

**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 **HMW INTERNATIONAL, INC.**, 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 **\$188,200** 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: HMW International, Inc.
Address: 359 Molino Avenue
Mill Valley, CA 94941
Telephone No.: 415-389-1348

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)

Services to be provided by Contractor under the PG&E-Marin Energy Watch Partnership Contract and Marin Energy Management Team Comprehensive Public Sector Services program element of the PG&E-Marin Energy Watch Partnership:

Marin Energy Watch Partnership

Program Description. Pacific Gas and Electric Company (PG&E) and the County of Marin (County) have agreed to work together on the Marin Energy Watch Partnership Program (Program). The Program will promote reduced energy use and achieve specified energy savings targets by providing energy efficiency information (Marketing and Outreach) and direct installation of energy efficient equipment to eligible PG&E customers (Direct Install). Eligible PG&E customers include residential, Small and Medium-Size Business Customers and municipal/government customers located within designated areas called the "Targeted Areas".

Program Administration: HMW will provide assistance to the County for the general management and administration of the Program including:

- Management of program elements and subcontractors
- Coordination with PG&E and other programs
- Development of the Project Management Plan and other plans and reports
- Development of project management and communication tools

Marin Energy Management Team Comprehensive Public Sector Services

Program Element Description. The Marin Energy Management Team (MarinEMT) acts as an "energy manager" for a collaboration of Public Agencies including all local governments, school districts and special districts. The program element specifically addresses the difficulty of reaching smaller public sector institutions. Services include audits, technical assistance, engineering, assistance in financing and obtaining incentives, specifying, and managing projects, energy accounting and reporting, procurement, peer meetings, training workshops. The team also works to capture comprehensive energy savings and lost opportunities through a mix of activities designed to support the customer base on an ongoing basis.

Program Administration: HMW will provide assistance to the County for the general management and administration of this Program Element including:

- 1.1 Management of MarinEMT team/subcontractors
- 1.2 Coordination with PG&E and other programs
- 1.3 Development of MarinEMT element of the Project Management Plan and other plans and reports
- 1.4 Development of project management and communication tools

Program Activities:

2.1 Organizational Assessment & Assistance: MarinEMT assesses current capabilities and needs of each Public Agency to identify the potential opportunities and level of assistance needed by the customer.

2.2 Energy Accounting: For each participant, MarinEMT retrieves historical energy use data, benchmarks facilities, and tracks energy use on an ongoing basis. Energy Accounting software is used that allows for analysis and reporting. The team works with PG&E to automate the ongoing retrieval of utility data.

2.4 Peer Networking and Training: Plan and participate in peer networking meetings and local workshops.

2.5 Facility Auditing and Engineering: Direct the work of team technical staff that will perform audits, bid specifications, presentations for management, financial analysis and other information as necessary to facilitate the implementation of energy efficiency measures.

2.6 **Incentives and Direct Install:** Manage the implementation of energy efficiency measures through direct installation contractors or financial incentives.

2.7 **Program collaboration and leveraging:** Direct the team in establishing and maintaining collaborations with water districts, and leveraging of other technical assistance and financial opportunities available to Public Agencies. Such programs include the California Energy Commission Energy Partners Program and tax-exempt low-interest financing, other state and federal funding opportunities. Assist in coordination with other PG&E energy efficiency programs.

7.9.3 **Savings:** Assist County staff in preparation of reports required to implement energy efficiency measures for submittal to PG&E's Program Manager for review and approval.

EXHIBIT "B"
FEES AND PAYMENT SCHEDULE (required)

Fees:

The maximum compensation for labor, travel and materials, and incentives is not to exceed \$188,200. 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 are completed and inspected. Payment schedule and terms are subject to PG&E and CPUC rules and requirements as may yet be determined.

Staff time will be billed on a time and materials basis at the following hourly rate:

Principal consultant/Project Manager:	\$135.00
Technical Assistant/Auditor:	\$75.00
Project Coordinator:	\$50.00

Budget:

Administrative Costs	\$37,050
Marketing and Outreach	\$37,050
Direct Implementation (non-incentive)	---
Activity	\$74,100
Subtotal Non-Incentive	\$148,200
Incentives	\$40,000
Contract Total	\$188,200

Time & Materials Billing Schedule:

January 2009	\$ 21,445
February 2009	\$ 19,720
March 2009	\$ 9,510
April 2009	\$ 2,340
May 2009	\$ 2,340
June 2009	\$ 8,820
July 2009	\$ 12,460
August 2009	\$ 15,130
September 2009	\$ 12,745
October 2009	\$ 12,130
November 2009	\$ 0
December 2009	\$ 0
Subtotal Time & Materials	\$ 116,640
Reserve T&M Funds	\$ 31,560
Total Time & Materials	\$ 148,200