

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
ENOVITY, INC.**

THIS AGREEMENT, entered into this _____ day of _____, 20_____,
by and between the COUNTY OF SAN MATEO, State of California, hereinafter called the
"County", and **Enovity Inc.**, hereinafter called the "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of Energy Consulting Services.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services (Detailed Scope of Work)

Exhibit B—Payments and rates

Exhibit C – General Obligation of Consultant

Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Two Hundred Seventy Five Thousand Dollars, \$275,000. The contractor agrees to credit to County any monies received by it from PG&E rebates/incentives for conducting the comprehensive audit on facilities in indicated in Exhibit B of RFP.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from February 15, 2011 through Feb 14, 2012.

This Agreement may be terminated by Contractor, the Director of Public Works or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

To the full extent permitted by law, 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.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County’s prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Department/Division 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 specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of 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, and it will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by 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.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000
- (c) Professional Liability \$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.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated there under, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.

- D. *Violation of Non-discrimination provisions.* 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 section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to 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 their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* 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.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

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.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY'S authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. 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 and signed by the parties.

15. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

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:

Enovity Inc.
100 Montgomery St., Suite 600
San Francisco, CA 94104

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

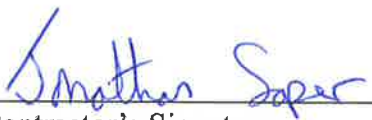
COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board



Contractor's Signature
Jonathan Soper
Principal
Date: 2/7/2011

Exhibit “A”

1. In consideration of the payments set forth in Exhibit “B”, Contractor shall provide Professional Consulting Services to perform investment grade audit on facilities indicated in Exhibit B of RFP and develop a Strategic Energy Master Plan (SEMP) for the County of San Mateo facilities. The contractor shall provide services according to below indicated detailed scope of work.

Detailed Scope of Work for Strategic Energy Master Plan

I. MAIN GOALS

- A.Reduce Energy consumption in county facilities by 25% by 2020
- B.Reduce county facilities’ greenhouse gas (“GHG”) emission by 15% by 2020
- C.Reduce County facilities’ water consumption by 10% by 2020
- D.Procure/generate 25% of power from green sources
- E.Reduce energy cost and/or increase energy generation revenue to offset energy cost
- F.Implement energy efficiency and conservation measures to achieve Energy Star rating for major facilities
- G.Achieve significant cost savings that are sustainable over the long term;
- H.Maintain, or improve the levels of occupant comfort, health, and safety that do not adversely affect County employees or the public;
- I.Capture additional benefits that may directly or indirectly result from the implementation of energy related services, such as improved occupant comfort, building functionality, reduced maintenance needs, improved indoor air quality, the reduction of GHG and award of renewable energy and/or GHG credits;
- J.Prepare a policy on facilities operation, maintenance, occupant comfort, and use of personal devices
- K.Prepare a policy on including and analyzing the energy/GHG impact on decisions related to construction/leasing/buying new facilities
- L.Be in compliance with governmental regulations and requirements.

II. SCOPE OF SERVICES

The County of San Mateo Department of Public Works (DPW) is seeking consultant services to develop a Strategic Energy Master Plan (SEMP) for the County of San Mateo. Services may require but not limited to, analysis of utility bills, energy audits for various county facilities, recommendation on energy savings and conservation measures and associated cost and life cycle analysis, feasibility studies, identification of available rebates and incentives, compliance with codes and regulations.

1. INTRODUCTION:

The County of San Mateo seeks consultant services to develop a Strategic Energy Master Plan (SEMP). The County will use the SEMP to advance the County's energy conservation, energy usage and cost reduction, greenhouse gas ("GHG") reduction and environmental sustainability goals through a wide range of energy projects, along with renewable energy assessments and deployment at a wide variety of County facilities. The County wants to investigate any relevant federal, state and utility company grants, incentives, tax credits and rebates that may be available for the recommended projects. The Contractor shall coordinate with the County's utility providers to ensure the recommendations meet all relevant federal, state and utility program requirements.

The Contractor shall:

1. Assist the County in development of a SEMP, which will include a comprehensive energy strategy, policy and plan;
2. Prepare a comprehensive energy efficiency and renewable energy audit that will identify cost-effective energy efficiency and renewable energy opportunities for County facilities;
3. Analyze, design and prioritize initiatives that efficiently and effectively meet the County's energy related goals; and
4. Assist in identifying rebates from utilities or other federal or state grants, loans, tax credits and incentives, to help underwrite current and future improvements or initiatives.

2. MAIN TASKS:

The County anticipates the following tasks associated with this Contract, at a minimum:

- A. Project Kick-off Meeting: Introduce staff associated with this Contract, provide any background information, confirm work orders and tasks, prioritized facility list, audit report contents and format, reporting requirements and the communications process.
- B. Report on Current and Potential County Energy Efficiency and On-Site Generation:

1. Analyze and report on energy efficiency (electricity and natural gas) and water usage at selected County facilities, conduct an investment grade energy audit building systems (HVAC, lighting, BMS), equipment, operations, and operational procedures for optimal performance, including the following thorough assessments:
 - a. Existing equipment; replacement, repair, or rehabilitation;
 - b. Potential alternative processes;
 - c. Tariff applicability;
 - d. Proposed energy efficiency and water conservation projects;
 - e. Equipment controls;
 - f. Lighting; Plug loads
 - g. Building/Energy Management Systems; Sequence of operations
 - h. Building envelope performance with evaluation for cooling/heat gain or loss, transmission and leakage; The site visit will include: review of historical data of existing energy and water usage (to be provided by the County and/or the County's utility providers), meeting with the facilities' staff, touring the facilities, identifying all major lighting, HVAC equipment and systems, determining occupancy schedules, energy use patterns,
 - i. Solar potential, alternative fuel sources and identifying facility or occupancy changes that could affect energy use; and
 - j. Each proposed project will be discussed on a *building-by-building basis* with separate savings and cost. All project cost analysis shall include cost of material, life cycle analysis, labor, engineering design, project management and commissioning of the measures.
2. Review existing utility bills and inventory current energy usage and charges to list energy sources, energy forecasting, energy procurement methods and also to develop an energy baseline and to perform tariff analysis. Develop Key Performance Indicators such as KWH, Peak KW, EUI, Therms, Gallons of water, energy charges/sf, energy charges/employees etc.
3. Conduct a feasibility review for central plant for government center complex, on-site power generation using fuel cells etc. at San Mateo Medical Center, heat recovery systems, solar photovoltaic cells, solar water heating.
4. Establish the standards on minimum efficiency for major equipments; identify any other cost efficient energy-efficient equipment
5. Conduct an assessment of County usage and policies as they affect energy and water usage and cost.

6. Identify suitable enterprise software programs that can be used for monitoring and reporting the energy, water consumption and GHG emission.
7. Develop and provide a template/matrix that can subsequently be used by the County for future facility energy and water evaluations and audits.
8. Provide a standard listing/spreadsheet of energy efficiency, water conservation, on-site power generation, heat recovery or renewable energy items that the County can use to evaluate a building it is proposing to construct, buy or lease.
9. Summarize pre-existing energy and water conditions at County facilities and quantify energy savings that are projected to be realized as a result of future projects and projects in progress.
10. Provide a comprehensive list of specific potential energy efficiency projects to be considered during the next three to five years, including technical solutions, mechanisms of implementing the Energy Efficiency & Conservation Measures descriptions of the projects, job creation and/or retention, GHG reduction benefits, any restrictions or limitations, and permits required, with a cost/benefit analysis prepared for all potential energy efficiency projects proposed for implementation.
11. Provide a comprehensive list of potential revenue and funding sources/grants/incentive programs/rebates, including regional programs, that could result in revenue to the County to offset rising energy and water costs, including a description of the funding source/program, the method for applying for those funds, any requirements or limitations, and the estimated funds the County could receive.
12. For all proposed recommendations provide a full life-cycle economic assessment with and without available federal, state or utility company rebates, including estimated installation cost, cost of maintenance, insurance and all other costs.
13. Optimize the operation (develop new sequence of operation) of Tri-Gen, UTC PureComfort, one MW Co-Gen plant at YSC central plant
14. Analyze and recommend upgrade to chiller plants at San Mateo Medical Center, Hall of Justice, and Maguire Jail
15. Provide standards for upgrading the BMS upgrades at various county facilities, including a standard energy dashboard interface, and installation of gas, electric & water sub-meters

C. Draft Facility Report: The Contractor shall prepare a report that describes each facility and its energy use patterns, identifies all lighting, HVAC, water conservation and on-site generation, heat recovery and co-generation options, associated energy use and cost reductions including rebate opportunities, present recommendations regarding all options analyzed, and include all calculations conducted in support of the analyses. The Contractor shall provide an electronic copy, in an editable format, of the draft report to the County's Project Manager.

D. Develop a Strategic energy plan:

1. Review and evaluate the San Mateo County Energy Strategy 2012; including accomplishments achieved, policies to be continued and lessons to be incorporated into the new policy. Also, review the San Mateo County's Climate Action Plan (being currently developed) and follow its recommendations related to GHG emission guidelines that relate to County facilities.
2. Assess Current County Processes, Responsibilities, Initiatives, Structure (Internal Assessment). Assess the current County processes, responsibilities, initiatives and structure, and apply frameworks and approaches to help senior management address key questions about the organization's capabilities, role, and positioning in with respect to energy and energy markets.
3. Assess Actions and Strategies of Industry Peer Group (External Assessment). Perform an external assessment (benchmarking as well as review of key industry issues) and interviews with County staff, followed up by strategic goal setting workshops, where the County's management team reviews benchmark data relative to its key performance measures and develops energy related organization goals performance targets.
4. Develop a new County Energy and Water Policy that:
 - a. Provides a clear, measurable objective that reflects the County's commitment, culture and priorities;
 - b. Establishes accountability, recommends a chain of command, defining roles in the organization, and designating the authority for personnel to implement the energy management plan;
 - c. Ensures continuous improvement in net energy and water use reduction, monitors trends and increases conservation and energy generation, including provisions for evaluating and updating the policy to reflect changing needs and priorities;
 - d. Promotes goals by providing a methodology for setting performance goals and for linking energy goals to overall service, financial and environmental goals of the organization, and monitors and reports life cycle and return on investment information;
 - e. Establishes a commitment policy on using and purchasing energy and water in the most efficient, cost-effective and environmentally responsible manner possible; and
 - f. Establishes a policy on improving water conservation and energy efficiency continuously by establishing and implementing

effective water conservation, energy management and energy generation deployment programs Countywide that support all operations and strive to ensure customer satisfaction while providing a safe and comfortable work environment.

5. Prepare a policy on facilities operation, maintenance, occupant comfort, lighting levels and use of personal devices.
6. Prepare a plan (spread sheet) indicating how County will meet its energy & GHG reduction targets by 2020
7. Assess County's organization structure, processes and culture to identify best practices and areas of improvement as related to energy management.

3. DEVELOP A STRATEGIC ENERGY MASTER PLAN:

A. Develop a comprehensive strategic energy and water plan that will provide the County with the framework for achieving goals in the following areas during the next three to five years:

1. Energy Efficiency and Water Conservation;
2. Generation Deployment;
3. Carbon Reduction;
4. Cogeneration;
5. Funding and Financing of Energy Investments; and
6. Energy Related Organizational Change
7. Participation in EPA Energy Star's Portfolio Manager Program

B. This document will highlight current successes. In developing this document, key stakeholders, the County's Green Team and possibly the Green Team's steering committee will be interviewed. The plan should include the following:

1. Vision;
2. Mission;
3. Values;
4. Objectives;
5. Strategies;
6. Goals;
7. Programs; and
8. Benchmarking and performance measurement

C. Report Discussion Meeting: At the request of the County's Project Manager, the Contractor shall meet with the County's project team to discuss the draft reports and any needed changes.

D. Final Reports: The Contractor shall incorporate changes and recommendations from the County's project team and finalize the Policy, Plan providing electronic copies to the County's Project Manager. The Contractor shall provide the final

reports on a compact disc in a software program specified by the County's Project Manager.

- E. Technical Assistance: The Contractor shall be available for any technical assistance or clarification that may be required as a result of the recommendations.
- F. The County is open to a variety of project approaches. As a minimum, any alternative approach shall incorporate the tasks identified herein.

Exhibit B

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in our Accounting Department of a written itemized invoice identifying the scope of work, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in scope of work. Costs for services deemed necessary by the County for completion of scope of work shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.

2. Reimbursable expenses. Except for travel in or to the Counties of San Francisco or Santa Clara , the Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, and 925 area codes; fees paid for securing permits and approvals of authorities having jurisdiction over the project; and special delivery service.

3. The total not-to-exceed amount for this Agreement shall be \$275,000 unless said amount is authorized to be increased by the County Board of Supervisors. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the scope of work. The not-to-exceed fees for the scope of work shall not exceed the total \$275,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors. The contractor agrees to credit to County any monies received by it from PG&E rebates/incentives for conducting the comprehensive audit on facilities in indicated in Exhibit B of RFP.

Exhibit C

1. Consultant Personnel

The Consultant shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Consultant proposes for use on the project.

Consultant represents that it is qualified to furnish the services described under this Agreement. Consultant further declares that one or more members or employees of its firm and that of its sub consultants, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Consultant shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub consultants.

Nothing in this Agreement abrogates the professional responsibilities of the Consultant and /or sub consultants with respect to design defects, errors, omissions, or malpractice.

2. Corrections And/Or Revisions

Consultant shall make and provide to the County all necessary corrections and/or revisions to the project analysis when it is determined by the Director of Public Works or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Consultant.

3. General Obligations of County

County shall be responsible for providing any available data required by the Consultant as stipulated in any approved Task Order.

County shall examine documents submitted by Consultant and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Consultant), as stipulated in approved Task Orders.

4. Payment Upon Suspension, Abandonment Of Project, Or Termination Of Agreement

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Consultant shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any

Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Consultant, County shall be obligated to compensate Consultant only for that portion of Consultant's services that were satisfactorily performed.

5. **Performance Of Services If Consultant Is Not Diligent In Performing Work**

In the event Consultant is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works or the respective designated representative may, at his option, seven (7) days after written notice to Consultant, perform any such required engineering services or retain a different consultant to do the same, and the cost associated with having said work completed by means other than the Consultant will be retained from any sums not yet paid to the Consultant.

6. **Authorization to Proceed**

Consultant shall commence work upon receipt of the Task Order.

6.1 **Time of Completion of each Task**

Consultant agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Consultant's time schedule.

7. **County's Review and Approval**

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Consultant's submittal if changes and/or comments transmitted to Consultant by County during previous review were not addressed by Consultant in current submittal.

8. **Changes in Work**

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount of Consultant's services. In the event that such changes are ordered, Consultant shall be entitled to compensation of all work previously directed by County and performed by Consultant prior to receipt of notice of change. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement, compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Consultant and County.

9. **Interest of Consultant/Consultant Independent of County**

In accepting this Agreement, Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this services hereunder. Consultant further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee if the County.

In the performance of the engineering services necessary for compliance with this Agreement, Consultant, and any of its subconsultants or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Consultant has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all subconsultants employed for the project described herein. Consultant shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. **General Provisions**

- (a) The Consultant acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Consultant upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Consultant shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Consultant to perform such services, the decision of the Director of Public Works or the respective designated representative will be final after discussions between County and Consultant.
- (d) The Consultant warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company

or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. **Ownership of Documents**

All tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Consultant or subconsultants under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Consultant against such use. Computer files used by Consultant to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

Attachment IP – Intellectual Property Rights

1. The County of San Mateo (“County”), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively “Vendors”) for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. “Work Products” are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County’s exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County’s titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable

Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.

5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be “work-made-for-hire” or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County’s titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.

6. Contractor agrees that before commencement of any subcontract work it will incorporate this Schedule IP to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County’s titles, rights, and interests in Work Products are preserved and protected as intended herein.