

**COUNTY OF SAN MATEO
ENERGY SERVICES CONTRACT**

AGREEMENT NO. _____

This Agreement entered this (_____) day of (_____), 2008, by and between the County of San Mateo, a political subdivision of the State of California, hereinafter called "County" and **ABI Services, Inc.**, hereinafter called "Contractor".

WITNESSETH

WHEREAS, the County has the authority to engage independent Contractors to perform sundry services for the County, with or without the furnishing of materials; and

WHEREAS, Government Code §4217.12 provides that notwithstanding any other provision of law, a public agency may enter into an energy service contract on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds that the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases

WHEREAS, it is necessary and desirable that Contractor be engaged by County for the purpose of providing conservation services and conservation measures in public buildings, including equipment or other measures to reduce energy use or make for a more efficient use of energy, as hereinafter described:

IT IS AGREED BETWEEN THE COUNTY AND CONTRACTOR as follows:

1. Scope of Work. Contractor shall provide all labor, material, and incidentals, in accordance with the terms of this Agreement, necessary to perform the services identified in:

Exhibit A: ABAG Vendor Agreement; and

Exhibit B: ABI's Proposal

This Agreement is subject to the Contractor submitting a complete proposal that identifies the work to be performed and costs. The San Mateo County Public Works Director must approve this proposal and written authorization from the San Mateo County Public Works Director is required before any work can commence on any of the facilities covered by the proposal. The Public Works Director, at his sole discretion, shall have the authority to exclude individual facilities, in which case Contractor shall not provide the materials or perform the work on the excluded facilities, and the County shall incur no cost as a result of such exclusions.

2. Schedule and Term. The schedule and terms of this Agreement begins August 1, 2008 and extends through November 30th 2008 for a total of 122 days.

3. Payments. In consideration of the services rendered in accordance with the terms, conditions and specifications set forth herein and in attached exhibits, if any, County shall make payment to Contractor as follows:

Payment will be made upon satisfactory completion of job and receipt of an itemized invoice identifying the Agreement number, County Project Number, Complete Scope of Work, Specific Work Completed, Number of Hours involved and breakdown of charges.

The total project cost will be \$589,176.18. Of this amount the County's share under this contract shall not exceed \$439,176.18. The County authorizes the Pacific Gas and Electric (PG&E) rebate of \$150,000 to which the County would be otherwise entitled to be paid directly to the contractor, in partial consideration of the services provided under this agreement, and the County shall pay Contractor directly for the difference of the total project cost, which includes a 20% contingency (\$98,196) for unanticipated costs related to this project. This additional amount can only be expended after written authorization is provided by the Public Works Director and specifies the work to be performed and payment amount. The County will have the right to withhold payment if the County determines the quantity and/or quality of the work performed is unacceptable.

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4. Changes. County may require changes in the scope of services to be performed by Contractor under this Agreement and Contractor agrees to perform said changes. Such changes, including any increase or decrease in the Contractor's fee, shall be made by written amendment to the Agreement and such amendment shall be issued prior to commencing with the changes. Changes to this Agreement will be paid for at a lump sum amount agreed to by the parties or at an amount based on the actual labor hours and expenses incurred in the performance of the change as directed by the County.

5. Relationship of the Parties. It is understood that this is an Agreement by and between County and Contractor and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other relationship whatsoever other than that of independent contractor.

6. Non-Assignability. Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of County. Contractor

shall not employ subcontractors or consultants to carry out the responsibilities undertaken pursuant to this Agreement without the prior written consent of the County. All assignees, subcontractors, or consultants approved by the County shall be subject to the same terms and conditions applicable to Contractor under this Agreement, and Contractor shall be liable for the assignee's, subcontractor's, or consultant's act and/or omissions. All agreements between Contractor and subcontractor and/or assignee for services pursuant to this Agreement shall be in writing and a copy shall be provided to the County.

7. Termination of Agreement. Either party may terminate this Agreement after giving the other party written notice of a violation of this Agreement and the violating party does not correct the violation within fifteen calendar days after receiving said notice. Said notice shall specify what work other than correcting the violation may be performed after receipt of such notice. Violations of this Agreement include failure to perform obligations required by this Agreement in a timely and proper manner and failure to adhere to the covenants, terms, conditions or stipulations of this Agreement.

In the event of such termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, reports, and specifications prepared by Contractor shall, at the option of the County become the property of County, and Contractor shall be entitled to receive just and equitable compensation for work completed in accordance with this Agreement. Notwithstanding the above, Contractor shall not be relieved of any liability to County for damages sustained by County by reason of Contractor's breach of this Agreement and County may withhold any and all payments to Contractor until such time as the exact amount of damages due the County from Contractor has been determined.

County may terminate this Agreement at any time without cause upon ten calendar days written notice to Contractor, and thereupon all documents, data, studies, surveys, drawings, estimates, reports and specifications prepared by Contractor shall become the property of County and subject to payment therefore be delivered to County upon demand. Said notice shall specify what work may be performed after receipt of such notice. In the event of such termination by County without cause, County shall pay Contractor for services actually performed pursuant to this Agreement prior to the date of termination.

8. Hold Harmless. CONTRACTOR shall indemnify and save harmless the COUNTY, its officers, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including CONTRACTOR, its officers, employees and servants, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties or claims of damages resulting from CONTRACTOR'S failure to comply with applicable laws, or (D) any other loss or cost resulting from the CONTRACTOR'S negligent or reckless acts or omissions or willful misconduct in connection with the performance of any work required of CONTRACTOR or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of CONTRACTOR to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission, which occurred during or under this Agreement.

9. Insurance. The Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained. The Contractor shall furnish County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall be endorsed to provide thirty - calendar days written notice to County of any change in the limits, cancellation or other modification of the insurance.

The Contractor shall have in effect during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage in accordance with Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code.

Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability Insurance and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations are by himself or by any subcontractor or anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below:

A.	Comprehensive General Liability	\$1,000,000
B.	Motor Vehicle Liability Insurance	\$1,000,000
C.	Workers Compensation	\$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

10. Non-Discrimination. Contractor, with regard to this Agreement, shall not discriminate on the grounds of age, ancestry, creed, color, disability, marital status, medical condition, national origin, political or religious affiliation, race, sex, sexual orientation or any other non-job-related criteria. This shall apply to Contractor's organization and in the selection and retention of subcontractors and vendors. In regard to contracts over \$5,000 with respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

11. Compliance with Contractor Employee Jury Service Ordinance. For contracts over \$100,000, Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees regular pay the fees received for jury service.

12. Records. Any system or documents developed, produced or provided under this contract shall become the sole property of the County. Contractor shall maintain all required records for three years after the County makes final payment and all other pending matters are closed, and shall be subject to examination and audit of the County, a federal grantor agency, and the State of California.

13. Notices. Notices are valid only if written. Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail to the last business address known to him who gives the notice.

In the case of County, to:

James C. Porter, Director of Public Works
County of San Mateo
Department of Public Works
555 County Center, 5th Floor

Redwood City, CA 94063-1665

In the case of Contractor, to:

ABI Services, Inc.
30085 Ahern Street
Union City, CA 94587

14. Review of Work. It is understood that periodic review of the Contractor's work will be necessary and the right to review is reserved to the County. Contractor agrees to provide County, or any of its duly authorized representatives, access to any and all books, documents, papers, and records which are directly pertinent to this Agreement. Contractor shall maintain all required records for three years after County makes final payments and all other pending matters are closed.

15. Interest of Contractor. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement no persons having such interest shall be employed.

16. Commencement of Work. Contractor shall commence performance of the services and duties required to be performed under this Agreement immediately upon receiving a signed copy of the Agreement. Contractor shall obtain any license, permit, or approval necessary from any agency whatsoever for the services required by this agent.

17. Compliance with Laws. This Agreement shall be governed by the laws of the State of California. In performing this Agreement, the Contractor shall comply with applicable federal, state, and local codes, statutes, regulations and ordinances currently in effect including but not limited to the requirement of paying prevailing wages.. Where requested, Contractor shall provide engineering calculations and other information necessary for compliance.

18. Merger Clause. This Agreement, including exhibits constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each part of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing. In the event of a conflict between the terms, conditions or specifications set forth herein and those in exhibits attached hereto or contractor's proposal, the terms, conditions or specifications set forth herein shall prevail.

19. Warranty. Contractor warrants to County that the goods and services covered by this agreement will conform to the drawings, specifications, samples, and description furnished by County and will be of first class material and workmanship and free from defects. Goods will be received subject to inspection and acceptance at destination by County and risk of loss before acceptance shall be on Contractor. Defective goods rejected by County may, without prejudice to any other legal remedy, be held at Contractor's risk and returned to Contractor at Contractor's expense. Defects

are not waived by acceptance of goods or by failure to notify Contractor of defect immediately upon receiving goods.

Unless otherwise agreed in writing by the parties, all implied and express warranties pursuant to the California Commercial Code, sections 2312-2317, shall apply to the goods covered by this agreement. Furthermore, warranties shall run for a minimum of twelve months after installation and acceptance and claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

20. Exhibits. The following exhibit(s) are a part of this Agreement:

Exhibit "A": ABAG Vendor Agreement

Exhibit "B": ABI Proposal

This Agreement is subject to the Contractor submitting a complete proposal that identifies the work to be performed and costs. The San Mateo County Public Works Director must approve this proposal and written authorization from the San Mateo County Public Works Director is required before any work can commence on any of the facilities covered by the proposal. The Public Works Director, at his sole discretion, shall have the authority to exclude individual facilities, in which case Contractor shall not provide the materials or perform the work on the excluded facilities, and the County shall incur no cost as a result of such exclusions.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By:
Adrienne Tissier, President
Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Contractor's Signature

Date: