

**COUNTY OF MARIN
STANDARD SHORT FORM CONTRACT**

THIS AGREEMENT is made and entered into this day August 22, 2006 by and between the COUNTY OF MARIN, hereinafter referred to as "County" and **KENWOOD ENERGY**, 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 **\$77,220** including direct non-salary expenses.

5. TIME OF AGREEMENT:

This Agreement shall commence on **August 22, 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: Kenwood Energy
Address: P.O. Box 692
Kenwood, CA 95452
Telephone No.: 707-695-2158

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)

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

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

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.

2.3 Web-based Intranet: The MarinEMT will update and maintain its private web-based intranet for storing and sharing reports and information for Public Agencies.

2.3 Peer Networking and Training: Participate in peer networking and training. Conduct local workshops as appropriate.

2.4 Facility Auditing and Engineering: Conduct or assist in all level of audits (walkthroughs to investment grade) to identify savings opportunities. Prepare audit reports, bid specifications, presentations for management, financial analysis and other information as necessary to facilitate the implementation of energy efficiency measures.

2.5 Technical Assistance: Provide or assist in finding any professional assistance that will aid in implementing energy efficiency measures. Assistance includes but is not limited to engineering, financial, project management, and policy.

2.6 Incentives and Direct Install: Assist in the development of incentive plans appropriate to the mix of technical assistance, direct install and financial assistance to be provided to public sector customers. Provide calculated savings forms and work papers required for PG&E approval to implement energy savings measures for public sector customers.

2.7 Program collaboration and leveraging: Assist in the collaboration with Marin water districts to integrate energy and water conservation programs for both reduced transaction and marketing costs and to capture energy savings in the distribution and treatment of water resulting from reduced water use. Assist in leveraging 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 that are not considered to violate the double-dipping restrictions.

7.9.3 Savings: Assist 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 is not to exceed \$77,220.

Note: Funding for this contract assumes funding through December 2007 and contractor is only liable for work through 2007.

This contract will be billed as a time and materials contract. Tim Holmes, the principal consultant, will bill at a rate of \$135.00 per hour.

Fee Schedule:

| | |
|---------------------------------------|-----------------|
| Administrative Costs | |
| Overhead and General Admin | \$15,444 |
| Other Administrative Costs | \$0 |
| Marketing and Outreach | \$15,444 |
| Direct Implementation (non-incentive) | -- |
| Activity | \$46,332 |
| Installation | \$0 |
| Hardware and Materials | \$0 |
| Rebate Processing and Inspection | \$0 |
| Total | \$77,220 |