

**COUNTY OF MARIN
STANDARD SHORT FORM CONTRACT**

THIS AGREEMENT is made and entered into this day January 27, 2009 by and between the COUNTY OF MARIN, hereinafter referred to as "County" and **COMMUNITY ENERGY SERVICES CORPORATION**, 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 part of the Marin Energy Watch Partnership; 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 **\$395,680** including direct non-salary expenses.

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 2, 2009**, and shall terminate on **January 31, 2010**. 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 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) with a two million dollar (\$2,000,000) aggregate limit. 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 combined single limit (\$1,000,000.00).

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

6.3 WORKERS' COMPENSATION

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. 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 PROFESSIONAL LIABILITY INSURANCE

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Contract or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. The amount of the policy deductible or self-insured retention must be declared on Exhibit C. If the deductible or self-insured retention amount exceeds \$100,000, the County may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and the County of Marin may conclusively rely thereon.

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

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 workers' 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 negligence, recklessness or willful misconduct in the performance of this contract..

19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from the County's contact person referenced in paragraph 20.

NOTICES below.

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: Community Energy Services Corporation
Address: 1013 Pardee Street, Suite 201
Berkeley, CA 94710-2644
Telephone No.: 510-981-7765

20. ACKNOWLEDGEMENT OF EXHIBITS

	<input checked="" type="checkbox"/> <u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	Scope of Services	
<u>EXHIBIT B.</u>	Fees and Payment	
<u>EXHIBIT C.</u>	Insurance Reduction/Waiver	

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

**APPROVED BY
COUNTY OF MARIN:**

By: _____
COUNTY ADMINISTRATOR

CONTRACTOR:

By: _____
Name: _____
Telephone No.: _____

COUNTY COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)

REASON(S) REVIEW:

- Contract Requires Board of Supervisors' Approval
- Standard Short Form Content Has Been Modified
- Optional Review by County Counsel at Department's Request

County Counsel: _____

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES (required)

Contractor Scope of Services will include the development and implementation of a small commercial direct install energy efficiency program participating in the Marin Energy Watch partnership. Activities under this contract will include, but not be limited to:

1. Operating Community Energy Services Corporation's small commercial business program in Marin County, herein called the Smart Lights Program
2. Developing marketing plan and collateral materials
3. Recruiting small business customers to participate in program
4. Conducting energy audits at approximately 300 small businesses in Marin County by end of 2009
5. Providing incentives for the installation of energy efficiency retrofits in approximately 150 small businesses in Marin County by end of 2009, resulting in 240 gross, connected kW and 900,000 kWh of gross kWh savings

TASK	Date Complete
Administrative Activities:	
1. Hold initial program meetings with Marin Energy Watch and PG&E staff	Monthly
2. Set up Data Management and Accounting protocols to comply with PG&E program reporting requirements	Jan 30, 09
3. Customize BEAM (the program management, contacts management, and project management database) to comply with Marin Energy Watch program requirements	Jan 30, 09
4. Cross train MEPT staff in conducting Smart Lights audits and using program software (BEAM)	Feb 5, 09
5. Review and revise Program Materials to be consistent with Marin Energy Watch requirements, including but not limited to the following:	Feb 6, 09
a. Program Management Plan (PMP)	
b. Program E3 Calculator and Incentive Amounts	
c. Program Equipment, Installation and Quality Control Standards	
d. Program Work papers (as necessary)	
e. Installation contractor documents	
6. Prepare for and hold installation contractor training workshop	Feb 17, 09
a. Recruit contractors and suppliers	
b. Prepare training documents and workshop	
c. Hold workshop	
7. Solicit, negotiate, and institute 2009 Program installation pricing	Jan 29, 09
8. Prepare monthly progress reports and invoices	Monthly
Marketing Activities:	
1. Review and revise marketing collateral (flyers, applications, website)	Jan , 09
2. Develop Program Marketing and Outreach Plan	Jan 30, 09
3. Hire Program Marketing and Outreach Coordinator	Feb 6, 09
4. Manage customer contacts and services	On-going
5. Hold meetings with Chamber of Commerce groups, business networks, local governments – first to be held in Feb 09	On-going
6. Meet with Marin Energy Watch to coordinate Mill Valley, Sausalito business district outreach campaign	Feb 13 09
7. Execute Mill Valley and Sausalito campaigns	March-May 09
8. Meet with Marin Energy Watch to coordinate San Rafael business district outreach campaign	Feb 13 09
9. Execute San Rafael campaign	Sept-Nov 09
Direct Implementation Activities:	
1. Respond to, audit, and present audit results to interested customers	On-going
2. Present audit reports to 150 customers (50%)	June 12 09
3. Present audit reports to 150 customers (100%)	Nov 13 09
4. Install 60 kW gross connected savings (25%)	May 31 09
5. Install 120 kW gross connected savings (50%)	Aug 31 09
6. Install 180 kW gross connected savings (75%)	Oct 31 09
7. Install 240 kW gross connected savings (100%)	Dec 31 09

EXHIBIT "B"
FEES AND PAYMENT SCHEDULE (required)

Fees:

The maximum compensation for labor, travel and materials is not to exceed \$395,680. This contract will be billed as both a time and materials contract and a unit-price basis for incentive payments to customers.

Per the County's Master Contract with PG&E for the Marin Energy Watch Partnership, there is a monthly cap on all spending during the initial Bridge Funding Period. Monthly Time and Materials amounts vary to allow for the monthly needs of other programs in the Partnership. Contractor is authorized to spend an amount not to exceed the below fee schedule during the Bridge Funding Period for Time and Materials work. Any unspent funds in a single month may not be spent in future months without written authorization from the Contract Manager.

Incentive payments are budgeted as a lump sum for contract period and will be invoiced as installations have occurred. Payment schedule and terms are subject to PG&E and CPUC rules and requirements as may yet be determined.

Community Energy Services Corporation			
Hourly Rates			
Admin			
	Executive Director	Kim Malcolm	\$ 90.00
	Program Director	Maria Sanders	\$ 70.00
	Program Manager	Martin Bond	\$ 60.00
	Data Management	Per Month	\$ 340.00
Direct Implementation			
	Technical Manager	Carlo Federiconi	\$ 60.00
	Project Manager	Chris Lewis	\$ 55.00
	Project Manager	Erin Fisher	\$ 55.00
	Project Manager	Matthew McDermont	\$ 55.00
	Operations Coordinator	Nikki Dove	\$ 45.00
	Project Coordinator	Eric Bartesch	\$ 45.00
Marketing			
	Coordinator	TBD	\$ 50.00
Mileage	Per Mile	at current IRS rate	
Materials	At cost plus 18% indirect rate		

Budget:

Administrative Costs	\$50,050
Marketing and Outreach	\$55,101
Direct Implementation (non-incentive)	---
Activity	\$153,729
Subtotal Non-Incentive	\$258,880
Incentives	\$136,800
Contract Total	\$395,680

Time & Materials Billing Schedule:

January 2009	\$ 12,000
February 2009	\$ 15,360
March 2009	\$ 30,335
April 2009	\$ 29,500
May 2009	\$ 29,500
June 2009	\$ 18,010
July 2009	\$ 12,870
August 2009	\$ 7,695
September 2009	\$ 28,130
October 2009	\$ 29,495
November 2009	\$ 26,400
December 2009	\$ 19,585
Total Time & Materials	\$ 258,880