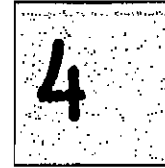




City of Palo Alto City Manager's Report



TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER **DEPARTMENT:** UTILITIES

DATE: APRIL 12, 2010 **CMR:** 191:10

REPORT TYPE: CONSENT

SUBJECT: Approval of Utilities Public Benefit Three-Year Contract with OPOWER, Inc. in the Total Amount of \$574,083, \$213,000 of Which Comes From Federal Stimulus Funds, for Administration and Delivery of Residential Home Energy Reports

RECOMMENDATION

Staff recommends that City Council:

1. Approve and authorize the City Manager to execute the attached contract with OPOWER, Inc. for administration and delivery of residential Home Energy Reports.

EXECUTIVE SUMMARY

The Energy Efficiency Community Block Grant (EECBG) program was created by Congress in 2007 and was funded for the first time by the American Recovery and Relief Act (ARRA) with an appropriation of \$3.2 billion. On March 26, 2009, the City of Palo Alto was determined to be eligible to receive up to \$663,000. The funds were received on October 27, 2009 for two demonstration projects as approved in the EECBG application: the early replacement of High Pressure Sodium (HPS) street lights on selected streets with Light Emitting Diode (LED) streetlights and the implementation of a Home Energy Report for residential customers. The EECBG funds allocated to the LED Streetlight Project and the Home Energy Report project are \$450,000 and \$213,000, respectively.

Under the Home Energy Report project, six quarterly Home Energy Reports will be sent to City of Palo Alto Utilities residential customers. The first report will be sent with a letter introducing residential customers to the project and offering them the chance to continue participating or to opt out. If residents opt to participate, the Home Energy Reports they receive will compare their home energy usage to the average energy used by a similar home, and to the average energy used by the most efficient similarly sized home in a comparison group. Energy usage data for individual homes in the comparison group will not be reported, to protect customer privacy.

The first report and introductory letter will be sent to all residential customers, and future reports will only be sent to customers who did not opt out. Report data will also be available on a website for customer access via secure log-in. Water and greenhouse gas information are planned to be added at a future date. The cost of the project is \$574,083 for project development and then two years of report delivery (\$74,083 setup and \$250,000 per year).

BACKGROUND

The Long-term Electric Acquisition Plan (LEAP) objectives and guidelines set the direction for planning and managing the electric supply portfolio, including the use of cost-effective efficiency as energy resources. Council approved the LEAP Objectives and Guidelines in 2001 and 2002 (CMR:425:01 and CMR:398:02). Staff updates the Council on progress in implementing LEAP. The LEAP implementation tasks were most recently updated in March 2007 (CMR:158:07). In addition, the City's Ten-Year Energy

Efficiency Portfolio Plan, approved by Council in April 2007 (CMR:216:07) identifies and sets high goals for gas and electric conservation and efficiency programs. An update of this Plan will come to Council in May 2010 and also recommends large efficiency gains.

Home Energy Reports are issued by a variety of utilities, including the Sacramento Municipal Utility District (SMUD). These utilities have done comparative research on energy usage by customers who receive or do not receive the reports and have documented that customers who receive the reports reduced energy usage on average by about one to three percent. The Federal Government, including the President, has also expressed interest in these reports as ways of encouraging energy conservation and efficiency.

The Energy Efficiency Community Block Grant (EECBG) program, created by Congress in 2007 and funded by the American Recovery and Relief Act (ARRA) with an appropriation of \$3.2 billion, administered by the U.S. Department of Energy (DOE), provides federal grants to units of local government, Indian tribes, states and territories to reduce energy use and fossil fuel emissions, and for improvements in energy efficiency.

On March 26, 2009, DOE announced the EECBG formula grant allocations, and the City of Palo Alto was determined to be eligible to receive up to \$663,000. The City of Palo Alto received funds on October 27, 2009 for two projects. The two demonstration projects approved in the EECBG application include the early replacement of High Pressure Sodium (HPS) street lights on selected streets with Light Emitting Diode (LED) streetlights, and the implementation of a Home Energy Report for residential customers. The EECBG funds allocated to the LED Streetlight Project and the Home Energy Report project are \$450,000 and \$213,000 respectively.

DISCUSSION

In October 2009, the City issued a Request for Proposals (RFP) seeking responses from organizations interested in providing the home energy reports. An evaluation committee of CPAU staff members reviewed the firms' qualifications and submittals in response to the criteria identified in the RFP. The committee evaluated the firms based on six main criteria consisting of quality of service proposed, cost, location of the vendor, qualifications of the consultant, experience, and the financial capability of the company to deliver the services requested in the Request for Proposal. Of the two responses received, OPOWER's was ranked first primarily due to the company's extensive experience in implementing Home Energy Reports for utilities.

Summary of Solicitation Process

Proposal Description/Number	Home Energy Report, RFP Number 134341		
Proposed Length of Project	Up to 5 Years		
Number of Proposals Received:	Two		
Company Name	Location (City, State)	Program Description	Points Out of 500 Possible
1. OPOWER	Arlington, VA	Produce 6 quarterly Home Energy Reports to residents comparing electric and natural gas usage with similar homes. Delivered by mail and on web-site. Water and greenhouse gas to be added at a future date.	402
Proposal Amount Submitted	\$574,083 for project development and then two years of report delivery years (\$74,083 setup and \$250,000 per year)		Comparable product delivered at 20+ utilities
2. Ennovationz	Mountain View, CA	Develop product to deliver 2 residential reports on energy usage or 50 home energy/water audits and small commercial benchmarking database/reports.	238
Proposal Amount Submitted	\$198,000 for one year		No product yet developed and no experience

OPOWER was selected for this project due to expertise with delivery of similar programs at a variety of other municipally and investor owned utilities, including SMUD mentioned in the background.

The project will be completed as follows:

Task 1: Deploy technical infrastructure

OPOWER will install and configure all necessary hardware, software and network infrastructure for the delivery of the Home Energy Reports and OPOWER Customer Portal in conjunction with City of Palo Alto's (CPA) IT Department. OPOWER will host servers on a secure site.

Task 2: Select pilot regions and acquire 3rd party data

OPOWER will perform historical energy usage, demographic and geographic research, in conjunction with CPAU, to identify the regions of CPAU's territory best suited to deploy the pilot program. Zip codes, city, and county boundaries will be considered so as to optimize data coverage and ensure speedy deployment. Data bases researched for this data will be from public sources such as census records.

Task 3: Design optimization, segmentation and targeting plan

OPOWER will work with CPAU to optimize targeting of rebates programs and energy water saving recommendations. Key metrics, such as internal and external cost per acquisition, will be used to improve this targeting effort where possible. OPOWER will use energy, housing, and demographic data and available past utility program participation data to design a multi-dimensional segmentation plan based on:

- Energy consumption patterns (e.g. normalized high seasonal peak, high base load, etc.). No individual customer information will be available or identified. Customers will only be able to compare their own data against an average sample.
- Publicly available housing data (e.g. age of house, size of house, value of home, type of construction, presence of a pool, presence of a garage).
- Past program participation & rebate redemption (e.g. ENERGY STAR® rated appliance and other rebates; rate assistance programs, etc.), when available; and
- Publicly available demographic data (e.g. renter vs. homeowner, presence of children in the household, indicators of interest in environmental issues, age of customer, duration of residence, socioeconomic/income levels, as available).

Task 4: Integration of program marketing for Home Energy Reports and OPOWER Customer Portal.

OPOWER will work with CPAU to target rebates, programs, and recommendations in the Home Energy Reports and through the OPOWER Consumer Portal. Updates to marketing materials will be implemented as needed. Rebates recommendations will be targeted to customers based on individual usage patterns. All residential customers will receive a first letter introducing them to the Program and offering them the option to opt out of future reports. Customers must log-on to the portal to achieve the benefits of this program.

Task 5: Deploy OPOWER CSR Portal

OPOWER will provide its customer web portal to support the Home Energy Reports and conduct on-site training of customer service staff on using this interface.

Task 6: Implement Automated Data Transfer

OPOWER and CPAU will jointly develop, implement, and finalize a protocol for regular, secure transfer of data from CPAU to OPOWER in a mutually agreed upon format(s). OPOWER will maintain data confidentiality and will use sample averages in comparison with individual customer billing histories. It is expected that transfers will come from the two CPAU billing Systems (Banner for information previous to May 2009 and SAP for information from May 2009). Program participation rates will come from Excel and Access databases.

Task 7: Integrate Utility data streams and populate Insight Engine

The Insight Engine is the back-end data services and analytics engine that powers OPOWER's customer facing applications, including both the online and offline components of the Home Energy Reporting System, for all OPOWER clients. OPOWER will integrate data received from CPAU with third party data and populate the Insight Engine.

RESOURCE IMPACT

The cost of the project is \$574,083 for project development and then two years of report delivery (\$74,083 setup and \$250,000 per year). \$213,000 will be funded by the federal stimulus funds (ARRA) and the remaining \$361,083 will be funded by the Public Benefit program areas in both the Electric and Gas Funds Alternate Resources Supply Funds. Contract funding for initial setup is included in the FY 09/10 Electric and Gas Fund budgets for Public Benefit Programs. Funds for subsequent years will be subject to appropriation of funds in subsequent budgets. Contract costs will include program development, implementation, and some energy incentives payments.

POLICY IMPLICATIONS

The proposed contracts support the Council-approved Gas Utility Long-Term Plan, the Ten-year Energy Efficiency Portfolio Plan, the Long-term Electric Acquisition Plan, and Comprehensive Plan Goal N-9. Implementation of efficiency programs support greenhouse gas reduction goals identified in the Palo Alto Climate Protection Plan and in the California Global Warming Solutions Act of 2006 (AB 32).

ENVIRONMENTAL REVIEW

The provision of these services do not constitute a project pursuant to Section 21065 of the California Public Resources Code, thus no environmental review under CEQA is required.

ATTACHMENT

A. Contract

PREPARED BY:

 **JOYCE KINNEAR**
Utility Marketing Services Manager

REVIEWED BY:

TOM AUZENNE
Assistant Director, Utilities

DEPARTMENT APPROVAL:


VALERIE O. TONG
Director, Utilities

CITY MANAGER APPROVAL:


JAMES KEENE
City Manager

CITY OF PALO ALTO CONTRACT NO.: C10134341

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
OPOWER, INC.
FOR PROFESSIONAL SERVICES
HOME ENERGY REPORTS**

This AGREEMENT is entered into on this 3rd day of May, 2010, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and OPOWER, INC., a Delaware corporation, located at 1515 North Courthouse Road, Suite 610, Arlington, VA 22201 ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to provide Home Utility Usage Reports for residential customers to identify energy and water savings ("Project") and desires to engage a consultant to configure, design and implement a program 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 Seventy Four Thousand Eighty Three Dollars (\$574,083).

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. Notwithstanding the foregoing, half the annual license fees listed in Exhibit "C" shall be due and payable upon execution of this Agreement.

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.

Notwithstanding Section 11 above, CITY agrees that subcontractors, including third-party service providers, may be used to complete the Services. The subcontractors initially authorized by CITY to perform work on this Project are those used by CONSULTANT in its normal course of business, including, but not limited to, those performing printing, mailing, data storage and other data services.

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 Chris Patton as the Client Solution Manager 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, 250 Hamilton Avenue, Palo Alto, CA 94303, 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. Refer to Exhibit "E" for complete terms and conditions of OPOWER Licensing Agreement.

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

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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

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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.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING. The City of Palo Alto is a green business and works to purchase and provide products in an environmentally sustainable manner. CONSULTANT will use production methods that reduce waste and environmentally toxic products, as well as have less packaging. CONSULTANT will adhere to the standard that printed materials will be, at a minimum, printed on 30% post consumer recycled paper with vegetable based ink. The designer will check with the project manager to discuss the maximum recycled content paper available for each project. FSC (Forest Stewardship Council) certified paper that is "process free" is preferred. CONSULTANT will use methods that reduce energy use and thus the carbon footprint for the development, production and delivery of products. CONSULTANT shall adhere to the City's Environmentally Preferred Purchasing policies as may be amended from time to time.

SECTION 24. MISCELLANEOUS PROVISIONS.

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

24.2. 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.

24.3. 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.

24.4. 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.

24.5. 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.

24.6. 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.

24.7. 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.

24.8. 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.

24.9. 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.

24.10 If, pursuant to this contract with CONSULTANT, City shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes beyond the scope of services attached in Exhibit "A" without City's express written consent.

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

City Manager or Designee

APPROVED AS TO FORM:

Senior Asst. City Attorney

OPOWER, INC.

By: 

Name: Daniel Yates

Title: CEO

Attachments:

EXHIBIT "A":	SCOPE OF WORK
EXHIBIT "B":	SCHEDULE OF PERFORMANCE
EXHIBIT "C":	COMPENSATION
EXHIBIT "D":	INSURANCE REQUIREMENTS
EXHIBIT "E":	LICENSE AGREEMENT

EXHIBIT "A"
SCOPE OF SERVICES

PHASE I A: INFRASTRUCTURE AND PRODUCT CUSTOMIZATION

Task 1: Deploy technical infrastructure

OPOWER shall install and configure all necessary hardware, software and network infrastructure for the delivery of the Home Energy Reports and OPOWER Customer Portal in conjunction with City of Palo Alto's (CPA) IT Department.

Task 1 Details:

In coordination with CPA's IT Department, OPOWER shall set up and configure the technical infrastructure:

- Requisition and configure OPOWER servers.
- Install and configure required underlying software (e.g. database server, application server, web server, etc)
- Install and configure multi-layered backup system
- Extend and secure networking topology.
- Harden networked servers and implement operations processes and access controls
- All servers will hosted be on OPOWER's server network and no servers will be hosted on CPA systems

Task 1 Deliverables:

- Fully deployed hardware and software infrastructure ready for program launch

Task 2: Select pilot regions and acquire 3rd party data

OPOWER shall perform historical energy usage, demographic and geographic research, in conjunction with CPAU,, to identify the regions of CPAU's territory best suited to deploy the pilot program. Zip codes, city, and county boundaries will be considered so as to optimize data coverage and ensure speedy deployment.

Task 2 Details:

OPOWER shall identify program regions:

- CPAU has approximately 25,000 Electric residential customers. The initial plan is for approximately 25,000 customers to receive dual fuel (electricity and gas), paper Home Energy Reports (HER) and the OPOWER Consumer Portal website. Control groups will also be established for each type of customer, through a synthetic control group or other standard M & V methodology. The final split will be agreed to based upon program goals and by mutual consent.
- Analyze demographic, geographic, and local data coverage rates to select optimal regions for the program.

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- Acquire housing data from 3rd party providers and county assessor offices in pilot region
- Acquire demographic data from 3rd party providers for pilot region
- Extend geocoding licenses to selected areas

Task 2 Deliverables:

- Selected pilot regions with accompanying 3rd party data sample.

Task 3: Design optimization, segmentation and targeting plan

OPOWER shall develop an analytically grounded segmentation plan to optimize targeting of Utility programs and recommendations.

Task 3 Details:

OPOWER and CPAU shall:

- Compile available analysis of previous marketing campaigns used to market CPAU rebates, programs and energy/water saving recommendations. Where possible, key metrics, such as internal and external cost per acquisition, will be provided to better inform targeting efforts.

OPOWER shall:

- Use energy, housing, and demographic data and available past program participation data to design a multi-dimensional segmentation plan of Designated Customers based on:
 - Energy consumption patterns (e.g. normalized high seasonal peak, high base load, etc.)
 - Housing data (e.g. age of house, size of house, value of home, type of construction, presence of a pool, presence of a garage)
 - Past program participation & rebate redemption (e.g. ENERGY STAR appliance and other rebates; rate assistance programs, etc), when available
 - Demographic data (e.g. renter vs. homeowner, presence of children in the household, indicators of interest in environmental issues, age of customer, duration of residence, socioeconomic/income levels, as available)
- Identify high-potential prospects for program marketing by profiling historical participants and available historical marketing campaign results.

Task 3 Deliverables:

- Designated Customer segmentation and targeting plan summary.

Task 4: Integration of program marketing for Home Energy Reports and OPOWER Customer Portal.

OPOWER shall work with CPAU to target CPAU rebates, programs, and recommendations in the Home Energy Reports and through the OPOWER Consumer Portal. Updates to these marketing materials will be implemented as needed.

Task 4 Details:

OPOWER and CPAU shall:

- Compile a comprehensive list of rebates, programs, and recommendations for inclusion in the Home Energy Reports and the OPOWER Customer Portal.

OPOWER shall:

- Brand the Home Energy Reports and OPOWER Consumer Portal with the CPAU logo according to CPAU's branding style guide.
- Integrate CPAU's rebates, programs, and recommendations into OPOWER's offer and tip database for presentation on the Home Energy Reports and OPOWER Consumer Portal.
- Update rebates, programs, and recommendations, as needed, by material changes in program structure or availability of program funds.

Task 4 Deliverables:

- Sample Home Energy Report branded with the CPAU logo, according to CPAU's style guide.
- OPOWER Consumer Portal branded with the CPAU logo, according to CPAU's style guide. CPAU marketing materials and efficiency programs integrated and formatted for use in OPOWER's Action Steps database.
- Periodic updates of marketed CPAU efficiency programs and campaigns as required.

PHASE I B: PRODUCT INTEGRATION AND CUSTOMIZATION

Tasks in Phase IB will need to occur in parallel with Phase IA, as they often require greater time for completion.

Task 5: Deploy OPOWER CSR Portal

OPOWER shall provide its OPOWER CSR Portal to support the Home Energy Reporting System, and conduct on-site training of customer service staff on using this interface.

Task 5 Details:

OPOWER shall:

- Create and permission password-protected accounts for customer service representatives and customer service managers. OPOWER shall not be providing customer service representatives for this program, as they will be provided by CPAU's Utility Marketing Services and Customer Service Representative staff.
- Conduct eight-hours of on-site training session.

Task 5 Deliverables:

- Configured and deployed OPOWER CSR Portal
- Onsite training day (8 hours).

Task 6: Implement Automated Data Transfer

OPOWER and CPAU shall jointly develop, implement, and finalize a protocol for regular, secure

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transfer of data from CPAU to OPOWER in a mutually agreed upon format(s). It is expected that transfers will come from the two CPAU billing Systems (Banner for information previous to May 2009 and SAP for information from May 2009). In addition, program participation rates will come from Excel and Access databases.

Task 6 Details:

- Establish secure, firewalled connection (e.g., sftp, ssh) between OPOWER servers and CPAU data center for secure transmission of data.

OPOWER and Utility shall jointly develop data transfer protocols:

- Develop the list of data elements owned by CPAU (e.g., electricity usage and billing data, gas usage and billing data, energy efficiency program participation) and mutually agreed upon data formats for each to be used in the project implementation. Transfer protocols will need to be developed for data coming from both the electricity and the gas information systems.
- Establish a process for the initial transfer of historical data from CPAU to OPOWER. The expected data transfer will include 12+ months of energy usage data (back to January 1, 2009, as available) and customer identifying data (address, account #, etc) for the customers from which Designated Customers, neighbors and control groups will be developed. OPOWER shall follow CPAU's confidentiality requirements for customer data and will sign a non-disclosure form. OPOWER shall notify CPAU immediately if any leak of customer data is suspected, so that all customers may be immediately notified.
- Establish an ongoing process for energy usage updates for the selected groups of Designated Customers and customers in the neighbor and control groups.
- Establish an ongoing process for notification of all new Customers and all Customers that have ended their relationship with CPAU.

Task 6 Deliverables:

Task 6A Deliverables: Electricity deployment

- Establish secure, firewalled connection (e.g., sftp, ssh) between OPOWER servers and City of Palo Alto data center for secure transmission of electricity data, in coordination with the CPA IT group.
- OPOWER receives initial historical energy data and other agreed upon data elements via established, secure connection.
- OPOWER and Utility establish a schedule for ongoing automated data update processes for new, continuing, and departing Customers.

Task 6B Deliverables: Gas deployment

- Establish secure, firewalled connection (e.g., sftp, ssh) between OPOWER servers and City of Palo Alto data center for secure transmission of gas data, in coordination with the CPAU IT group.
- OPOWER receives initial historical energy data and other agreed upon data elements via established, secure connection.
- OPOWER and Utility establish a schedule for ongoing automated data update processes

for new, continuing, and departing Customers.

Task 7: Integrate Utility data streams and populate Insight Engine

The Insight Engine is the back-end data services and analytics engine that powers OPOWER's customer facing applications, including both the online and offline components of the Home Energy Reporting System, for all OPOWER clients. OPOWER will integrate data received from CPAU with third party data and populate the Insight Engine database by performing the following steps.

Task 7 Details:

OPOWER shall:

- Define and author data transform layer for initial and ongoing meter data from Utility.
- Parse and load initial account information and meter read data, and additional data provided by Utility in accordance with Task 6.
- Parse and load available third-party data (e.g. housing data, demographic data) sourced by OPOWER in Task 2.
- Match data, ensuring accurate combination of initial and ongoing Customer and 3rd-party data through the unique customer identifier from your system, and for the 3rd party data through rigorous name and address matching to append those data to your customer data.
- Standardize all addresses to USPS standards for geo-coding and mailing purposes.
- Geo-code all addresses to establish longitude and latitude coordinates for each premise.
- Initiate ongoing normative calculations to determine and regularly update neighbor and efficient neighbor calculations for each Customer.

Task 7 Deliverables:

Task 7A Deliverables: Electricity deployment

- Insight Engine with loaded and matched historic and ongoing energy data, housing, and demographic data for all Customers.
- Geo-codes and normative calculations for all Customers loaded in the Insight Engine.

Task 7B Deliverables: Gas deployment

- Insight Engine with loaded and matched historic and ongoing energy data, housing, and demographic data for all Customers.
- Geo-codes and normative calculations for all Customers loaded in the Insight Engine.

Task 8: Final selection of Designated Customers

OPOWER shall analyze the integrated data resulting from Task 7 and provide statistics and insights necessary to enable the final selection of the test and control groups for the program.

Task 8 Details:

- Working in conjunction with CPAU, OPOWER may randomly partition the customers in

the selected pilot regions into test and control, selecting an exact set of customers from the pilot regions identified in Task 2. The final test group selection will comprise the Designated Customers. A potential option for control groups is to compare CPAU customer data with that of a synthetic control or other standard M & V methodology.

- The selection of the Designated Customers must meet OPOWER's technical eligibility requirements for available data and "neighbor" selection. Such eligibility requirements shall be shared with and agreed to by CPAU in writing prior to implementation, via a data requirements document.

Task 8 Deliverables:

Task 8A Deliverables: Electric deployment

- Final selection of Designated Customers and control group for the program implementation.

Task 8B Deliverables: Gas deployment

- Final selection of Designated Customers and control group for the program implementation.

PHASE II: IMPLEMENTATION

Task 9: Implement Home Energy Reports Program

OPOWER shall deliver the Home Energy Reports to CPAU Designated Customers through an opt-out program. OPOWER shall make the OPOWER Customer Portal available to CPAU Designated Customers.

Task 9 Details:

- Designated Customers will receive offline Home Energy Reports 10 reports, on average, for an initial period of 20 months, with 12-month extensions subject to mutual signed agreement by Utility and OPOWER.
- Accompanying the first months' mailing will be an introductory insert explaining the nature of the program, its duration, and the options for learning more or opting out.
- Home Energy Reports shall be delivered at an average frequency of no fewer than six reports per Designated Customer per year.
- The OPOWER Customer Portal will be available to Designated Customers throughout the initial term of the program.

CPAU customer service staff will be able to opt-out Designated Customers who call in and request to no longer receive the Home Energy Reports.

Optional: Only upon CPAU's review and approval, OPOWER may source and include 3rd party offers and coupons in the Home Energy Reports to increase their effectiveness and ability to be acted upon.

Task 9 Deliverables:

- Delivery of an average of ten (10) reports per year per Designated Customer for 20 months. Over the program duration, 250,000 paper reports will be delivered to CPAU Designated Customers.

Task 10: Deploy Home Energy Reporting Website

OPOWER shall make available the OPOWER Customer Portal to all Designated Customers.

Task 10 Details:

- OPOWER shall work with CPAU to "private-label" the website, branding it with CPAU's logo, according to CPAU's style guide.
- OPOWER shall work closely with CPAU to set up a mutually agreed upon authentication process to allow Designated Customers access to their energy information online. Such authentication process will include a method to provide Designated Customers with secure and easy access to their information through the website.
- OPOWER shall host and maintain the website, which is integral to the Home Energy Reporting System, which in turn is integrated with the Insight Engine, both also hosted and maintained by OPOWER only after approval by CPA's IT group.

Task 10 Deliverables:

- Contractor shall make available the OPOWER Customer Portal to all Designated Customers for a period of twelve (12) months.

PHASE III: MEASUREMENT AND VERIFICATION

Task 11: Measure and Report on Conservation, Efficiency and Program Participation

OPOWER shall provide annual reports, thirteen months from the date of the first mailing of Home Energy Reports and every twelve months thereafter or until this Agreement is terminated in electronic format to verify program accomplishments (the "Program Reports").

Task 11 Details:

Program Reports shall include:

- Analysis of change in electric consumption among Designated Customers compared to the established control group and to their historic consumption. Analysis shall include breakdown of program impact by segments, subject to sufficient data sets and mutual consent. Such segments may include analysis by:
 - Heat type (electric or gas)
 - Designated Customer investment likelihood (a combined measure of wealth, home ownership, etc)
 - Energy profile (high summer peak, low summer peak, etc)
 - Year over year analysis of energy usage
- Final output includes overall analysis of savings impact of Reports and cost of Reports to customer and to CPAU (per customer and total for time period). OPOWER shall provide all assumptions and factors used in the calculation of energy and cost savings for Utility internal verification purposes.

- Response rates for trackable actions taken by Designated Customers and for program participation rates for which data is provided to OPOWER, including rebate redemptions and other efficiency and conservation programs tracked at the household level. OPOWER shall measure the incremental response rates and aggregate program participation attribution rates for Designated Customers compared to the control group.

Task 11 Deliverable:

- Delivery of annual Program Reports

PHASE IV: OPTIMIZATION AND EXPANSION (Optional)

Task 12: Optimize expansion and selection of new Designated Customers based on learnings from PHASES I - III.

At the end of the first year and any subsequent years as agreed to by Utility and OPOWER, OPOWER shall analyze the results from DELIVERABLES II and III and provide recommendations about how to optimize the expansion of the Home Energy Reporting System among CPAU's customers. Among these options will be the addition of water and greenhouse gas emission data onto the reports, which will be priced separately at that time.

Task 12 Details:

- Working in conjunction with CPAU, OPOWER shall identify the priorities subject to CPAU's approval, for expansion and select a set of households that is optimized to increase the efficacy of the program and to increase and explore learnings from the ongoing implementation.
- If desired by CPAU, OPOWER and CPAU will together select additional Designated Customers or some other number of Designated Customers as determined by CPAU, and an accompanying control group.
- Customers must meet OPOWER's technical eligibility requirements for available data and neighbor selection, as provided to CPAU.
- The frequency of Home Energy Report delivery to different sub-segments of the Designated Population as determined in Task 5 above shall be reconsidered and optimized and this frequency shall be established by amendment to this Statement of Work, with an accompanying amendment to the budget, as appropriate.

Task 12 Deliverables:

Selection of Designated Customers and control group for the program expansion.

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.

<u>Milestones</u>	<u>Completion</u>
1. Finalize Look of HER's	Estimated by July 1, 2010
2. OPOWER Portal Set-up	Estimated July 1, 2010; may be later if CPAU is late in delivering required data
3. First Reports Sent	Within 60 days of Portal Set-up
4. Second Reports Sent	Within 60 days of First Reports
5. Third Reports Sent	Within 60 days of Second Reports
6. Fourth Reports Sent	Within 60 days of Third Reports
7. Fifth Reports Sent	Within 60 days of Fourth Reports
8. Sixth Reports Sent	Within 60 days of Fifth Reports
9. Program Year Two; First Reports	Twelve Months after First Reports (60 days after Sixth Reports)
10. Program Year Two; Second Reports	Within 60 Days of Second Year; First Reports
11. Program Year Two; Third Reports	Within 60 Days of Second Year; Second Reports
12. Program Year Two; Fourth Reports	Within 60 Days of Second Year; Third Reports

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 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 \$574,083. 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 project manager 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 \$574,083.

BUDGET SCHEDULE

NOT TO EXCEED AMOUNT

Maximum Total Compensation

\$574,083

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: \$10,000.

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 \$500.00 shall be approved in advance by the CITY's project manager.

**OPOWER
APPLICATION SERVICE AGREEMENT
ORDER**

ORDER # []

The following products are licensed under the terms and conditions specified in the Application Service Provider Agreement (the "Agreement") between OPOWER and CPAU dated _____ as well as the additional terms and conditions set forth in this Order:

OPOWER Proprietary Software:	Home Energy Reporting System Suite
OPOWER Portal URL:	www.cityofpaloalto.org/energyreport (exact URL TBD)
Access Term:	4 Month Implementation 20 months of reporting and web access from: 7/1/10-2/30/12 (exact dates TBD)
Included Features:	<input checked="" type="checkbox"/> Printed and Mailed Home Energy Reports <input checked="" type="checkbox"/> OPOWER Portal <input checked="" type="checkbox"/> OPOWER CSR Portal <input checked="" type="checkbox"/> Program Reports
Training Time & Expenses Included:	1 eight hour training day with OPOWER trainer and training materials included

Fees and Payments:

1. Service Fees

License Fees	Payment Due Date
Home Energy Reports	
\$75,000 set-up fee for the initial 25,000 Designated Customers.	Upon invoice, after Execution of the Agreement, estimated April 26, 2010
\$5.00 license fee per Designated Customer per year.	\$62,500, half of which is due at Execution of the Agreement, estimated April 26, 2010 \$62,500 due at First Reports Sent (FRS), July 1, 2010 \$83,333 due beginning of Program Year 2, estimated July 1, 2011

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	(prorated for 8 Months)
OPOWER Portal	
\$25,000 Set-up Fee	Waived
\$1.50 license fee per Designated Customer per year	\$37,500 due at FRS, estimated July 1, 2010 \$25,000 due beginning of Program Year 2, estimated July 1, 2011 (prorated for 8 Months)

2. Service Fees

Service Fee	Payment Terms
Home Energy Reports Print Management, Printing, and Mailing	
YEAR1: 12 months of Reporting \$5.00 per Designated Customer Year 6 reports Per Household	First Reports Sent ("FRS"): <ul style="list-style-type: none"> ○ 40% of annual printing and mailing fees, \$53,750, including an introductory mailer for first time report recipients, due when first reports sent (estimated for July 1, 2010)^ Program Year 1: 2010: 7/1/10 - 6/30/2011: Remaining balance of \$75,000 paid in 1/3 increments as reports are mailed <ul style="list-style-type: none"> ○ 1/3 due, \$25,000 after first 3 months from start of Program Year ○ 1/3 due, \$25,000 after first 6 months from start of Program Year ○ 1/3 due, \$25,000 after first 9 months from start of Program Year

YEAR 2: 8 months of Reporting \$5.00 per Designated Customer Year (prorated 8 mo.) 4 reports Per Household	Program Year 2: 2011: 7/1/2011 – 2/30/2012 <ul style="list-style-type: none"> ○ 1/3 due, \$29,167 after first 12 months from start of Program ○ 1/3 due, \$29,167 after first 15 months from start of Program ○ 1/3 due, \$29,167 after first 18 months from start of Program
Staff Training Days and Travel \$2,000 per day or portion thereof \$5,000 Travel Fees	Upon invoice, not prior to training. Years 1 & 2

* Fee Calculation is based upon delivery to each Designated Customer ten (10) Reports over the 20 month program each report being one-page double-sided 8.5" by 11" Home Energy Reports per Program Year via USPS standard mail at current freight and postage prices. OPOWER may increase the fees by not more than an amount equal to the percentage increase of the USPS rate for Standard Mail Regular - Letters AADC Local entry rate, as defined in the USPS Domestic Mail Manual (current price is \$0.256).

Additional Services may be subject to additional Fees as quoted by OPOWER.

All Fees are non-refundable except as expressly provided herein. Upon termination, OPOWER shall only refund the pro-rated portion of any Home Energy Report printing and mailing service Fees paid for services not yet delivered as of the termination date. All setup and license fees are payable pursuant to Section 5 of the Agreement, and will be invoiced accordingly.

All invoices to be paid generally within 30 days of receipt of invoice.

Payment Schedule (all payments are due Net 30 upon CPAU's receipt of invoice)*

2 year program, 25,000 Households Receiving Reports, 20 months of reports; 10 reports per household for a Total of 250,000 reports

	Contract Execution (March 1, 2010)	First Reports Sent ("FRS") - Estimated for July 1, 2010	FRS + 3 months	FRS + 6 months	FRS + 9 months	Year 1 Total
Setup Fees	\$ 75,000					
HERS Annual License Fees	\$ 62,500	\$ 62,500				
Energy Insider Setup Fees		Waived				
Energy Insider License Fees		\$ 37,500				
Data Refresh & Optimization Fees	N/A					
Printing & Mailing Fees***		\$ 53,750	\$ 25,000	\$ 25,000	\$ 25,000	
Explanatory Insert		Incl				
Training and Travel Fees	\$ 2,000	\$ 5,000				
SUBTOTAL:	\$ 139,500	\$ 158,750	\$ 25,000	\$ 25,000	\$ 25,000	\$ 373,250

	FRS + 12 months	FRS + 15 months	FRS + 18 months	Year 2 Total
Setup Fees				
HERS Annual License Fees	\$ 83,333			
Energy Insider License Fees	\$ 25,000			
Data Refresh & Optimization Fees		Waived		
Printing & Mailing Fees***	\$ 29,167	\$ 29,167	\$ 29,167	
Explanatory Insert	N/A			
Training and Travel Fees	\$ 5,000			
SUBTOTAL:	\$ 142,500	\$ 29,167	\$ 29,167	\$ -

TOTAL 24-Month Program:



* This Payment Schedule is based on contract signature prior to 3/30/2010

***Printing and Mailing: Fee Calculation is based upon delivery to each Designated Customer of an average of fourteen (14) one-page double-sided 8.5" by 11" Home Energy Reports via USPS standard mail, over 20 months of reporting, at current freight and postage prices. The fees set forth for printing and mailing shall be in effect from the date of contract signing and for a period of 12 months. Thereafter, Positive Energy may increase the fees by not more than an amount equal to the percentage increase of the USPS rate for Standard Mail Regular - Letters AADC Local entry rate, as defined in the USPS Domestic Mail Manual (currently \$0.256).

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:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES	\$1,000,000	
YES	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 \$100,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATE(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

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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 CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

EXHIBIT "E"

OPOWER LICENSING AGREEMENT

1. Definitions Related to Licensing Agreement

"Generalized Information" shall mean: (i) any data or information provided to OPOWER by the Utility under the terms of this Agreement; (ii) any data or information collected and/or compiled by OPOWER under the terms of this Agreement, and (iii) the results and data from any manipulation, analysis, calculations, or processing of such data, including, without limitation, Utility Data, in accordance with this Agreement, which in each of (i), (ii) and (iii) does not permit the personal identification of any Authorized User. All Generalized Information shall be considered OPOWER's Confidential Information.

"Content" shall mean any OPOWER Content, Third Party Content and/or Utility Data made available to Utility and/or Authorized Users, as applicable, on or through the Services, in accordance with this Agreement.

"Customer Service Application" shall mean the online portal provided by OPOWER enabling Administrative Users, including Utility customer service staff to access the Home Energy Reports and other features and functions of the Portal Services.

"Home Energy Report" shall mean the reports prepared by OPOWER and delivered to the Designated Customers describing those customers' energy use, comparing such customers' energy use to their neighbors and providing targeted energy efficiency offers and rebates.

"Home Energy Reporting System" shall mean the combined offline and online system by which OPOWER delivers customized energy data and recommendations to Designated Customers, including, but not limited to, the Home Energy Reports and the OPOWER Portal Website.

"OPOWER Content" shall mean any data, results, ideas, plans, sketches, texts, files, links, images, photos, video, sound, inventions (whether or not patentable), notes, works of authorship, articles, feedback, or other materials, including, without limitation, statistics, analyses and forecasts, and any similar information that is either owned or licensed by OPOWER and that OPOWER makes available through the Services, specifically including Third Party Content, and specifically excluding Utility Data.

"OPOWER Intellectual Property" shall mean: (i) any proprietary work; (ii) any system owned or licensed by OPOWER outside the scope of this Agreement; (iii) any analysis, compilation, aggregation, derivative work, or work of authorship created by OPOWER under the terms of this Agreement, including Program Reports, Customer Service Application; (iv) data independently developed or created by OPOWER for purposes of implementing, administering, improving, or otherwise providing the OPOWER Portal Website; and (v) data entered by Customers via the OPOWER Portal Website.

"OPOWER Portal Website" shall mean a website created and maintained by OPOWER to provide Designated Customers with additional information about their energy usage. All Designated

Customers must agree to OPOWER's terms and conditions of use to access the OPOWER Portal Website

"Services" shall mean the Portal Services and all other services requested pursuant to an Order. Services may include any or all aspects of the Home Energy Reporting System, the Customer Service Application and Program Reports.

"Utility Brand" shall mean any one or more of the trademarks, service marks, trade names, domain names, logos, business and product names, slogans, and registrations and applications for registration thereof owned by the Utility as of the Effective Date.

"Utility Data" shall mean any data or information supplied by the Utility to OPOWER under this Agreement, including personally identifiable data; provided, however, that Utility Data shall specifically exclude Aggregated Analytics, OPOWER Content and Third Party Content.

1.2. Retained Rights - Ownership.

(i) Subject to the rights granted in this Agreement, Utility retains all right, title and interest in and to the Utility Brand and Utility Data, and OPOWER acknowledges that it neither owns nor acquires any additional rights in and to the Utility Brand or Utility Data not expressly granted by this Agreement. OPOWER further acknowledges that Utility retains the right to use the Utility Brand and Utility Data for any purpose in Utility's sole discretion.

(ii) OPOWER retains all right, title and interest in and to the Services, Generalized Information, the OPOWER Retained Intellectual Property, the OPOWER Content and the OPOWER Intellectual Property. Utility acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Utility further acknowledges that OPOWER retains the right to use the foregoing for any purpose in OPOWER's sole discretion.

(iii) Utility owns each tangible Home Energy Report created as part of these Services, including any sample reports, and all right, title and interest therein, provided that OPOWER retains ownership in the: (a) design, look, and feel; (b) graphical elements; (c) content other than the Utility Data; and (d) any intellectual property therein.

(iv) Utility grants OPOWER a non-exclusive and on-transferable license to Utility Data, for the provision of Services under this agreement.

2.3. Third Party Content. Utility acknowledges that Third Party Content may be available through the Services, and that use of such Third Party Content may be subject to additional terms and conditions of the Third Party Providers ("**Provider Terms**"). Utility shall comply with all such Provider Terms and pass through any applicable Provider Terms to Authorized Users as required by Third Party Providers. OPOWER makes no representations or warranties regarding any Third Party Content found on or through the Services or that is otherwise available using the Services.

4. Usage Restrictions. (i) Utility not will assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Utility's rights under this Section (ii) Utility will ensure that its use of the Services, the Application Documentation Content, and all Utility Data complies with all applicable laws, statutes, regulations or rules, including, without limitation, the OPOWER Terms of Use. (iii) Utility shall notify OPOWER immediately of any unauthorized use of any password or account, or any other known or suspected breach of security. (iv) Utility will only allow Administrative Users who have been assigned a unique user identification to access the Customer Service Application.

5. Brand Licenses. The Parties will cooperate to develop a mutually agreeable strategy for co-branding of the Home Energy Reports and the OPOWER Portal Website. Subject to the terms and conditions of this agreement, Utility grants to OPOWER a non-exclusive, non-transferable right and license to use the Utility Brand during the Term in accordance with such reasonable Utility branding guidelines as Utility may specify for the limited purposes of performing OPOWER's obligations under this Agreement. Notwithstanding the foregoing, (a) Utility may use the OPOWER Brand to identify and publicize the Services at trade shows and utility industry events; (b) OPOWER may identify the Utility as an OPOWER customer and use the Utility Brand in connection therewith, provided that such identification shall not state or imply an endorsement by the Utility; (c) OPOWER may identify the Services with the OPOWER Brand and "runs on OPOWER" or other similar phrasing. Except as expressly permitted by this Agreement, each Party shall have a written right of approval over the use of its Brand by the other Party, not to be unreasonably withheld