

**COUNTY OF MARIN
STANDARD SHORT FORM CONTRACT**

THIS AGREEMENT is made and entered into this day August 15, 2006 by and between the COUNTY OF MARIN, hereinafter referred to as "County" and **THE ENERGY ALLIANCE ASSOCIATION**, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, County desires to retain a person or firm to provide the following services: to provide energy efficiency services as outlined in the Marin Energy Watch Partnership Contract (see Attachment 1); and

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by County, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

The County agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and contract forms and special provisions format when needed.

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit "B"** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract.

Contractor shall provide County with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

4. MAXIMUM COST TO COUNTY:

In no event will the cost to County for the services to be provided herein exceed the maximum sum of **\$298,704** including direct non-salary expenses.

5. TIME OF AGREEMENT:

This Agreement shall commence on **August 15, 2006**, and shall terminate on **June 30, 2009**. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to County. The general liability policy shall be endorsed naming the County of Marin as an additional insured. The certificate(s) of insurance and required endorsement shall be furnished to the County prior to commencement of work. Each certificate shall provide for thirty (30) days advance notice to County of any cancellation in coverage. Said policies shall remain in force through the life of this Contract and shall be payable on a per occurrence basis only, except those required by paragraph 6.4. a. and b. which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify and hold the County, its employees, officers, and agents, harmless and defend the County against any and all claims, damages, losses and expense that may arise by reason of the Contractor's negligent actions or omissions. County agrees to timely notify Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the agreement. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

A request for a waiver of any of the following insurance requirements must be set forth on **Exhibit "C"** attached hereto. A waiver must address reduced amounts of coverage or the type of coverage waived entirely.

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000.00). The County shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.2 AUTO LIABILITY

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars (\$1,000,000.00).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.3 WORKERS' COMPENSATION

The Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to County prior to commencement of work.

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.4 OTHER INSURANCES

Contractor may be required to carry additional insurance based upon the nature of the work to be performed (scope of services). For each additional required insurance, a corresponding certificate of insurance must be provided. Claims-made policies must have a retroactive date either prior to the effective date of the Contract or the beginning of the Contract work. Claims-made coverage must extend a minimum of twelve (12) months beyond completion of Contract work or end of current Contract, whichever is later. If coverage is cancelled or non-renewed, and not replaced with another claims made policy with a retroactive date prior to the Contract effective date, the Contractor must purchase extended reporting coverage for a minimum of twelve (12) months beyond completion of Contract work. Contractor shall maintain a policy limit of not less than one million dollars (\$1,000,000) per incident, with a deductible or self-insured retention not to exceed *\$2,500 unless approved by the County.

6.4.a Professional Liability Insurance..... (check box if required)

**Deductibles greater than \$2,500 require Insurance Reduction/Waiver form (Exhibit "C") to be completed.*

6.4.b Maritime Insurance..... (check box if required)

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the County except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the County evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the County.

10. LICENSING AND PERMITS:

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

11. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit County to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from County. Contractor shall refund any monies erroneously charged.

12. TITLE:

Any and all documents, information and reports concerning this project prepared by the Contractor, shall be the property of the County. The Contractor may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatsoever, Contractor shall promptly turn over all information, writing and documents to County without exception or reservation.

13. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the County may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

14. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the County. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and worker's compensation.

15. AMENDMENT:

This Contract may be amended or modified only by written agreement of all parties.

16. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to County, as is evidenced in writing.

17. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in MARIN County, California.

18. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's willful misconduct or negligent performance of this Contract. Nothing herein shall be construed as a limitation of Contractor's liabilities.

19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws (including, but not limited to the County of Marin Nuclear Free Zone and Living Wage Ordinance) affecting the services covered by this Contract.

20. NOTICES:

This Contract shall be managed and administered on County's behalf by the Department Contract Manager named below. All invoices shall be submitted and approved by this Department and all notices shall be given to County at the following location:

Contract Manager: Dana Armanino _____

Dept./Location: Community Development Agency, Rm 308 _____

Telephone No.: 415-499-3292 _____

Notices shall be given to Contractor at the following address:

Contractor: The Energy Alliance Association _____

Address: 1055 Broadway, Suite D _____

Telephone No.: Sonoma, CA 95476 _____

21. ACKNOWLEDGEMENT OF EXHIBITS

CONTRACTOR'S INITIALS

EXHIBIT A. **Scope of Services** _____

EXHIBIT B. **Fees and Payment** _____

EXHIBIT C. **Insurance Reduction/Waiver** _____

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

**APPROVED BY
COUNTY OF MARIN:**

By: _____
BOARD PRESIDENT

CONTRACTOR:

By: _____
Name: _____
Telephone No.: _____

APPROVED AS TO FORM (if standard short form content has been modified):

County Counsel: _____

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES (required)

Scope of Services (as stated in PG&E-Marine Energy Watch Contract, Attachment 1):

Small Business Calculated Savings Direct Install Program Element

Calculated Savings Direct Install Programs use a calculated savings approach, rather than a deemed savings approach, for most of its measures, whereby wattage and operating schedules of existing equipment are verified and site-specific energy-efficient retrofits are specified. In this manner, Calculated Savings Direct Install Programs can calculate the energy savings specific to a measure and customer and thereby scale incentives accordingly.

1. General: The Marin Energy Watch Partnership (Partnership) intends to work with the Small Business Energy Alliance (SBEA) to implement the Small Business Calculated Savings Direct Install Program Element.

a. Program Element Overview: The SBEA will be used in conjunction with the MarinEMT program targeted at public agencies, the Marin Green Business program, and as directed by the Implementer.

b. The Partnership shall provide overall program administration, planning, marketing, auditing, operations, and installation management for the Small Business Calculated Savings Direct Install Program Element, as defined in the approved Program Management Plans (PMPs). Energy Efficient Measures installed are defined in the product specifications in the LGP Installation Standards manuals provided by PG&E or as approved by the PG&E Program Manager.

2. Contractor Personnel: Contractor is responsible for providing qualified personnel to perform the Work. Prior to starting Work, Contractor shall ensure that all personnel performing Energy Specialist work, which includes Assessments and/or installations of Energy Efficient Measures (EEMs), shall complete the required training classes as they become available, which can include video-training. Exceptions to this training requirement may be approved by the PG&E Program Manager.

Contractor shall have all necessary licenses and insurance, and use only employees who have completed training to install EEMs. These employees are referred to as "Energy Specialists".

a. For customer self-installed measures, PG&E may waive installer training requirement if Implementer is performing 100% pre and post installation inspections of self-installed measures.

3. No Debilitating Allergic Reactions: Contractor shall ensure that all personnel performing field Work have no debilitating allergic reactions to animals, smoke, mildew, dust, insulation material such as fiberglass, rockwool, cellulose, silverwool, vermiculite, or flame retardant chemicals (such as boric acids and sulfates), when wearing gloves and face masks. Contractor shall ensure that all personnel performing field Work wear gloves, facemasks, and other protective clothing as necessary.

4. Determination of Customer Eligibility: The Energy Specialist shall determine Customer eligibility. An eligible Customer is an owner, renter or lessee (or agent thereof) of a commercial or multi-family facility. Eligible Customers must meet the following conditions:

a. Customer's gas and/or electric service site must be located within the Targeted Areas.

b. Customer must receive PG&E gas or electric distribution service and be on a residential or Small Business rate schedule. Customer is only eligible to receive EEMs that correspond directly to the type of service (i.e. electricity or natural gas) that Customer receives from PG&E or other IOU participating in this Contract.

c. Residential Customers must reside in a Single or Multi Family Home, condominium, or Mobile Home.

d. Small Business Customers must receive gas and/or electric distribution service from PG&E within the Targeted Area, be on an A1, A6, A10, or E19 account and use less than 100 kW demand per month.

e. On a case-by-case basis, Medium Business Customers on accounts with demand over 100 kW may also be eligible for Program Direct Install services. Contractor shall obtain permission to provide services to potential Customers with demand over 100 kW by written approval from the PG&E Program Manager after consultation with PG&E's local Account Services office. Common areas of multi-family buildings are eligible to receive services regardless of rate schedule.

f. Qualifying Eligible Business Customers: The Contractor shall qualify Small Businesses by size and location.

-- The Contractor shall work closely with the Partnership, PG&E's Program Manager, PG&E Account Services representatives, and City or County staff to identify those businesses to focus Program marketing, advertising, outreach, energy Assessments, installation of energy efficiency measures and follow up for Customers eligible to participate in the Small Business Calculated Savings element.

5. Assessment and Installation Services: Contractor shall perform energy Assessments, develop specifications for the installation of EEMs, and ensure installation of EEMs according to the program-approved product specifications in the LGP Installation Standards manual, as defined in the PMP.

a. Customer Information: During the site visit, the Energy Specialist shall collect the Customer information as required by PG&E.

b. Review of Energy Assessment Results: At the conclusion of the energy Assessment, the Energy Specialist shall take time with the Customer and thoroughly explain what changes the Business Customer needs to make its premises more energy efficient. In addition, the Energy Specialist shall explain in detail all phases of the work that will be completed in the Customer's premises by the Installation Contractor.

c. Customer Language Preference: The Energy Specialist shall determine Customer's language preference and provide Customer with marketing materials in Customer's preferred language whenever possible.

d. Business Owner Waiver: The Energy Specialist shall obtain signatures from both the business owner and the property owner or its authorized agent's signature on the Small Business Property Owner Release and Waiver Agreement (Exhibit D of the PG&E Marin Energy Watch Partnership Contract, Attachment 1), or equivalent form approved by PG&E. The Energy Specialist shall not install any EEMs without a signed copy of Exhibit D or equivalent approved form.

6. Energy Efficiency Measures:

All EEMs shall qualify under PG&E's deemed savings programs. Any installation standards that deviate from PG&E deemed savings measures as specified in PG&E's LGP Installation Standards manual must be pre-approved by PG&E's Program Manager and shall be documented in the PMP. Any additional EEMs that Contractor desires to install must be pre-approved by PG&E's Program Manager and shall be documented in the PMP. For these additional EEMs, Contractor must submit product specifications. Contractor shall provide product samples to PG&E upon the request of the Program Manager.

a. Contractor shall submit any proposed changes to the EEM products shown in Attachment F - EE Measures Unit Price-Estimated Savings (see PG&E Marin Energy Watch Partnership Contract, Attachment 1) to the PG&E Program Manager for approval prior to using the new products.

b. Contractor shall provide the measure savings calculation methodology to PG&E's Program Manager for approval as part of the PMP.

For the Small Business Calculated Savings Direct Install Program, Contractor will be paid based on the energy savings calculation methodology as outlined in PMP and approved by PG&E.

c. PG&E reserves the right to change the process, format, content and number of Energy Assessments to be conducted under this Program at any time upon thirty (30) calendar days' written notice to Implementer. Any additional Work or decrease in Work resulting from such changes shall be addressed as set forth in Section 19 in the PG&E Marin Energy Watch Partnership Contract, Additional Work or Changes in Work, of the General Conditions, attached hereto. PG&E agrees that any changes it requests under this subsection concerning the Work will not require changes in other work that Implementer may be carrying out that is separate from Work under this Contract.

d. Unauthorized Work: If a Customer requests Contractor to perform any tasks unrelated to or beyond the Scope of Work described in this Contract, Contractor shall politely inform the Customer that it is not authorized to perform those tasks.

e. Under no circumstances will the Contractor be compensated for performing work not required by the terms of this Contract. In addition, Contractor may not solicit Customer for any work that is unrelated to or beyond the Scope of Work described in the Contract. Contractor shall prominently disclose to Customers, orally and in writing that Customers are not obligated to purchase any service and that Program services are paid for by PGC funds.

f. Notwithstanding the above, customers may have co-pay obligations as identified on the customer participation agreement form and disclosed to customers orally and in writing.

e. Customer Confidentiality: Contractor shall ensure that all Customer data collected under this Contract remains confidential and will not be used for any purpose other than as specifically provided for in the Contract. Such information will be protected as set forth in Section 18 of the PG&E Marin Energy Watch Partnership Contract, Confidentiality, and the required PG&E Non-Disclosure Agreement, herein.

7. Task Deliverable: Contractor shall perform energy Assessments on Small Businesses, develop specifications for the installation of EEMs, and ensure installation of EEMs according to the program-approved product specifications and LGP Installation Standards.

EXHIBIT "B"
FEES AND PAYMENT SCHEDULE (required)

Fees:

The maximum compensation for labor, travel and materials is not to exceed \$298,704.

The Energy Alliance Association will bill for direct implementation and rebate processing labor at \$0.13 per kWh installed and verified. Rebate payments to customers for energy efficiency measures will be billed in a lump sum.

Fee Schedule:

Direct Implementation	\$96,000
Rebate Processing and Inspection	\$35,000
Rebates to Customers	\$167,704
Total	\$298,704