CITY OF PALO ALTO CONTRACT NO. C08125914A

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
ACTERRA
FOR PROFESSIONAL SERVICES
(Energy Efficiency Evaluation, Measurement & Verification, Electric Demand Reduction, and
Third Party Energy Efficiency Programs.)

This AGREEMENT is entered into __________, by and between the CITY OF
PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and
ACTERRA, a California corporation located at 3921 E. Bayshore Road, Palo Alto, CA
("CONSULTANT").

RECORDS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to provide energy efficiency programs to include Energy Efficiency Evaluation,
Measurement, and Verification, Electric Peak Demand Reduction (DR) and a Third-Party Energy
Efficiency Program and desires to engage a consultant to design the energy efficiency programs in
connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise,
qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the
Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and
conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in
Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The
performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution
through "completion of the services in accordance with the Schedule of Performance attached as
Exhibit "B" unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of
Services under this Agreement. CONSULTANT shall complete the Services within the term of this
Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part
of this Agreement. Any Services for which times for performance are not specified in this Agreement

Professional Services
Revised 10/18/07
shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed Sixty Thousand Dollars per year ($60,000 / year). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Six Thousand Dollars ($6,000). The applicable rates and schedule of payment are set out in Exhibit “C”, entitled “COMPENSATION,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of the CITY’s stated construction budget, CONSULTANT shall make recommendations to the CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT’s obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

NO SUBCONTRACTORS CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Debbie Mytel as the project director to have supervisory responsibility for the performance, progress, and execution of the Services to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY’s project manager. CONSULTANT, at CITY’s request, shall promptly remove personnel who CITY finds do
not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City’s project manager is Joyce Kinnear, Utilities Department, Marketing Services Division, Palo Alto, CA 94303, and Telephone: (650) 329-2652. The project manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work products, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT’s records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT’s services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not
be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best’s Key Rating Guide ratings of A:-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY’s Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days’ prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY’s Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT’s liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The city manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other
data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager
To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.
SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment, including completing the form furnished by CITY and set forth in Exhibit "E."

SECTION 23. MISCELLANEOUS PROVISIONS.

23.1. This Agreement will be governed by the laws of the State of California.

23.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

23.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys’ fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys’ fees paid to third parties.

23.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

23.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

23.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

23.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

23.8. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 24.8 shall take
precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

23.9. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

__________________________
Assistant City Manager

APPROVED AS TO FORM:

__________________________
Senior Asst. City Attorney

APPROVED:

__________________________
Director of Administrative Services

ACTERRA

By: _______________________

Name: ____________________

Title: EXECUTIVE DIRECTOR

Taxpayer Identification No.

23-7064937

Attachments:
EXHIBIT “A”: SCOPE OF WORK
EXHIBIT “B”: SCHEDULE OF PERFORMANCE
EXHIBIT “C”: COMPENSATION
EXHIBIT “D”: INSURANCE REQUIREMENTS
EXHIBIT “E”: CERTIFICATION OF NONDISCRIMINATION
EXHIBIT “A”

SCOPE OF SERVICES

Acterra will provide residential customers with in-home energy audits through its Green@Home program. Green@Home uses community volunteers to mobilize the community to engage in residential energy savings retrofits and associated behavioral changes. Based on the success of its Green@Home pilot program last year, Acterra will complete at least 250 in-home audits a year for the City of Palo Alto Utilities (CPAU).

Green@Home uses an innovative "community based social marketing" approach to bring about measurable reductions in energy consumption. While some of these marketing approaches have already been utilized successfully by CPAU in reaching high levels of residential participation in PaloAltoGreen, Green@Home takes social marketing to a higher level. Because of its innovative approach, the Green@Home program was selected to present a "poster session" at the Behavior, Energy, and Climate Change (BECC) Conference from November 6 to 8, 2007 in Sacramento under the sponsorship of Stanford’s Precourt Institute on Energy Efficiency and the American Council for an Energy Efficient Economy.

Green@Home aims to move people beyond the paralysis of frightening disaster scenarios of global warming by creating a visible social movement that inspires further ripples of change. Changing individual behavior is not always easy. Social science researchers find that even financial rewards, such as saving money on energy bills, are often not sufficient incentive for people to change old habits or adopt new technologies. Instead, researchers are turning increased attention to the power of social context to create "tipping points" that motivate people to shift their behavior. To reduce our energy consumption and curb global climate change, we need to generate a bandwagon effect to generate the community spirit of, "We're all working on this together."

Green@Home is designed to utilize this new social marketing approach, engaging peer pressure from volunteer auditors and neighbors to encourage people in the community to participate and to follow through on energy conservation recommendations made during a house call energy audit. Specifically, the social marketing techniques that have been incorporated into the Green@Home program design are as follows:

- Easy steps to take—in addition to installing energy conservation devices on the spot, volunteers make simple, specific recommendations for further energy-saving actions that the resident can complete.
- Written commitment to change—Residents sign a commitment statement promising to follow through with recommendations from the energy audit.
- Baseline measurement—Volunteers use a “Kill-a-Watt” meter in the house to check on energy usage and go over residents’ utility bills.
- Measurable results—Volunteers predict specific CO2 emission reductions and utility bill savings that can be monitored by the customer or the utility.
• Support group for follow-up—Residents may join a "Low Carbon Diet" group. Volunteers ask about neighbors who might also like a home energy audit.

• Visible prompts for new behaviors—Residents receive a tire pressure gauge as reminders to follow through on recommendations.

• Public recognition for accomplishments—Neighborhood "e-newsletter" will list names of residents who participate.

• Change norms through visible participation—Residents will receive a lawn sign, creating a "bandwagon effect" to engage more participants by establishing a new norm of responsible social behavior. Those who are already CPAU customers with a PaloAltoGreen lawn sign will add the Green@Home sticker to their existing lawn signs.

Project Staffing: The project will have two formal staff persons—Debbie Mytels, Acterra's full-time Associate Director, and a to-be-hired Volunteer/Training Coordinator, at a 75% FTE rate. Michael Closson, Acterra's Executive Director, is the supervisor of Debbie Mytels, who in turn will supervise the Green@Home Volunteer/Training Coordinator.

Debbie Mytels is Associate Director at Acterra: Action for a Sustainable Earth. Debbie has been called "an environmental entrepreneur" for her skills in working with start-up projects and involving community volunteers. Her current role is to develop new programs for Acterra. Since joining the Acterra staff three years ago, Debbie worked to create Acterra's environmental leadership training program, Be the Change. Currently, Debbie is leading the development of two energy-related projects—Green@Home to engage volunteers in residential energy saving and the Cool Community campaign—both of which aim to leverage the power of individuals in groups to create a social "tipping point" regarding CO2 emissions.

Before working at Acterra, Debbie served five years as Outreach Director at the Foundation for Global Community where she worked on food and agriculture issues and organized other programs in community dialogue, training sessions, and a weekly series of documentary film nights. Debbie has also served leadership positions in several other organizations, including the Silicon Valley Toxics Coalition, Canopy: Trees for Palo Alto, the San Franciscuito Creek Watershed Council, and Leadership Midpeninsula. She also served for six years as Executive Director of the Peninsula Conservation Center, one of the forbearers of today's Acterra. During that time she created the Business Environmental Awards and worked with commercial property owners to establish the first recycling program for businesses in downtown Palo Alto. Prior to that Debbie worked seven years for the Palo Alto Unified School District as coordinator of parent/community involvement. During that time she served as a volunteer leader of the city-wide PTA Council, and in 1987 she was awarded the Palo Alto Chamber of Commerce's Tall Tree Award for volunteer service.
recognizing her role in leading a community education campaign that led to successful passage of a utility tax to support the schools and open space.

Debbie has been an active leader in many local organizations, including the Loma Prieta Chapter of the Sierra Club, Midpeninsula Access Corporation, the Center for Economic Conversion, Collective Roots Garden Project, and the Midtown Residents' Association, of which she was a co-founder. Debbie has a BA with honors in Social Psychology from UC Berkeley and did graduate work at Stanford in Communications/Journalism. She has been a resident of Palo Alto for over 30 years.

Work Plan or Proposal: Acterra’s Green@Home program uses community volunteers to mobilize the community to engage in residential energy saving retrofits and associated behavioral changes. Acterra will hire a Volunteer/Training Coordinator who will then partner with other organizations to recruit at least 50 volunteers. The volunteers will be trained in five courses of two sessions each. Volunteer training materials have been enhanced with funds from the Bay Area Air Quality Management District for use in several Bay Area cities. The program will be publicized to CPAU residential customers through local media outlets and by the distribution of 5,000 flyers door-to-door in every Palo Alto neighborhood with brochures available at community events and through CPAU utility bill inserts. Multi-family buildings will be a priority location for distribution. Presentations will be made at a minimum of 10 neighborhood community association meetings. Once home energy audits are offered to CPAU residential customers, trained volunteers will visit a minimum of 250 households. After completion of the audit, residents will be offered lawn signs and window stickers. Follow-up phone calls and emails will be sent to all residents at one and two months after the completion of the energy audit to reinforce the recommendations. Reports will be provided to CPAU’s project manager monthly, quarterly, and at the completion of the program. The program will be reviewed at six months in to determine if adjustments in the process are warranted.

Specific Tasks:
1. Vendor shall hire a Volunteer/Training Coordinator.
2. Vendor shall recruit and train at least 50 volunteer energy auditors.
3. Vendor shall market Green@Home program subject to CPAU approval and with the CPAU program manager will market the program through City venues.
4. Vendor shall provide energy audits to a minimum of 250 residents.
5. Vendor will ensure that all recipients of an energy audit are followed up with at one and two month intervals after the completion of the energy audit.
6. Vendor shall work with CPAU to review program at six months to determine if adjustments are warranted.
7. CPAU shall submit payment to Vendor for work completed within one month of receiving invoice.
8. CPAU will provide Vendor with logo and relevant marketing information to assist Vendor in its marketing efforts with approval from CPAU.

**Reporting Activities:**
1. Vendor shall provide CPAU with monthly reporting of all activities pertaining to the contract.
2. Vendor shall provide CPAU with quarterly reporting of activities, results, analyses to the City's DSM portfolio.
3. Vendor shall provide CPAU with project completion reporting of activities, results, and analyses to City.
4. Vendor shall provide CPAU with ad hoc reports as required.
EXHIBIT “B”

SCHEDULE OF PERFORMANCE

VENDOR shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for VENDOR and CITY so long as all work is completed within the term of the Agreement. VENDOR shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed. This is the first year of a potential three year contract based on City Council approval of funds for each subsequent year.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit “B” unless terminated earlier pursuant to Section 19 of this Agreement.

Workplan Schedule

<table>
<thead>
<tr>
<th>Task</th>
<th>Start Dates</th>
<th>Responsible Person</th>
<th>Others Involved</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hire Volunteer/Training Coordinator</td>
<td>June 15, 2008</td>
<td>Debbie Mytels</td>
<td>At least 50 volunteers will be trained in 5 courses of 2 sessions each</td>
<td></td>
</tr>
<tr>
<td>Recruit and train volunteers</td>
<td>June 15, 2008</td>
<td>Volunteer/Training Coordinator</td>
<td>Debbie Mytels</td>
<td></td>
</tr>
<tr>
<td>Partner with organizations to recruit volunteers</td>
<td>June 15, 2008</td>
<td>Volunteer/Training Coordinator &amp; Debbie Mytels</td>
<td>CEAP, Acterra Members, Palo Alto Neighborhoods, Sierra Club Cool Cities, etc.</td>
<td></td>
</tr>
<tr>
<td>Publicize Green@Home to CPAU residential customers</td>
<td>June 15, 2008</td>
<td>Volunteer/Training Coordinator &amp; Debbie Mytels</td>
<td>Volunteers from pilot project are also available</td>
<td></td>
</tr>
<tr>
<td>Organize a kick-off event</td>
<td>First part of July 2008</td>
<td>Volunteer/Training Coordinator &amp; Debbie Mytels</td>
<td>Volunteers will distribute 5,000 flyers door-to-door throughout Palo Alto</td>
<td></td>
</tr>
<tr>
<td>Publicize the program at neighborhood association meetings &amp; in newsletters</td>
<td>July 15, 2008</td>
<td>Volunteer/Training Coordinator &amp; Debbie Mytels</td>
<td>Perhaps July 4th Chili Cook Off.</td>
<td></td>
</tr>
<tr>
<td>Publicize through a CPAU bill insert</td>
<td>Winter 2008-2009</td>
<td>Debbie Mytels</td>
<td>Presentations will be made to at least 10 associations</td>
<td></td>
</tr>
<tr>
<td>Publicize through local media</td>
<td>July 15, 2008</td>
<td>Volunteer/Training Coordinator</td>
<td>Coordinate with CPAU staff</td>
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<tr>
<td></td>
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<td></td>
<td>Perform an energy audit at a</td>
<td></td>
</tr>
<tr>
<td>outlets</td>
<td>Coordinator &amp; Debbie Mytels</td>
<td>Council Member's Home</td>
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</tr>
<tr>
<td>Offer energy audits to CPAU residents</td>
<td>July 15, 2008</td>
<td>Volunteers</td>
<td>Serve a minimum of at least 250 homes</td>
<td>Special effort to reach apartment dwellers &amp; renters</td>
</tr>
<tr>
<td>Offer lawn signs &amp; window stickers</td>
<td>July 15, 2008</td>
<td>Volunteers</td>
<td>Offer to all audit recipients</td>
<td>Stickers can be added to PAG signs</td>
</tr>
<tr>
<td>Follow-up calls and emails sent to all audit recipients at one and two month intervals after audit</td>
<td>August 15, 2008</td>
<td>Volunteers, supervised by Acterra staff</td>
<td>Office volunteers will be trained to make follow-up calls and emails, recording data on the effectiveness of audit recommendations</td>
<td>Email reminders will be sent to all recipients who give out email addresses</td>
</tr>
<tr>
<td>Reports provided to CPAU on monthly, quarterly, and program end achievements</td>
<td>July 15, 2008</td>
<td>Volunteer/ Training Coordinator &amp; Debbie Mytels</td>
<td></td>
<td>After 6 months, in consultation with CPAU staff, adjustments will be made to the program if warranted after review</td>
</tr>
</tbody>
</table>
EXHIBIT “C”

COMPENSATION

The CITY agrees to compensate the VENDOR for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on a time and materials basis for actual services up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to VENDOR under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed $60,000. VENDOR agrees to complete all Basic Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

VENDOR shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s Manager of Utility Marketing Services may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed $60,000.

**Pricing:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
<th>In-Kind</th>
<th>Source of In-Kind</th>
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<tbody>
<tr>
<td>Personnel</td>
<td>$47,000</td>
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<tr>
<td>Publicity Expenses</td>
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<td>Volunteer Training</td>
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<td>Audit Printed Materials</td>
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<td>Program Materials</td>
<td>CPAU</td>
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<tr>
<td>Audit Supplies</td>
<td>$1,500</td>
<td>CFL’s and Gauges</td>
<td>CPAU &amp; donations</td>
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<td>Audit Tools</td>
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<tr>
<td>Office Costs</td>
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<td>Administrative Overhead</td>
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<td><strong>Total</strong></td>
<td><strong>$60,000</strong></td>
<td><strong>For period June 2008-June 2009</strong></td>
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B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.

C. DEDUCTIBLE AMOUNTS IN EXCESS OF $5,000 REQUIRE CITY’S PRIOR APPROVAL.

II. CONTRACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSUREDS”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY
Exhibit “D”
INSURANCE REQUIREMENTS

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

PURCHASING AND
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CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.
Exhibit E
Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Proposer is INDIVIDUAL, sign here:

Date:__________________________
Proposer’s Signature

Proposer’s typed name and title

2. If Proposer is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date:__________________________
Member of the Partnership or Joint Venture signature

Date:__________________________
Member of the Partnership or Joint Venture signature

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

_________________________________ and ______________________________________
Title ______________________________________________________________________

Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary’s certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

By:________________________________ Date: ______________________
Title: ____________________________________________________________________

By:________________________________ Date: ______________________
Title: ____________________________________________________________________

City of Palo Alto – RFP 125914
Exhibit D
INSURANCE REQUIREMENTS

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B. CROSS LIABILITY

Rev. 11/07
Exhibit D

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1. If Proposer is INDIVIDUAL, sign here:

Date:__________________________

Proposer’s Signature

Proposer’s typed name and title

2. If Proposer is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date:__________________________

Member of the Partnership or Joint Venture signature

Date:__________________________

Member of the Partnership or Joint Venture signature

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

Secretary ______________________ and ______________________

Title

Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary’s certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Act

Corporation Name (type or print)

By:__________________________ Date: 3-11-08

Title: Secretary

By:__________________________ Date: __________________

Title:

City of Palo Alto – RFP 125014
CITY OF PALO ALTO CONTRACT NO. C08125914B

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
BLUE LINE INNOVATIONS, INC.
FOR PROFESSIONAL SERVICES
(Energy Efficiency Evaluation, Measurement & Verification, Electric Demand Reduction, and
Third Party Energy Efficiency Programs.)

This AGREEMENT is entered into ________________, by and between the CITY OF
PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and
BLUE LINE INNOVATIONS, INC., a Newfoundland, Canada corporation, located at 1545 Carling
Avenue, Suite 304, Ottawa, Ontario, Canada ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to provide energy efficiency programs to include Energy Efficiency Evaluation,
Measurement, and Verification, Electric Peak Demand Reduction (DR) and a Third-Party Energy
Efficiency Program and desires to engage a consultant to design the energy efficiency programs in
connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise,
qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the
Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and
conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in
Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The
performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution
through completion of the services in accordance with the Schedule of Performance attached as
Exhibit "B" unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of
Services under this Agreement. CONSULTANT shall complete the Services within the term of this
Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part
of this Agreement. Any Services for which times for performance are not specified in this Agreement
shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner.
based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed Twenty Thousand Dollars per year ($20,000 per year). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Two Thousand Dollars ($2,000). The applicable rates and schedule of payment are set out in Exhibit “C”, entitled “COMPENSATION,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of the CITY’s stated construction budget, CONSULTANT shall make recommendations to the CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT’s obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

NO SUBCONTRACTORS, CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Darrel Huskey as the project director to have supervisory responsibility for the performance, progress, and execution of the Services to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY’s project manager. CONSULTANT, at CITY’s request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the
adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's project manager is Joyce Kinnear, Utilities Department, Marketing Services Division, Palo Alto, CA 94303, and Telephone: (650) 329-2652. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of
any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The city manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to Professional Services Revised 10/18/07
CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager
To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.
SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment, including completing the form furnished by CITY and set forth in Exhibit “E.”

SECTION 23. MISCELLANEOUS PROVISIONS.

23.1. This Agreement will be governed by the laws of the State of California.

23.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

23.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys’ fees paid to third parties.

23.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

23.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

23.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

23.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

23.8. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 24.8 shall take
precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

23.9. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

Assistant City Manager

APPROVED AS TO FORM:

Senior Asst. City Attorney

APPROVED:

Director of Administrative Services

BLUE LINE INNOVATIONS, INC.

By: [Signature]

Name: DARREL HUSKEY
Title: Dir. of Business Dev.

Taxpayer Identification No.

[Number]

Attachments:

EXHIBIT “A”: SCOPE OF WORK
EXHIBIT “B”: SCHEDULE OF PERFORMANCE
EXHIBIT “C”: COMPENSATION
EXHIBIT “D”: INSURANCE REQUIREMENTS
EXHIBIT “E”: CERTIFICATION OF NONDISCRIMINATION
EXHIBIT “A”

SCOPE OF SERVICES

Blue Line Innovations will provide residential customers with in-home display devices. The price for the units will be as listed below and includes pre-programmed units and all program costs (administration, marketing, customer support, and logistics). The price for shipping is also included (at $9.99 per unit), shipped to the customer’s door. Our program covers multi-channel customer integration including marketing, after sale support services, logistical support including warehousing and customer delivery solutions, quality assurance and database tracking and reporting.

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<thead>
<tr>
<th>Quantity</th>
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<tbody>
<tr>
<td>125</td>
<td>20,000</td>
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Blue Line Innovations is a leader in the creation of real-time energy feedback technologies that deliver superior value to clients and have a positive impact on the environment. Blue Line Innovations led the world’s largest deployment of real-time feedback products for the residential sector in 2006 and, consequently, received the Association of Energy Service Professionals Award for Outstanding Energy Efficiency Technology Deployment of the Year 2006.

Blue Line Innovations Inc. is a Canadian firm with offices in St. John’s, Newfoundland and Ottawa, Ontario that develops and provides real-time energy feedback technologies that enable the energy sector to meet their demand-side management objectives and save consumers money.

Blue Line Innovations has assembled a management team with over 60 years combined experience in technology companies and the energy industry. The company’s CEO has experience in the energy sector and in leading business through periods of rapid growth. The company has bolstered its management strength with world-class execution ability. BreconRidge Manufacturing Services has extensive experience manufacturing electronic devices – 60% of the world’s MP3 players are manufactured at its plant in China. NuComm, the company’s customer service partner, named one of Canada’s 50 Best Managed Companies for the past five years, provides our customer care services. The combination of experienced management and world-class partners makes Blue Line a considerable force in conservation and demand-management. Blue Line Innovations Inc. has adopted a functional organizational structure that enables the fulfillment of functional goals and promotes efficient use of company resources. Blue Line Innovations has fifteen full-time employees, consisting of engineering, marketing, finance, operations and administration staff. All employees will have some involvement in the delivery of the Project.
Key People: Darrel Huskey Director Business Development Darrel Huskey will be the Project Manager. He will co-ordinate with other key members to ensure the project is on-time. Darrel Huskey has 30 years of technical sales, sales management and Business Development experience. He has worked for Fortune 500 companies such as Motorola and Bristol Myers. Much of his career has centered on channel management. (Both Direct and Indirect Distribution). Darrel gained a B.S. in Industrial Chemistry form Western Carolina University. Mr. Huskey will be responsible for overall project management. Douglas Goaley.

Work Plan or Proposal: Blue Line Innovations will distribute PowerCost Monitors to a pilot project group of Palo Alto’s residential customers. A letter can be distributed to customers through the mail with a sign up form which would allow them to indicate their interest and respond back. Responses can be sent back to Palo Alto and can then be forwarded to the distributor for pick and pack. PowerCost Monitors can be shipped to the customer’s door within 4-6 business days.

The Technology: The PowerCost Monitor™ is a powerful real-time direct feedback display device for residential energy consumers. It tells them at a glance, in real-time, how much electricity their home is using in dollars and cents and in kW. The PowerCost Monitor™ can accommodate various pricing strategies including single/flat, multi-tiered and Time of Use rate structures. Domestic energy use studies have demonstrated that real-time feedback technology, such as the PowerCost Monitor™, yields energy savings of up to 20 percent. The PowerCost MonitorTM provides residential and non-demand small commercial consumers of electricity with a measurement tool to help manage their electrical consumption. As the consumer utilizes electricity, they are provided with the costs of the consumption habits in real-time.

The Display Unit, located inside the home, receives a wireless signal from the transmitter and displays the consumption information in real time and in dollars and cents for the end user. Other information is also displayed such as signal strength of sensor, battery life, time and temperature at meter location. - 9 - The PowerCost Monitor™ is completely self-installable by the homeowner and does not require access to the electrical panel, nor does it involve the services of an electrician or other outside third party installer. Ninety one percent of respondents in a recent customer satisfaction survey were pleased with the ease of installation.

Customer Ease of Installation: The PowerCost Monitor™ is designed for self-installation and does not require a qualified electrician. It is the only truly consumer level product that can be installed by any homeowner using a screwdriver and does not require access to the electrical panel. During development of the product, Blue Line Innovations contracted third-party usability experts who, using scientific methodology, monitored user performance on a series of tasks specifically designed to test the ease of installation of the
PowerCost Monitor™. The test participants reflected a broad spectrum of potential users. The variables included age, gender and technical proficiency, attitude towards the environment and the location of the power meter. Each participant was observed installing the PowerCost Monitor™ at his/her home. Each session was videotaped and participants' comments recorded. All participants were able to install the device unassisted using installation instructions provided.

Study participants were asked to compare the complexity of PowerCost Monitor™ installation with other products with which they were familiar. When asked to complete the sentence, "It's as easy to install as a..." participants responded with answers such as: a) "Bicycle Speedometer" b) "Thermostat" c) "TV/Stereio" d) "Easier than a modem, more difficult than a toaster" e) "Clock radio/thermostat, easier than Ikea units" f) "Odometer for bicycle"

Marketing Awareness: Blue Line Innovations will create the letter for distribution to the customers. Depending on how many units will be distributed, Blue Line will send the correct number of letters accordingly to account for non-responses. For example, since there are 125 customers to be recruited, there will be 10,000 letters sent out and the first 125 to respond will be chosen for the program. Public Relations Through joint press announcements in the early stages of a project is anticipated to generate awareness amongst the utilities customers, particularly the early adopters. A concerted effort will be made to involve government departments and agencies at the municipal to help promote the product by supporting and endorsing the technology in press releases as well as other communication mediums.

Logistics: Our enrollment, service and support are designed to ensure minimal human resource commitment from the City of Palo Alto. Blue Line’s capabilities include multi-channel integration (web, e-mail, phone, mail); customer order interface including product information and selection, order placement, order pricing including shipping and taxes, order delivery date, order payment and order confirmation and tracking number assignment; customer service and after sales support including installation assistance, technical support, warranty claims, product return and replacement. Blue Line will provide the City of Palo Alto with monthly reports on sales, shipping and customer service levels. Blue Line’s customer care and support centre will provide customers with outstanding customer service. Blue Line Innovations has established a customer care and support centre to provide customers with outstanding customer service. Blue Line’s call centre, outsourced to NuComm, will provide customers with technical support, general product inquires, purchasing options, pre and post customer care. Blue Line’s online ordering system uses Secure Sockets Layer technology to ensure secure ecommerce transactions by encrypting information and providing authentication. The online system can capture credit card and shipping information and can electronically process all transactions. Order information is sent electronically to Blue Line’s distribution centre for immediate pick and pack.
The PowerCost Monitor™ will be shipped directly to the customers' premises from our warehouse utilizing a negotiated method of transport. Third party services are not required to be on premises to deploy, install or troubleshoot the device. Customer service and technical support is provided via Blue Line's call centre. Installation support and troubleshooting is carried out via phone or email. Product replacements, if required, will be provided using Blue Line's RMA (Return Material Authorization) process.

**Project Staffing:** Blue Line Innovations has fifteen full-time employees, consisting of engineering, marketing, finance, operations and administration staff. All employees will have some involvement in the delivery of the Project. Blue Line will also use its experienced, qualified partners to provide customer support (NuComm) and logistics (BreconRidge).

**Specific Tasks:**
1. Vendor shall provide 125 PowerCost Monitor’s to CPAU residential electricity customers on a first come, first-served basis.
2. Vendor shall ship product to customer within 6-8 days of ordering.
3. Vendor shall provide list of subscribed customers to CPAU on a biweekly basis.
4. Vendor shall conduct the marketing of the program subject to CPAU approval.
5. Vendor shall provide after-sale support services and technical support for CPAU subscribed customers.
6. Vendor will share all relevant data to assist CPAU in conducting an analysis of the program.
7. CPAU shall submit payment to Vendor for work completed within one month of receiving invoice.
8. CPAU will provide Vendor with logo and relevant marketing information to assist Vendor in its marketing efforts with approval from CPAU.

**Reporting Activities:**
9. Vendor shall provide CPAU with monthly reporting of all activities pertaining to the contract.
10. Vendor shall provide CPAU with quarterly reporting of activities, results, analyses to the City's DSM portfolio.
11. Vendor shall provide CPAU with reporting of activities, results, and analyses to City.
12. Vendor shall provide CPAU with ad hoc reports as required.
EXHIBIT "B"

SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed. This is the first year of a potential three year contract based on City Council approval of funds for each subsequent year.

### Proposed Schedule of Activities - CPAU PowerCost Monitor Pilot Rollout 2008

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<th>June</th>
<th>July</th>
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<td>First Week</td>
<td>Second Week</td>
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<tr>
<td>1 Meetings</td>
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<tr>
<td>1.1 Roles and deliverables</td>
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<td>1.2 Project Meeting 2 - Discuss</td>
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<td>1.3 Deliverables</td>
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<td>1.4 Project Meeting 3 - Update</td>
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<td>1.5 Project Meeting 4 - Website</td>
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<td>1.6 Project Meeting 5 - Update</td>
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<td>1.7 Go Live date</td>
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<tr>
<td>2 General Deliverables</td>
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<tr>
<td>2.1 Receive logos and information from CPAU for Website</td>
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<td>2.2 BLI pre-programs 125 units for CPAU</td>
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<td>2.3 BLI commences marketing - sends emails / letters to customers</td>
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<td>3 Website</td>
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<tr>
<td>3.1 Receive customer database from CPAU</td>
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<td>3.2 Implement database into website</td>
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<td>3.3 Testing</td>
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<td>3.4 Approval on website from CPAU (Leeway for any changes)</td>
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<td>3.5 Go live date</td>
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<td>4 Call Centre</td>
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<tr>
<td>4.1 Provide scripting to CPAU for approval</td>
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<tr>
<td>4.2 CPAU approval</td>
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<td>4.3 Provide scripting to call centre</td>
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<td>4.4 Test call centre</td>
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<td>4.5 Call centre ready</td>
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</table>

Blue Line Innovations
SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit "B" unless terminated earlier pursuant to Section 19 of this Agreement.
EXHIBIT “C”

COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed $20,000. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s Manager of Utility Marketing Services may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed $20,000.

Pricing: The pricing option is bundled for 125 units. The Consultant is purporting to provide CPAU with 125 units at $20,000 total. The bundled cost in this proposal for 125 units is $160 / unit. Quantity Price ($) 125 20,000 Turn Key Solution Offers Pre Shipping Includes: pre-programmed units ($10 Value) all program costs (administration, marketing, customer support, and logistics) shipping to the homeowner’s door ($10 Value) Post Shipping Includes: multi-channel customer integration including marketing after sale support services quality assurance and database tracking and reporting.
Exhibit D

INSURANCE REQUIREMENTS

Contractors to the City of Palo Alto (City), at their sole expense, shall for the term of the contract obtain and maintain insurance in the amounts for the coverage specified below, afforded by companies with an best's key rating of A-:VII, or higher, licensed or authorized to transact insurance business in the State of California.

Award is contingent on compliance with City's insurance requirements, as specified below:

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<th>REQUIRED</th>
<th>TYPE OF COVERAGE</th>
<th>REQUIREMENT</th>
<th>MINIMUM LIMITS</th>
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<td>EACH OCCURRENCE</td>
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<tr>
<td>YES</td>
<td>EMPLOYER'S LIABILITY</td>
<td>STATUTORY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>GENERAL LIABILITY, INCLUDING</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>PERSONAL INJURY, BROAD FORM</td>
<td>PROPERTY DAMAGE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>PROPERTY DAMAGE BLANKET</td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>CONTRACTUAL, AND FIRE LEGAL LIABILITY</td>
<td>COMBINED.</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>AUTOMOBILE LIABILITY, INCLUDING</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>ALL OWNED, HIRED, NON-OWNED</td>
<td>- EACH PERSON</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH OCCURRENCE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY AND PROPERTY DAMAGE, COMBINED</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>PROFESSIONAL LIABILITY, INCLUDING ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENCE</td>
<td>ALL DAMAGES</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

The City of Palo Alto is to be named as an additional insured: Contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect throughout the entire term of any resultant agreement, the insurance coverage herein described, insuring not only contractor and its subconsultants, if any, but also, with the exception of workers' compensation, employer's liability and professional insurance, naming as additional insureds City, its council members, officers, agents, and employees.

I. INSURANCE COVERAGE MUST INCLUDE:

A. A provision for a written thirty day advance notice to City of change in coverage or of coverage cancellation, and

B. A contractual liability endorsement providing insurance coverage for contractor's agreement to indemnify City.

C. Deductible amounts in excess of $5,000 require City's prior approval.

II. CONTRACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDs"

A. PRIMARY COVERAGE

With respect to claims arising out of the operations of the named insured, insurance as afforded by this policy is primary and is not additional to or contributing with any other insurance carried by or for the benefit of the additional insureds.

B. CROSS LIABILITY
Exhibit D
INSURANCE REQUIREMENTS

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDs, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

PURCHASING AND
CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.
CERTIFICATE OF INSURANCE

Issued by: Smith Petrie Carr & Scott Insurance Brokers Ltd

This is to certify to: Purchasing and Contract Administration
City of Palo Alto
PO Box 10250
Palo Alto, CA
94303

That policies of insurance as herein described have been issued to the Insured named below and are in force at this date.

Named Insured: Blue Line Innovations Inc.
Steve Pearce
1545 Carling Avenue # 304
Ottawa, ON K1Z 8R1

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>INSURANCE COMPANY &amp; POLICY NUMBER</th>
<th>POLICY EXPIRATION</th>
<th>AMOUNT INSURED OR LIMITS OF LIABILITY IN CANADIAN DOLLARS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability Including:</td>
<td>Dominion of Canada CCP0421458</td>
<td>August 25, 2008</td>
<td>Bodily Injury &amp; Property Damage</td>
</tr>
<tr>
<td>• Products &amp; Completed Operations</td>
<td></td>
<td></td>
<td>$5,000,000 Each Occurrence</td>
</tr>
<tr>
<td>• Non-Owned Automobile</td>
<td></td>
<td></td>
<td>$5,000,000 General Aggregate</td>
</tr>
<tr>
<td>• Cross Liability/Severability of Interests</td>
<td></td>
<td></td>
<td>$5,000,000 Products &amp; Completed Operations Aggregate</td>
</tr>
</tbody>
</table>

The insurance afforded is subject to the terms, conditions and exclusions of the applicable policy. This certificate is issued as a matter of information only and confers no rights on the holder and imposes no liability on the Insurer. The Insurer will endeavour to mail to the holder of this Certificate 30 days written notice of any material change in or cancellation of these policies, but assumes no responsibility for failure to do so.

Note/Project:

Date: March 5, 2008

Smith Petrie Carr & Scott Insurance Brokers Ltd.

Per: .................................................................
Authorized Representative  JH
ENDORSEMENT

It is agreed the following is/are hereby added to the Policy as additional Insured but only insofar as their Legal Liability arises vicariously out of the operations of the Named Insured in connection with the project/contract described below:

Attached to and forming part of Policy Number CCP0421458 of the Dominion of Canada

NAMED INSURED: Blue Line Innovations Inc. Steve Pearce

This endorsement shall become effective: March 5, 2008

Additional Insured: Purchasing and Contract Administration
City of Palo Alto
PO Box 10250
Palo Alto, Ca
94303

Project Reference: Proof of Insurance

All other terms and conditions of this policy shall remain unchanged.

Smith Petrie Carr & Scott Insurance Brokers Ltd

Per: .................................................................
Authorized Representative JH

Date: March 5, 2008
EXHIBIT E

Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Proposer is INDIVIDUAL, sign here:

Date:________________________

Proposer's Signature

Proposer's typed name and title

2. If Proposer is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date:________________________

Member of the Partnership or Joint Venture signature

Date:________________________

Member of the Partnership or Joint Venture signature

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

[Director of Business Development] and [Title]

Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

[Blue Line Innovations Inc]

Corporation Name (type or print)

By: [Darrel Huskey] Title: [Director of Business Development]

Date: 3-11-08

City of Palo Alto – RFP 125914
CITY OF PALO ALTO CONTRACT NO. C08125914C

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND ECOLOGY ACTION FOR PROFESSIONAL SERVICES
(Energy Efficiency Evaluation, Measurement & Verification, Electric Demand Reduction, and Third Party Energy Efficiency Programs.)

This AGREEMENT is entered into ____________________, by and between the CITY OF PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and Ecology Action, a California corporation located at 211 River Street, Santa Cruz, CA ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to provide energy efficiency programs to include Energy Efficiency Evaluation, Measurement, and Verification, Electric Peak Demand Reduction (DR) and a Third-Party Energy Efficiency Program and desires to engage a consultant to design the energy efficiency programs in connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit "B" unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and
timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed Five Hundred Thousand Dollars per year ($500,000 per year). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Fifty Thousand Dollars ($50,000). The applicable rates and schedule of payment are set out in Exhibit “C”, entitled “COMPENSATION,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges, based upon the CONSULTANT’s billing rates (set forth in Exhibit “C”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of the CITY’s stated construction budget, CONSULTANT shall make recommendations to the CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT’s obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

NO SUBCONTRACTORS. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Michael Drury as the project director to have supervisory responsibility for the performance, progress, and execution of the Services and Aaron Brown as the project coordinator to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY’s project manager. CONSULTANT, at CITY’s request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner.
are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City’s project manager is Joyce Kinnear, Utilities Department, Marketing Services Division, Palo Alto, CA 94303, and Telephone: (650) 329-2652. The project manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

**SECTION 15. AUDITS.** CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT’s records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

**SECTION 16. INDEMNITY.**

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT’s services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** The waiver by either party of any breach or violation of any covenant,
term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A:-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The city manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the
City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT’s services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA  94303

With a copy to the Purchasing Manager
To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.
SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment, including completing the form furnished by CITY and set forth in Exhibit "E."

SECTION 23. MISCELLANEOUS PROVISIONS.

23.1. This Agreement will be governed by the laws of the State of California.

23.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

23.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

23.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

23.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

23.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

23.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

23.8. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of
the fiscal year and funds for this Agreement are no longer available.

23.9. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

______________________________
Assistant City Manager

APPROVED AS TO FORM:

______________________________
Senior Asst. City Attorney

APPROVED:

______________________________
Director of Administrative Services

ECOLOGY ACTION

By: [Signature]

Name: Nellee Ackerman

Title: Vice President

Taxpayer Identification No.

94-2584236

Attachments:

EXHIBIT “A”: SCOPE OF WORK
EXHIBIT “B”: SCHEDULE OF PERFORMANCE
EXHIBIT “C”: COMPENSATION
EXHIBIT “D”: INSURANCE REQUIREMENTS
EXHIBIT “E”: CERTIFICATION OF NONDISCRIMINATION
EXHIBIT “A”

SCOPE OF SERVICES

Energy Edge
Commercial Efficiency Program

Overview

Ecology Action (Consultant) is contracted to implement Energy Edge, a program that will deliver energy efficiency retrofits and services to small & medium commercial establishments up to 500kW in demand and lodging facilities of all sizes. Energy Edge will deliver a summer peak demand savings of 250 kW, total energy savings of 1,726,276 kWh and will save 1,577 Therms. The proposed program budget is $495,662 including $226,928 in customer rebates.

The Energy Edge program has been tailored to meet the unique needs of the City of Palo Alto and their small business community. Consultant will leverage its experience and operational infrastructure to deliver a multi-market and scalable program.

The Consultant shall provide participating commercial customers with recommendations and reference materials on low-cost and no-cost strategies to reduce energy consumption and operation and maintenance (O&M) costs, detailed lamp recycling information, and links to other energy efficiency programs.

Consultant shall offer the following measures to CPAU customers:

- Comprehensive Lighting T8
- Comprehensive Lighting CFL
- Comprehensive Lighting LED + Misc.
- Refrigeration Controls
- Drop-in Replacement Refrigeration Fan Motors
- Refrigerator Door Gasket Replacements
- Strip Curtains
- Anti-Sweat Door Heaters
- Vendmiser
- Coolermiser
- Snackmiser
- Hotel Guestroom EMS (PTAC controls) will be available for only a portion of the hotel properties due to rebate budget limitations.

The contract duration is 14 months including 12 months in which Consultant will provide direct program services to CPAU.

Work Plan

Task 1: Program Kick-Off, Planning, and Staging

Consultant shall hold a kick-off meeting with CPAU staff to refine program coordination, confirm communication structures, delivery timelines and identify additional CPAU needs for the program. In the staging process, Consultant shall refine its initial market research and develop potential customer lists and contacts for each market segment. Consultant shall finalize agreements between Consultant and
installation contractors and vendors for all measures that will be delivered. During this phase, Consultant shall complete staffing plans, finalize workflow processes, and hire and train any program staff not currently employed by Consultant.

Consultant shall coordinate with CPAU to leverage interactions with participating businesses in order to promote CPAU’s other energy efficiency, demand response and renewables program offerings. Consultant shall distribute written materials such as low-cost and no-cost strategies to reduce energy use and O&M expenses. CPAU shall provide Consultant with all promotional materials pertaining to other CPAU program offerings.

**Task 2: Development of Marketing Material, Customer Forms, Rebates**

Consultant shall refine, develop, and submit for approval to CPAU all *Energy Edge* program marketing materials. Materials produced may include brochures, flyers, posters and displays, postcards, targeted letters, demonstration equipment, and press releases. Consultant shall determine which marketing materials are required to reach customers and associated savings goals. Consultant shall secure CPAU approval of all marketing material content prior to distribution.

All program forms shall be designed to ensure that all work proposed, agreed to, installed, and inspected has proper and sufficient documentation. Consultant shall leverage previously-developed bilingual marketing material and program forms where possible. Consultant shall finalize rebate structure for each measure toward a target program average rebate of approximately $0.131/kWh.

**Task 3: Marketing and Outreach**

Consultant shall conduct marketing to engage customers in the program. This marking may include door-to-door outreach, CPAU-assisted distribution of program information and strategic partnerships with Chamber of Commerce members and trade associations. Consultant shall confer with Utility account representatives and managers on CPAU’s preferred approach for targeting larger customers. CPAU shall assist Consultant by providing billing and customer data.

**Task 4: Facility Audits, Job Specification and Customer Enrollment**

Consultant shall make initial customer contact in-person. Customer enrollment normally begins with this initial Auditor visit. Upon the customer’s agreement to the free energy survey. Consultant shall complete an audit of end uses addressed by the program. Consultant shall confer with the decision maker (usually the owner or manager) to determine the hours of operation of the lighting (and other systems as applicable) in the site’s various sub-areas (i.e., front counter, office, kitchen, etc.). For potential efficiency measures not covered by the program, Consultant shall refer customer to other CPAU programs that are applicable. Consultant shall design and propose a packet of retrofit measures and/or services to the customer. Consultant shall secure customer signature to proceed with implementation of the desired measures.

**Task 5: Work Flow Management and Installation Contractor Management**

Consultant shall assign jobs to participating program contractor(s) that have been selected and trained by Consultant. Installation contractors shall enter an agreement with the customer to complete the work specified by Consultant. All work will be scheduled by the installer at a time convenient to the customer. The installation contractor shall obtain any necessary permit(s) for the installation along with all necessary materials. All equipment removed by program contractors shall be
properly recycled or handled in accordance with state and local ordinances. Mercury-containing lamps and PCB-containing ballasts shall be recycled through certified handlers (with documentation of same). The installation and/or service work shall be completed according to the job specification and at the unit pricing levels established by the program. Consultant shall assure that the contractor adheres to the program quality standards as described.

**Task 6: Quality Assurance and Quality Control**

The team’s quality assurance and quality control (QA/QC) methods are built into the program standards and procedures and are directly confirmed by site inspections. Consultant shall carry out pre- and post-installation inspections and shall promptly remedy customer service and warranty issues.

Consultant staff shall conduct all inspections. All (100%) of projects shall be thoroughly inspected. In addition, 10% of jobs shall be pre-inspected by senior staff prior to installation to ensure proper specification is being done. If any installation is deemed incomplete upon inspection, the installation contractor shall be notified and shall perform all services necessary to meet completion requirements at their own expense within five (5) business days of notification of incompleteness. Based on the degree of deficiency found in any failed inspection, the contractor may be subject to a higher level of scrutiny for five or more subsequent jobs.

**Task 7: Rebate Processing and Payment**

Following the customer approval and post-inspection of a completed job Consultant shall issue a rebate check directly to the installation contractor.

**Task 8: Data Management and Reporting**

Consultant shall issue monthly and quarterly savings and customer data reports and invoices to the CPAU project manager on a regularly scheduled basis. An accompanying narrative shall provide detail on program accomplishments and work done toward deliverables.

Monthly invoices to CPAU shall detail monthly expenses, including program staff labor, rebates and materials, and shall summarize expenses in both a program-to-date and percentage complete form. Quarterly reports shall include summaries of the savings achieved as well as a narrative component succinctly describing progress to date, challenges, and remedies. A final report shall be submitted and will summarize program impacts (kW, kWh, Therms and greenhouse gas mitigation). Consultant shall collect and provide to CPAU all data points required for CPAU to conduct program EM&V.

**Task 9: Program Ramp-Down and Completion**

A smooth ramp-down and shut-down process is integral to overall program success. *Energy Edge* staff shall contact customers who have been audited but have not made a decision (i.e., “fence sitters”), inform them of the expected close date of the program and refer them to other appropriate CPAU programs if they elect not to proceed with *Energy Edge*. Consultant will strive to make this referral process as smooth as possible to capitalize on positive customer perception and maximize use of CPAU portfolio services. Finally, even after *Energy Edge* is completely shut down, Consultant shall continue to field any customer warranty calls and refer them to their appropriate contractor and/or equipment manufacturer, and also forward any appropriate prospects to CPAU’s other energy efficiency programs.
materials to be delivered to CPAU at the end of the program shall include the final invoice and final report, in such formats as are required by the Utility.

Summary of Key Personnel

The program team is comprised of the following staff:

- Mahlon Aldridge, Vice President, Energy and Climate Group
- Michael Drury, Program Director
- Gene Thomas, Technical and Administrative Manager
- Aaron Brown, Senior Operations Manager
- Brian Kimball, Operations Manager
- Jennifer McNeil, Program Coordinator
- Energy Specialist (in-field auditor)

Division of Responsibilities

The following table describes the relative roles and responsibilities of Consultant staff. A portion of the listed staff's annual FTE shall be dedicated to the program.

<table>
<thead>
<tr>
<th>Staffing Description</th>
<th>Role</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultant Staff Positions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vice President</td>
<td>Strategic planning; budget oversight; performance oversight; administrative oversight; contract development; partnership development; regulatory analysis.</td>
<td>Prime</td>
</tr>
<tr>
<td>Technical &amp; Administrative Manager</td>
<td>Program performance analysis &amp; tracking; program reporting; EM&amp;V management &amp; coordination; EM&amp;V oversight; report development; contract change order management; strategic planning analysis; environmental impacts analysis; technology assessment; business development; software development assistance.</td>
<td>Prime</td>
</tr>
<tr>
<td>Program Director</td>
<td>Budget management &amp; tracking; partnership development; subcontractor contract processing; technology and engineering analysis and quality assurance.</td>
<td>Prime</td>
</tr>
<tr>
<td>Program Manager</td>
<td>Management of daily operations; oversight of new staff recruitment &amp; hiring; staff management; program administration; client communications; subcontractor management; marketing design &amp; management; coordination with other EE programs; auditor hiring, training, &amp; management oversight; quality assurance &amp; inspections oversight; contractor recruitment; contractor training; contractor oversight; upstream replacement lamp assurance; field communication oversight; CPAU and supplier invoicing; rebate payment management; IT specification, purchasing, &amp; management.</td>
<td>Prime</td>
</tr>
<tr>
<td>Operations Manager</td>
<td>Auditor hiring; auditor training; auditor supervision; job quality assurance &amp; inspections supervision; contractor recruitment; contractor training; contractor oversight; equipment specification; vendor pricing; upstream replacement lamp assurance; field office setup; field communication</td>
<td>Prime</td>
</tr>
<tr>
<td>Program Coordinator</td>
<td>Contractor management; audit data management; retrofit work flow management; report data compilation; satisfaction surveys administration; information systems development and interconnection; CFL inventory management (central); reporting support; audit software administration; vendor management; equipment and pricing research; miscellaneous research.</td>
<td>Prime</td>
</tr>
<tr>
<td>---------------------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Energy Specialist (Auditor)</td>
<td>In-field marketing; audits; QSP installation; job quality assurance &amp; inspections; CFL inventory requisition (local); field data management and synchronization; program design feedback; customer service.</td>
<td>Prime</td>
</tr>
</tbody>
</table>
EXHIBIT “B”

SCHEDULE OF PERFORMANCE
Timeline
Energy Edge
Commercial Efficiency Program

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

This is the first year of a potential three year contract based on City Council approval of funds for each subsequent year. This timeline for the first year assumes a contract duration of 14 months from June 15, 2008 to August 15, 2009. All work shall be completed and approved in the first twelve months of the contract period while all billing shall be completed with in 14 months from the contract start date.

Task 1: Program Kick-Off, Planning, and Staging
Start: June 15, 2008 / End: July 15, 2008

Task 2: Development of Marketing Material, Customer Forms, Rebates
Start: June 15, 2008 / End: Aug 1, 2008

Task 3: Marketing and Outreach
Start: July 1, 2008 / End: May 1, 2008

Task 4: Facility Audits, Job Specification and Customer Enrollment
Start: July 1, 2008 / End: May 1, 2008

Task 5: Work Flow & Contractor Management
Start: July 1, 2008 / End: June 14, 2009

Task 6: Quality Assurance and Quality Control
Start: July 1, 2008 / End: December 15, 2009
Task 7: Rebate Processing and Payment
Start: August 1, 2008 / End: June 14, 2009

Task 8: Data Management and Reporting
Start: July 1, 2008 / End: Aug 15, 2009

Task 9: Program Ramp-Down and Completion
Start: May 1, 2008 / End: Aug 15, 2009
EXHIBIT “C”

Energy Edge
Commercial Efficiency Program

The CITY agrees to compensate the CONSULTANT for professional services on a per unit basis in accordance with the terms and conditions of this Agreement, as set forth in the UNIT BASED PAYMENT STRUCTURE narrative in this exhibit below. Hourly rates presented below are for illustrative purposes only and shall only be relevant in projecting and paying for Additional Services should the CITY authorize CONSULTANT to conduct Additional Services.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed $495,662 for the first year of the contract. This is the first year of a potential three year contract based on City Council approval of funds for each subsequent year. Each additional year, if approved, shall be at the same rate.

CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed $495,662 for the first year of the potential three year contract. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as below. The CITY’s Manager of Utility Marketing Services may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed the amount shown below.

<table>
<thead>
<tr>
<th>Task Category</th>
<th>Rate</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Program Assistant</td>
<td>60</td>
<td>Jennifer McNeil</td>
</tr>
<tr>
<td>Energy Efficiency Specialist</td>
<td>91</td>
<td>TBD</td>
</tr>
<tr>
<td>Operations Manager</td>
<td>125</td>
<td>Brian Kimball</td>
</tr>
<tr>
<td>Technical &amp; Administration Manager</td>
<td>125</td>
<td>Gene Thomas</td>
</tr>
<tr>
<td>Senior Operations Manager</td>
<td>137</td>
<td>Aaron Brown</td>
</tr>
<tr>
<td>Director</td>
<td>138</td>
<td>Michael Drury</td>
</tr>
<tr>
<td>Vice President</td>
<td>145</td>
<td>Mahlon Aldridge</td>
</tr>
</tbody>
</table>

Breakdown of billing rates for the period June 2008-May 2009:

- Direct Wages 41.1%
- Benefits & Payroll Taxes 14.2%
- Organization Overhead 25.4%
- Retained Earnings 19.3%
There is no mark up on costs incurred directly by Ecology Action staff such as travel and marketing collateral.

Cost Proposal Summary

Savings Delivered:  
1,726,276 Annual kWh  
1,577 Annual Therms

Rebate/Incentives: $226,928

Labor: $249,695

Materials Expense: $19,039

ONE YEAR TOTAL PROGRAM COST = $495,662 (Not to exceed)

UNIT BASED PAYMENT STRUCTURE

The total contract payments shall not exceed $495,662. Rebates payments to Consultant shall equal the total rebates paid out by Consultant and as documented in monthly invoices to CPAU. Total rebates paid under the contract shall not exceed $226,928 without prior written approval from CPAU staff.

The non-rebate portion of the contract will be paid on a performance basis and will not exceed $268,734 without prior written approval from CPAU staff. Performance payments shall be made to Consultant by CPAU at a rate of $0.1557 per gross kWh saved by Consultant. Invoices for performance payments shall be submitted to CPAU monthly. Payments shall be made by CPAU within 30 days of receipt of invoice from Consultant.

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: (modify list as needed)

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone cellular phone, facsimile transmission and postage charges are reimbursable at actual cost.
All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than $1,000.00 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY’s Manager of Utility Marketing Services and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.

Work required because the following conditions are not satisfied or are exceeded shall be considered as additional services.
Exhibit D
INSURANCE REQUIREMENTS

Contractors to the City of Palo Alto (City), at their sole expense, shall for the term of the contract obtain and maintain insurance in the amounts for the coverage specified below, afforded by companies with Am Best’s Key Rating of A-:VII, or higher, licensed or authorized to transact insurance business in the State of California.

Award is contingent on compliance with City’s insurance requirements, as specified, below:

<table>
<thead>
<tr>
<th>Required</th>
<th>Type of Coverage</th>
<th>Requirement</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>EACH OCCURRENCE</td>
</tr>
<tr>
<td>YES</td>
<td>Worker’s Compensation</td>
<td>Statutory</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>Employer’s Liability</td>
<td>Statutory</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>General Liability, Including</td>
<td>Bodily Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Personal Injury, Broad Form</td>
<td>Property Damage</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Property Damage Blanket</td>
<td>Bodily Injury &amp; Property Damage Combined</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>Automobile Liability, Including</td>
<td>Bodily Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>All Owned, Hired, Non-Owned</td>
<td>- Each Person</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Each Occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Property Damage</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bodily Injury and Property Damage, Combined</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>Professional Liability, Including Errors and Omissions, Malpractice (When Applicable), and Negligent Performance</td>
<td>Bodily Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Damages</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

The City of Palo Alto is to be named as an additional insured: Contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect throughout the entire term of any resultant agreement, the insurance coverage herein described, insuring not only Contractor and its subconsultants, if any, but also, with the exception of Worker’s Compensation, Employer’s Liability and Professional Insurance, naming as additional insureds City, its Council members, officers, agents, and employees.

I. Insurance coverage must include:

A. A provision for a written thirty day advance notice to City of change in coverage or of coverage cancellation; and

B. A contractual liability endorsement providing insurance coverage for Contractor’s agreement to indemnify City.

C. Deductible amounts in excess of $5,000 require City’s prior approval.

II. Contractor must submit certificates(s) of insurance evidencing required coverage.

III. Endorsement provisions, with respect to the insurance afforded to “Additional Insureds”

A. Primary Coverage

With respect to claims arising out of the operations of the named insured, insurance as afforded by this policy is primary and is not additional to or contributing with any other insurance carried by or for the benefit of the additional insureds.

B. Cross Liability
Exhibit D
INSURANCE REQUIREMENTS

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED S UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISB ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED S, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.
EXHIBIT E

Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Proposer is INDIVIDUAL, sign here:

Date: __________________

Proposer's Signature

________________________
Proposer's typed name and title

2. If Proposer is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

________________________
Partnership or Joint Venture Name (type or print)

Date: __________________

Member of the Partnership or Joint Venture signature

Date: __________________

Member of the Partnership or Joint Venture signature

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

Chief Executive Officer ______ and Vice President Energy & Climate Group ______

________________________
Title

Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Ecology Action of Santa Cruz

Corporation Name (type or print)

By: __________________ Date: March 10, 2008

________________________
Title

By: __________________ Date: March 10, 2008

________________________
Title: VP

City of Palo Alto – RFP 125914
CITY OF PALO ALTO CONTRACT NO. C08125914D

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
SUMMIT BLUE CONSULTING, LLC
FOR PROFESSIONAL SERVICES
(Energy Efficiency Evaluation, Measurement & Verification, Electric Demand Reduction, and
Third Party Energy Efficiency Programs.)

This AGREEMENT is entered into _____________, by and between the CITY OF PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and SUMMIT BLUE CONSULTING, LLC, a Limited Liability Corporation located at 1722 14th Street, Suite 230, Boulder, CO 80302 ("CONSULTANT").

RECATALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to provide energy efficiency programs to include Energy Efficiency Evaluation, Measurement, and Verification, Electric Peak Demand Reduction (DR) and a Third-Party Energy Efficiency Program and desires to engage a consultant to design the energy efficiency programs in connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit "B" unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner.

Professional Services
Revised 10/18/07
based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed One Hundred Fifty Thousand Dollars per year ($150,000 per year). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Fifteen Thousand Dollars ($15,000). The applicable rates and schedule of payment are set out in Exhibit “C”, entitled “COMPENSATION,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of the CITY’s stated construction budget, CONSULTANT shall make recommendations to the CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT’s obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

NO SUBCONTRACTORS. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Gary Cullen as the project director to have supervisory responsibility for the performance, progress, and execution of the Services and Kevin Cooney as the project coordinator to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY’s project manager. CONSULTANT, at CITY’s request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are Professional Services
Revised 10/16/07
uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City’s project manager is Joyce Kinnear, Utilities Department, Marketing Services Division, Palo Alto, CA 94303, and Telephone: (650) 329-2652. The project manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT’s records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT’s services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not
be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best’s Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY’s Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days’ prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY’s Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT’s liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The city manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other Professional Services Revised 10/18/07
data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT’s services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.
SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment, including completing the form furnished by CITY and set forth in Exhibit “E.”

SECTION 23. MISCELLANEOUS PROVISIONS.

23.1. This Agreement will be governed by the laws of the State of California.

23.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

23.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys’ fees paid to third parties.

23.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

23.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

23.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

23.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

23.8. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 24.8 shall take
precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

23.9. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

________________________
Assistant City Manager

APPROVED AS TO FORM:

________________________
Senior Asst. City Attorney

APPROVED:

________________________
Director of Administrative Services

SUMMIT BLUE CONSULTING, LLC.

By: ______________________
Name: Marshall Kaneipp
Title: Principal

Taxpayer Identification No.

94-1530993

Attachments:
EXHIBIT “A”: SCOPE OF WORK
EXHIBIT “B”: SCHEDULE OF PERFORMANCE
EXHIBIT “C”: COMPENSATION
EXHIBIT “D”: INSURANCE REQUIREMENTS
EXHIBIT “E”: CERTIFICATION OF NONDISCRIMINATION
EXHIBIT “A”

SCOPE OF SERVICES

The scope of work is split into two phases. Phase 1 is an exploratory phase where information is gathered about the CPAU programs and detailed EM&V plans for each program, as needed, are developed. Upon completion of Phase 1, detailed EM&V plans that include specific EM&V strategies by program, their budgets, and their priority will be available. Based on these plans, the remaining tasks and associated budgets will be clearly defined. Tasks 1, 2, and 3 are Phase 1 tasks. Tasks 4 and 5 are Phase 2 tasks.

1.1 Phase 1

Task 1 – Project Initiation Meeting

In late June, after final contract approval, there will be a team meeting. Gary Cullen and Deborah Swarts will meet with CPAU staff in Palo Alto. Katherine Johnson of will join the meeting by phone. The purpose of the meeting is to discuss the specific programs offered by CPAU and review the data and tracking information CPAU has for each of their programs. At the meeting, the Summit Blue team will review the following items with CPAU staff:

- Current program descriptions.
- Program rebate applications.
- Program guidelines, eligibility criteria, and/or application instructions.
- Marketing materials.
- List of key program personnel and organizational structure.
- Program tracking databases.
- The ex ante measure impact and cost data currently assumed.
- Evaluation budgets.
- Any other support data deemed relevant by CPAU.

It is anticipated that this meeting will take a full day. In preparation for the meeting, Summit Blue will provide the CPAU project manager a meeting agenda that identifies who will be in attendance from the Summit Blue team, who Summit Blue would like in attendance from CPAU, and the specific data it would like to have brought to the meeting.

Task 1 Deliverables

At least a week prior to this meeting, the Summit Blue Project Manager will provide the CPAU Project Manager with a copy of the proposed agenda for review and comment. Within three working days after the meeting, a record of the meeting notes that includes specific decisions will be provided the CPAU Project Manager.

Task 2 – Data Analysis
The Summit Blue team expects that it will have collected most of the data relevant to the portfolio of CPAU energy efficiency programs at the project initiation meeting. Any additional data will be requested very soon after this meeting. After all the data are collected and reviewed, the Summit Blue team will determine the best impact evaluation approach for each program within the portfolio.

**Task 2 Deliverables**

At the conclusion of this task, the CPAU Project Manager will be provided a draft Working Paper that includes sections discussing each of the CPAU programs. Within each section will be a discussion of the available data and its quality, a prioritization of the program within the portfolio, and a recommendation on which impact evaluation strategy should be developed. Based on comments received from CPAU staff, the Working Paper will be finalized and it will serve as the guideline for developing the EM&V plans created in the next task.

**Task 3 – EM&V Plans**

Using the Working Paper developed in Task 2 as a guideline, the Summit Blue consulting team will draft a series of Impact Evaluation Research Plans for the higher priority programs, using the following general outline:

1. **Introduction and Key Issues.** This section will summarize the Plan, clearly present final research objectives, and discuss key issues.

2. **Study Method.** This section will present the specifics of the data assessment approach, data collection approach, and method that will be used to complete the project.

3. **Data Sources.** This section will specify the sources of data to successfully complete the study. This will include information from Task 2 as well as highlighting any further data collection sources required to successfully complete the impact evaluation.

4. **Data Collection and Sampling Plan.** This section will present the data collection plan and details of a planned sample design as appropriate. The data collection plan will define (1) the specific data collection requirements, along with the source of the information and the use to which that the data will be put, (2) the timing of the data collection, in relation to the rest of the plan, to assure that it meets the overall needs of the study, and (3) the scheduling method and plan for coordinating contacts. The plan will not include draft data collection instruments as these are best produced once a plan is agreed upon.

5. **Detailed Plan and Work Schedule.** This section will break the study down into distinct tasks and subtasks. It will present clearly defined task definitions, a schedule for conducting each task along with links between the tasks, and the planned budget with hours by person and specific expenses identified. The overall project schedule will be clearly presented.

6. **Proposed Outline for the Final Report.** This section will include a proposed outline for the final report.
The purpose of the plans is to lay out, in detail, steps that will be taken to perform the needed impact evaluations. In addition to developing the EM&V plans, each program will include an assessment and recommendation regarding data collection procedures. Demand-side management programs often fail to take EM&V data needs into account when the program delivery mechanisms are being established. Wherever possible, we propose to use an "integrated data collection" approach in order to achieve high levels of accuracy, completeness and economy in current and planned evaluations. The concept of integrated data collection (IDC) provides a data acquisition process that is designed into the program process flow. Some of the benefits of using an IDC approach include:

- **Cost Savings** – When IDC objectives are included in required program documents, such as applications, it results in a 100% response rate at no additional cost. When an IDC survey is conducted via telephone at the time of program intervention it avoids all of the challenging issues associated with phone surveys occurring some time after the project is complete, such as lost contacts due to employee turnover or recall issues that require a highly skilled interviewer spend time refreshing respondents on what was done under the program.

- **Real-Time Data Feed** – IDC can be highly integrated into ongoing program processes, such as project applications or web-based tools, and yields near real time, actionable data to program staff. Data is continuously being gathered and can be reviewed at any point or frequency during the program operating cycle.

- **Longevity** – When data collection is integrated into program processes, it can be maintained over time with minimal staff effort or cost. This helps to ensure the longevity of the data collection effort.

**Task 3 Deliverables**
The Summit Blue team will provide the CPAU Project Manager with a set of draft EM&V plans, delivered as a combined Evaluation Plan. The plans will include the assessment of current data collection procedures and any recommendations for changes to these procedures. The plans will be presented to CPAU staff at a meeting in Palo Alto, then edited as required to proceed with Phase II. The deliverable from this task will be revised EM&V plans along with recommendations for future data collection activities and identification of which plans will be implemented under Task 4 of this Work Plan.

1.2 **Phase II**

**Task 4 – Conduct Field Site Visits and Perform Data Review and Analysis**

Phase 2 of this project begins with this task. The EM&V plans developed under Task 3 will define the specific approaches taken for each of the CPAU programs that will be evaluated. It is anticipated, based on the current CPAU program offerings, that EM&V efforts will include at least the Commercial Advantage Program, the Commercial Lighting Program, and the Residential Smart Energy Program. The Residential Low-Income Program may be another candidate.

The gross demand and energy impacts resulting from DSM programs are developed through a careful review of program records and assumptions, followed by field inspections on a
sample of projects to confirm that program expectations accurately reflect field conditions. In general, four technical issues must be addressed to verify program impacts:

1. Determining the pre-installation technology performance baseline for each measure installed. In many cases this is difficult because programs can be unaware that a project has occurred until a post-installation application is received.

2. Verifying that the DSM measures listed for projects were in fact installed. As a general guide, the types of data collected during verification activities fall into five technical categories:
   i. Quantity of devices installed.
   ii. Capacity of devices installed (e.g., lamp wattage for lighting, tons for air conditioning).
   iii. Efficiencies of devices installed (e.g., SEER/EER for air conditioning).
   iv. Unique performance features of the technology (e.g., load profiles on variable speed application).
   v. Explanatory variables such as building type and square footage, operating hours, and usage/occupancy profiles.

3. Determining the demand and energy savings performance of the DSM measures installed. This frequently involves estimating not only the immediate kW, kWh, and therm impacts, but also longer term issues such as the long-term persistence of a measure's impacts or changes in customer behavior that may result from operating more efficient equipment.

4. Using statistical methods to estimate the precision and uncertainty involved in extrapolating the results of the sample of projects analyzed through field verification work to the population of all projects completed by the program.

The keys to addressing these technical issues when developing a cost-effective and reliable impact evaluation are:

1. Establish good quality participation data – The Summit Blue team will assess the quality of the data that is available to work with from program files and databases, and determine what data manipulation systems and supplemental analyses are required to produce reliable estimates of program impacts.

2. Match the data collection strategy to the data needs of the project or measure being investigated – On-site data collection is expensive and time consuming, and it is clear that not everything can be (or should be) measured or monitored. There are a variety of data collection methods available to the researcher including on-site observations, spot measurements, runtime hour monitoring, and end-use interval metering. It is not possible to measure everything, of course, and this inevitably involves trade-offs in budget and time. That is why a selective and focused field data collection approach would be used that targets key variables where better information will minimize uncertainty in the analysis. Each of these options has a different resource requirement and resulting cost, and thus it is imperative that verification activities must be identified that are commensurate with time and budget limitations.
3. Apply the appropriate analytic approach to the measure being analyzed — There are a variety of analytic methods including engineering analysis, hourly building energy simulation models, algorithm-based models, and regression modeling tools. In conjunction with the chosen data collection strategy, it is important to apply the appropriate tool to the analysis at hand, recognizing that the appropriate level of effort and economy must be observed.

When approaching a multiple program evaluation with a wide range of efficiency measures and diverse set of applications of those measures it is helpful to have a systematic context in which to make decisions about the selection of measurement and verification methods. The International Performance Measurement and Verification Protocols (IPMVP)\textsuperscript{1} are consistent with and complementary to the approach that the evaluation team has used for many program evaluation projects. Exhibit 1 presents a listing of the four IPMVP protocols, the nature of the performance characteristics of the measures to which M&V options typically apply, and an overview of the data requirements to support each option.

\textsuperscript{1} International Performance Measurement and Verification Protocol, US DOE, Revised March 2002.
## Exhibit 1: Overview of IPMVP M&V Options

<table>
<thead>
<tr>
<th>IPMVP M&amp;V Option</th>
<th>Measure Performance Characteristics</th>
<th>Data Requirements</th>
</tr>
</thead>
</table>
| **Option A**: Engineering calculations using spot or short-term measurements, and/or historical data. | Constant performance | • Verified installation  
• Nameplate or stipulated performance parameters  
• Spot measurements  
• Run-time hour measurements  
• The Summit Blue team would include high quality deemed savings estimates as another alternative. |
| **Option B**: Engineering calculations using metered data. | Constant or variable performance | • Verified installation  
• Nameplate or stipulated performance parameters  
• End-use metered data |
| **Option C**: Analysis of utility meter (or sub-meter) data using techniques from simple comparison to multivariate regression analysis. | Variable performance | • Verified installation  
• Utility metered or end-use metered data  
• Engineering estimate of savings input to SAE model |
| **Option D**: Calibrated energy simulation/modeling; calibrated with hourly or monthly utility billing data and/or end-use metering. | Variable performance | • Verified installation  
• Spot measurements, run-time hour monitoring, and/or end-use metering to prepare inputs to models  
• Utility billing records, end-use metering, or other indices to calibrate models |

### Task 4 Deliverables

Working Papers will be developed for each program undergoing an impact evaluation. The Working Papers will describe how each step of the EM&V plan implementation was completed and the results from each step. These Working Papers will be provided to the CPAU Project Manager for review and comment. These working papers, along with the comments received from CPAU, will form the basis of the final EM&V report that will be provided in Task 5.

### Task 5 – Quality Assurance and Final Reporting

Summit Blue is committed to an uncompromising standard of quality. We maintain a quality control process in which all research designs, analyses, and reports are overseen by
experienced senior level staff. Our commitment to quality may be summarized by the following guiding principles: *bring the best possible and most appropriate technical resources to each assignment, monitor project progress closely, maintain control over budgets and schedules, and communicate with the client regularly*. This has proven to be a formula for success. We understand CPAU's need to obtain the best value for technical services in the highly competitive energy marketplace today. We are committed to maintaining a high value, cost competitive team of technical experts with in-depth experience and demonstrated commitment to delivering a high quality product to the client.

**Task 5 Deliverables**

Task 2, data analysis, Task 3, development of the EM&V plans, and Task 4, conducting field site visits and performing data review and analysis, each have Working Paper deliverables that describe the available data and content of each EM&V plan as well as the results for the evaluations actually performed. Under this task, these Working Papers, along with comments received regarding them from CPAU staff, will be brought together and synthesized into a single Final Report.
EXHIBIT “B”

SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed. This is the first year of a potential three year contract based on City Council approval of funds for each subsequent year.

<table>
<thead>
<tr>
<th>Milestones</th>
<th>Completion</th>
<th>No. of Days/Weeks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Initiation Meeting</td>
<td>6/30/2008</td>
<td>Two</td>
</tr>
<tr>
<td>2. Data Analysis</td>
<td>7/31/2008</td>
<td>Four</td>
</tr>
<tr>
<td>3. EM&amp;V Plans</td>
<td>8/15/2008</td>
<td>Four</td>
</tr>
<tr>
<td>4. Conduct Visits &amp; Analysis</td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td>5. Quality &amp; Final Report</td>
<td>TBD</td>
<td></td>
</tr>
</tbody>
</table>

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit “B” unless terminated earlier pursuant to Section 19 of this Agreement.
EXHIBIT “C”

COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule below C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed $150,000 for the first phase and an additional $50,000 for the second phase in Fiscal Year 2008-2009. There is the potential for additional funding for phase two in the following two fiscal years, pending Council approval. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed $200,000 for each of three fiscal years. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s Senior Resource Planner may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed the figures shown below.

The budget provided for this proposal reflects the uncertainty as to which programs will be evaluated and the evaluation methodology to be employed for each. Impact evaluation cost can vary significantly depending on the evaluation methodology employed. Therefore, Summit Blue provides a detailed budget for Phase 1, but for Phase 2, a budget pool is proposed. From this pool, detailed budgets will be developed for the Phase 2 efforts, which shall in no event exceed $50,000 in Fiscal Year 2008-2009 with potential additional funding up to $200,000 in each year for Fiscal Years 2009-2010 and 2010-2011, depending on Council’s approval

PHASE I COMPENSATION:
<table>
<thead>
<tr>
<th>Personnel</th>
<th>Function</th>
<th>Rate</th>
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</thead>
<tbody>
<tr>
<td>Kevin Coney</td>
<td>Principal</td>
<td>$215</td>
</tr>
<tr>
<td>Greg Cullen</td>
<td>Project Manager</td>
<td>$165</td>
</tr>
<tr>
<td>Deborah Swartz</td>
<td>Engineer</td>
<td>$150</td>
</tr>
<tr>
<td>Ula Mornberg</td>
<td>Consultant</td>
<td>$125</td>
</tr>
<tr>
<td></td>
<td>Analyst</td>
<td>$90</td>
</tr>
<tr>
<td>Katherine Johnson</td>
<td>Consultant</td>
<td>$125</td>
</tr>
<tr>
<td>Admin</td>
<td>Admin</td>
<td>$60</td>
</tr>
</tbody>
</table>

| Total Hours       | 72        | 64   | 100  | 106  |

**Other Direct Costs**

| Travel, Food & Hotel | $1 | $700 | $700 |

| Total Labor         | $4,420 | $9,240 | $14,720 | $28,380 |
| Total ODCs          | $700  | $0    | $700    | $1,400  |

| Total Cost by Task  | $5,120 | $9,240 | $15,420 | $29,780 |

**REIMBURSABLE EXPENSES**

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: (modify list as needed)

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto’s policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone cellular phone, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than $1,000.00 shall be approved in advance by the CITY’s project manager.

**ADDITIONAL SERVICES**

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY’s project manager’s request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT’s proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY’s Senior Resource Planner and CONSULTANT prior to commencement.
of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.

Work required because the following conditions are not satisfied or are exceeded shall be considered as additional services.
IN Insurance Requirements

Contractors to the City of Palo Alto (City), at their sole expense, shall for the term of the contract obtain and maintain insurance in the amounts for the coverage specified below, afforded by companies with Am Best’s Key Rating of A-:VII, or higher, licensed or authorized to transact insurance business in the State of California.

Award is contingent on compliance with City’s insurance requirements, as specified, below:

<table>
<thead>
<tr>
<th>Required</th>
<th>Type of Coverage</th>
<th>Requirement</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Workplace Compensation</td>
<td>Statutory</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Employer’s Liability</td>
<td>Statutory</td>
<td>$1,000,000</td>
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<td>Yes</td>
<td>General Liability, Including Personal Injury, Broad Form Property Damage Blanket Contractual, and Fire Legal Liability</td>
<td>Bodily Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
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<td>Property Damage</td>
<td>$1,000,000</td>
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<td>Bodily Injury &amp; Property Damage Combined.</td>
<td>$1,000,000</td>
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<tr>
<td>Yes</td>
<td>Automobile Liability, Including All Owned, Hired, Non-Owned</td>
<td>Bodily Injury</td>
<td>$1,000,000</td>
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<td>- Each Person</td>
<td>$1,000,000</td>
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<td>- Each Occurrence</td>
<td>$1,000,000</td>
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<td>Property Damage</td>
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<tr>
<td></td>
<td></td>
<td>Bodily Injury and Property Damage, Combined</td>
<td>$1,000,000</td>
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<tr>
<td></td>
<td>Professional Liability, Including, Errors and Omissions, Malpractice (When Applicable), and Negligent Performance</td>
<td>All Damages</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Yes</td>
<td>The City of Palo Alto is to be named as an Additional Insured: Contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect throughout the entire term of any resultant agreement, the insurance coverage herein described, insuring not only Contractor and its Subconsultants, if any, but also, with the exception of Workers’ Compensation, Employer’s Liability and Professional Insurance, naming as additional insureds City, its Council Members, Officers, Agents, and Employees.</td>
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</tbody>
</table>

I. Insurance Coverage Must Include:

A. A provision for a written thirty day advance notice to City of change in coverage or of coverage cancellation; and

B. A contractual liability endorsement providing insurance coverage for contractor’s agreement to indemnify City.

C. Deductible amounts in excess of $5,000 require City’s prior approval.

II. Contractor Must Submit Certificates(s) of insurance evidencing required coverage.

III. Endorsement provisions, with respect to the insurance afforded to “Additional Insureds”

A. Primary Coverage

With respect to claims arising out of the operations of the named insured, insurance as afforded by this policy is primary and is not additional to or contributing with any other insurance carried by or for the benefit of the additional insureds.

B. Cross Liability
Exhibit D
INSURANCE REQUIREMENTS

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY
SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER,
BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL
LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE
   NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY
   (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF
   PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN
   NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

PURCHASING AND
CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.
### ACORD Certificate of Liability Insurance

**Producer:** Paychex Agency, Inc.  
150 Sawgrass Dr  
Rochester, NY 14620

**Insured:** Paychex Business Solutions, Inc.  
SUMMIT BLUE CONSULTING LLC  
911 Panorama Trail South  
Rochester, NY 14625  
877-266-6850

**Insurers Affording Coverage:**  
**Insurer A:** AMERICAN HOME ASSURANCE COMPANY  
**Insurer B:**  
**Insurer C:**  
**Insurer D:**  
**Insurer E:**

### Coverages

The Policies of Insurance Listed Below Have Been Issued to the Insured Named Above for the Policy Period Indicated. Notwithstanding Any Requirement, Term or Condition of any Contract or Other Document with Respect to Which This Certificate May Be Issued or May Pertain, the Insurance Afforded by the Policies Described Herein is Subject to all the Terms, Exclusions and Conditions of Such Policies, Aggregate Limits Shown May Have Been Reduced by Paid Claims.

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<thead>
<tr>
<th>Layer</th>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date (Primary)</th>
<th>Policy Expiration Date (Primary)</th>
<th>Limits</th>
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<td></td>
<td>General Liability</td>
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<td>Commercial General Liability Claims Made Occur</td>
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<td>General Aggregate Unit Applies Per Policy</td>
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<td>Automobile Liability</td>
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<td>Any Auto</td>
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<td>All Owned Autos</td>
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<td>Workers Compensation and Employers Liability</td>
<td>1101953</td>
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<td>06/01/08</td>
<td>X WE STATUTORY LIMITS</td>
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<td>WC, DISEASE—EA EMPLOYEE</td>
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</table>

Description of Operations, Locations, Hours, Exclusions Agreed to by Insurer Upon Special Provisions  
Workers Compensation Coverage is Provided to Only Those Employees leased To, But Not Subcontractors of the Named Insured

### Certificate Holder

**Certificate Holder:** SUMMIT BLUE CONSULTING LLC  
2732 14TH STREET SUITE 230  
BOULDER, CO 80302  
USA

**Authorized Representative:**  
[Signature]

**ACORD 25-S (787)**  
8049813

© ACORD CORPORATION 1988
<table>
<thead>
<tr>
<th>CO LTR</th>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFFECTIVE DATE</th>
<th>POLICY EXPIRATION DATE</th>
<th>LIMITS</th>
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<td>GENERAL LIABILITY</td>
<td>34 SBA KK5491</td>
<td>05/09/07</td>
<td>05/09/08</td>
<td>General Aggregate $4,000,000</td>
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<td>Products - Comprehensive $4,000,000</td>
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<td>Personal &amp; Adv Injury $2,000,000</td>
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<td>Each Occurrence $2,000,000</td>
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<td>Fire Damage (Any one fire) $300,000</td>
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<td>Medical Payments (Any one person) $10,000</td>
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<td>A</td>
<td>AUTOMOBILE LIABILITY</td>
<td>34 SBA KK5491</td>
<td>05/09/07</td>
<td>05/09/08</td>
<td>Combined Single Limit $2,000,000</td>
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<td>Bodily Injury (Per Person) $1,000,000</td>
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<td>Bodily Injury (Any One Accident) $1,000,000</td>
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<td>Property Damage $1,000,000</td>
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<td>Auto Only - EA Accident $1,000,000</td>
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<td>Other Than Auto Only: Each Accident $1,000,000</td>
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<td>Aggregate $1,000,000</td>
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<td>Aggregate $1,000,000</td>
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<td>EXCESS LIABILITY</td>
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<td>Each Occurrence $1,000,000</td>
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<td>Aggregate $1,000,000</td>
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<td>EACH STATE: EACH OCCURRENCE $1,000,000</td>
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<td>EACH STATE: AGGREGATE $1,000,000</td>
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<tr>
<td>B</td>
<td>PROFESSIONAL LIABILITY</td>
<td>H705-14834</td>
<td>07/31/07</td>
<td>07/31/08</td>
<td>Aggregate $2,000,000 Each Claim Incl Claim Exp &amp; In The Aggregate $10,000 Ded.</td>
</tr>
</tbody>
</table>

DESCRIPTION OF OPERATIONS, LOCATIONS, VEHICLES, SPECIAL ITEMS
ON GENERAL LIABILITY ADDITIONAL INSURED: CITY OF SANTA CLARA, ITS CITY COUNCIL, COMMISSIONS, OFFICERS, EMPLOYEES, VOLUNTEERS AND AGENTS IN RESPECT TO LIABILITY ARISING OUT OF CONSULTANTS' WORK FOR CITY. THIS INSURANCE IS PRIMARY AND NON-CONTRIBUTORY AND WAIVER OF SUBROGATION IN FAVOR OF CITY OF SANTA CLARA (AS DECIDED). SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPEDE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
EXHIBIT E

Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Proposer is INDIVIDUAL, sign here:

   Date: __________________
   Proposer's Signature

   Proposer's typed name and title

2. If Proposer is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

   Partnership or Joint Venture Name (type or print)

   Date: __________________
   Member of the Partnership or Joint Venture signature

   Date: __________________
   Member of the Partnership or Joint Venture signature

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

   The undersigned certify that they are respectively:

   CEO __________________ and Principal __________________

   Title

   Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

   Summit Blue Consulting, LLC

   Corporation Name (type or print)

   By: __________________ Date: 03/10/2008
   Title: CEO

   By: Dana Vincett Date: 03/10/2008
   Title: Principal

City of Palo Alto – RFP 125914