

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 **RISING SUN ENERGY CENTER**, 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 **\$156,039** 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: Rising Sun Energy Center

Address: 2033 Center Street

Berkeley, CA 94704

Telephone No.: 510-665-1501

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:

1. Contractor shall deliver available services to qualified Customers in accordance with the program Single Family and Multi-Family Element. Contractor shall canvass neighborhoods within designated City and County Targeted Areas to identify Single-Family and Multi-Family Customers, as applicable that may qualify for installation of certain energy efficient measures (EEMs).
2. Contractor shall provide Assessments and install specified EEMs in Customer facilities that qualify under the program.
3. Contractor Personnel: Contractor is responsible for providing qualified personnel to perform the Work. Prior to starting Work, Contractor shall ensure that all personnel as they become available and who are performing Energy Specialist work including Assessments and/or installations of EEMs, complete the required training, which can include video-training. Exceptions to this training requirement may be granted only with the approval of the PG&E Program Manager. Contractor shall have all necessary licenses and insurance, and use only employees who have completed training to install EEMs.
4. 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. Implementer shall ensure that all personnel performing field Work wear gloves, facemasks, and other protective clothing as necessary.
5. Assessment Services: After the Energy Specialist performs the assessment to identify potential Energy Efficiency Measures available under all programs, the Energy Specialist shall provide the services to the Customer as follows:
 - a. The Energy Specialist shall conduct an Assessment to determine which Energy Efficiency Measures will be installed to meet the energy goal of the program.
 - b. The Energy Specialist shall provide information and referrals to other Energy Efficiency measure and programs.
 - c. Customer Information: During the site visit, the Energy Specialist shall collect the required Customer information listed in Section titled, Single Family and Multi-Family Direct Install Program Element Reporting and Data Management
 - d. Daily Completion Rates for Residential Energy Assessment: Contractor shall ensure that each Energy Specialist does not perform more than:
 - i. Twelve (12) Residential Energy Assessments per eight-hour day, or
 - ii. More than fourteen (14) Residential Energy Assessments per ten-hour day.
 - e. Review of Energy Assessment Results: The Energy Specialists shall invite the customer to accompany them during the assessment and will explain proposed energy efficiency measures. If the Customer doesn't accompany the Energy Specialist on the assessment, the Energy Specialist discusses the proposed energy efficiency measures and offers written follow-up materials as appropriate.
 - f. Customer Language Preference: The Energy Specialist shall document Customer's language preference and provide Customer with marketing materials in Customer's preferred language whenever possible.
 - g. Residential Property Owner Release and Waiver: If the customer is the owner or renter of the residence, the energy specialist shall obtain the owner's or renter's signature on the Rising Sun Energy Center's Home Visit Form that includes the language of the property owner release and access agreement under the section titled Client Access Agreement.
 - h. A Residential Property Owner Release and Waiver Agreement is not required when Implementer is only installing EEMs that do not alter or modify in any way the structure of the home such as in the installation of CFL's, efficient-flow shower heads, and aerators.
 - i. Neither Contractor nor any of its subcontractors nor any person acting on their behalf shall sign a release or waiver from the Owner for any liability with respect to the Program.

6. Energy Efficient Measures (EEMs):
- a. All EEMs shall qualify under PG&E's deemed savings programs. Any installation standards that deviate from those detailed in PG&E's deemed savings measures LGP Installation Standards manuals must be pre-approved by PG&E and shall be documented in the PMP. Any additional EEMs that Implementer desires to install and that are not currently pre-approved by PG&E for this program must be pre-approved by PG&E's Program Manager.
 - b. Unauthorized Work: If a Customer requests Implementer to perform any tasks unrelated to or beyond the Scope of Work described in the Contract, Implementer shall politely inform the Customer that it is not authorized to perform those tasks.
 - c. 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.
 - d. 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.
 - e. Customer Confidentiality: Implementer 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 (Attachment 1), Confidentiality, and the required PG&E Non-Disclosure Agreement, herein.

EXHIBIT "B"
FEES AND PAYMENT SCHEDULE (required)

Fees:

The maximum compensation for labor, travel and materials is not to exceed \$156,039. 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. Rising Sun Energy Center staff will bill non-deliverable-tied hours at the following rates:

Executive Director	\$110.00
CYES Director	\$90.00
Operations Manager	\$80.00
CYES Program Managers	\$80.00
CYES Outreach Manager	\$80.00
Administrator	\$50.00
CYES Site Manager	\$50.00
CYES Youth Staff	\$25.00

Budget:

Administrative Costs	\$ 64,578
Marketing and Outreach	\$ 7,914
Direct Implementation (non-incentive)	---
Activity	\$ 24,375
Subtotal Non-Incentive	\$ 96,867
Incentives	\$ 59,172
Contract Total	\$ 156,039

Time & Materials Billing Schedule:

January 2009	\$ 0
February 2009	\$ 0
March 2009	\$ 4,812
April 2009	\$ 19,560
May 2009	\$ 19,560
June 2009	\$ 18,480
July 2009	\$ 16,560
August 2009	\$ 16,560
September 2009	\$ 750
October 2009	\$ 585
November 2009	\$ 0
December 2009	\$ 0
Total Time & Materials	\$ 96,867