



*A Department of the City of Alameda*

# **REQUEST FOR PROPOSALS**

**Specification No. PS 09-15-01**

## **Non-Residential Direct-Install Lighting, HVAC, and Refrigeration Retrofit Program**

**September 2015**

***Proposal Submission Deadline:  
Wednesday October 14, 2015 - 3:00 PM PT***

Make all inquiries and send all questions to:  
Roger Yang, Utility Procurement Administrator  
2000 Grand Street, Alameda, CA 94501  
Telephone: 510-814-6420  
E-mail: [yang@alamedamp.com](mailto:yang@alamedamp.com)

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Attachments

Attachment A: Scope of Services

Attachment B: Standard AMP Contractor Agreement

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## **I. Introduction**

Alameda Municipal Power (AMP) is requesting proposals for a Program Administrator to provide a non-residential direct-install lighting, heating, ventilation, and air conditioning (HVAC), and refrigeration retrofit program from qualified consultants.

AMP intends to issue a contract for these services for a term of two (2) years, with the option to renew annually for up to a total of three (3) additional years, subject to approval of funding by the City of Alameda Public Utilities Board. The total contract amount for the initial contract term is not to exceed \$1.1 million.

This document outlines the Purpose of the Request, Scope of Services, Proposal Format, Selection Process, and Conditions of Request.

### **A. Background**

AMP, a department of the City of Alameda, is a municipal utility that provides safe, cost-effective, reliable and environmentally responsible, electric-energy services since its founding in 1887. AMP is a full-service electric utility that provides electricity to all residential, commercial, and industrial customers within the City of Alameda. AMP is governed by a Public Utilities Board (Board). In accordance with the City Charter, the Board is composed of four commissioners and the city manager. The Board establishes goals and policies, approves major purchases, and creates the framework for local control of AMP. As a city department, AMP is a nonprofit organization and exists solely for the benefit of its customers. AMP takes pride in its reliability, renewable power portfolio and customer-centric focus. Additional information about AMP can be found at [www.alamedamp.com](http://www.alamedamp.com).

AMP has provided energy efficiency programs since 1991. Current non-residential programs are a lighting retrofit program that includes a direct-install path, an HVAC and custom retrofit program, and a new construction program. The intent of this contract is to expand the existing lighting direct-install program to include HVAC measures, refrigeration measures, and include all non-residential customers.

### **B. Purpose of the Request**

The purpose of this RFP is to obtain a Program Administrator (PA) to create and implement a non-residential direct-install lighting, HVAC, and refrigeration retrofit program that delivers 3,000 megawatt-hours (MWh) of cost-effective, reliable energy savings, and rebates to customers, and that supports AMP's greenhouse gas emissions reduction efforts. The program will be a "one-stop shop" program that will provide a seamless customer experience from audit to installation to rebate and will be offered to all AMP non-residential customers, except MU2 – street lighting. The PA will develop, implement, and manage the Program and manage any required PA-Approved Contractors. The payment structure for this program will be on a pay-for-performance basis, based upon the first year kilowatt-hour (kWh) savings of retrofits.

This program is focused on removing the barriers to AMP non-residential customers to complete lighting, HVAC and refrigeration retrofits. The barriers include knowledge of energy-efficient technologies (particularly LEDs), high costs, ability and time to hire a qualified installer, retrofit project costs, and compliance with all applicable codes and standards. Under a direct-install program, the PA will market the program, conduct energy audits that include project design and specifications, encourage the customer to complete the retrofit, comply with all applicable codes, refer the customer to PA-Approved Contractors to complete the retrofit, and upon completion of the retrofit, survey the customer to determine satisfaction with the program. Additionally, the PA will provide oversight and inspection of all retrofits, do the processing and payment of rebates, and provide program tracking and reporting.

The following is a list of AMP’s non-residential rate classes that are qualified for this program (excluding street lighting-only accounts) and the number of customers in each class.

| Rate Schedule      | Description                             | No. of Customers |
|--------------------|---|------------------|
| A1                 | Small commercial, not demand metered    | 3,430            |
| A2                 | Medium commercial, demand metered       | 262              |
| A3                 | Large commercial, larger than 500 kW    | 8                |
| OL                 | Outdoor private street and area lights  | 6                |
| Combustion Turbine | Combustion turbines                     | 2                |
| MU1                | Municipal facilities and public schools | 318              |
| MU3                | AMP facilities                          | 19               |

## II. Scope of Services

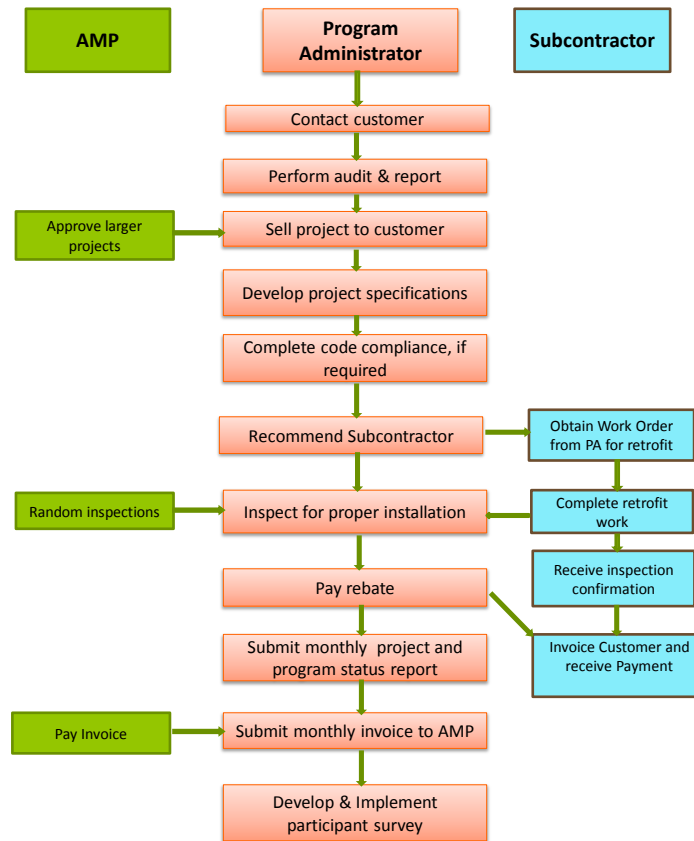
Attachment A is the Scope of Services listing major work tasks to be performed. The Scope of Services is a general guide on how the program will work and the deliverables. It is not intended to be a complete and detailed list of all work necessary to complete the project. Proposing teams may suggest process improvements as part of their response to this RFP. AMP will provide program oversight, additional quality assurance, and customer data.

The program goals are as follows:

- Create and implement a direct-install non-residential lighting, HVAC, and refrigeration retrofit program;
- The program is fully operational within two months of the contract start date;
- The net energy savings must meet or exceed 3,000 MWh/year;
- The results of the program total resource cost test must be greater than 1.0;
- The utility levelized cost over the lifetime of the program must be less than \$0.06/kWh;
- The program must have a high participant satisfaction rate; and
- The program tracking and reporting data must easily and reliably upload to MS Excel.

The illustration below is the envisioned process flow for program implementation. Note that this process flow is subject to modification and may not be appropriate for all customer types. The PA will have an opportunity to recommend alternatives to this model.

**Program Implementation Flow Chart**



**III. Proposal Format**

**A. RFP Manager**

All Proposers are prohibited from contacting AMP officials, consultants or staff regarding this RFP between the time of issuance of the RFP and contract award, unless such contact is made through the Utility Procurement Administrator’s office. Failure to comply with this provision could result in the rejection of a proposal. All questions and correspondence regarding the proposal documents and proposal should be directed in writing referencing “SPECIFICATION PS 09-15-01” to:

Alameda Municipal Power  
 2000 Grand Street  
 Alameda, CA 94501  
 Attention: Roger Yang, Utility Procurement Administrator  
 Phone: 510-814-6420  
 E-Mail: yang@alamedamp.com

## B. Timetable

The following schedule has been established for this RFP:

|  |                               |
|--|-------------------------------|
| RFP Release Date   | Wednesday, September 16, 2015 |
| Proposers Submittal of Interest/Pre-Proposal Questions Due | Wednesday, September 23, 2015 |
| Pre-Proposal Clarification                                 | Wednesday, September 30, 2015 |
| Proposals Due  | Wednesday, October 14, 2015   |
| Interviews Scheduled                                       | Week of October 26, 2015      |
| Final Contract Negotiations                                | Wednesday, November 18, 2015  |
| Public Utility Board Approval of Contract Award            | Monday, December 14, 2015     |
| Projected Contract Start Date                              | Monday, January 4, 2016       |

## C. Pre-Proposal Questions and Submittal of Interest

**Pre-proposal questions will be accepted via email no later than 3:00 p.m., Pacific Time, on Wednesday, September 23, 2015.** All questions received will be answered electronically via email to all participating Proposers. **All Proposers interested in submitting a proposal must email their intention by September 23, 2015, to guarantee receipt of AMP’s answers to all pre-proposal questions.** Proposers must also acknowledge receipt of pre-proposal clarifications in their proposal.

## D. Proposal Submission Instructions

All proposals must meet the content requirements and format guidelines listed below in the “Proposal Content Guidelines” section. **Sealed Proposals will be received until the hour of 3:00 p.m., Pacific Time, on Wednesday, October 14.** Proposals must be addressed to the Utility Procurement Administrator and plainly marked on the outside: “PROPOSAL FOR SPECIFICATION PS 09-15-01”. Proposer must submit a total of two (2) complete double-sided copies on paper containing a minimum of 20% post-consumer recycled content and one (1) electronic copy of the proposal. AMP will reject all proposals received after the specified time and will return such proposals to Proposers unopened. AMP assumes no responsibility for delays caused by delivery service. Postmarking by the date will not substitute for actual receipt.

## E. Proposal Content Guidelines

Proposals must be submitted with all documents required by this Request for Proposal. Proposals not submitted with all the required information may be considered incomplete and rejected by AMP. Proposals may be rejected if they show any alterations of form, additions not called for, conditional or alternative proposals, incomplete proposals, erasures, or irregularities of any kind. Any statement or qualification in proposal form, or attached to, or included therewith, serving to qualify proposal, or containing conflicting statements, or otherwise rendering proposal ambiguous or uncertain, will disqualify the proposal. AMP reserves the right to reject any or all proposals.

### 1. Introduction

Proposals should include the following:

- a) A letter of introduction briefly describing an understanding of the requested scope of work and qualifications to undertake this work such as experience in providing like

services, background of the firm(s). Please attach resumes of the principals with other project personnel.

- b) Additional material such as brochures and photos, promotional material, references, and supplemental graphics, applicable to the content of the proposal.
- c) Signature by an individual authorized by the firm or partnership to bind the firm or partnership to the proposal.
- d) A Table of Contents.

## **2. Project Team**

- a) Prime consultant(s): Name of entity submitting the proposal, its mailing address, telephone number, facsimile number, email address, the name of contact individual as well as the signature of principal/owner/officer in case of joint venture or other. Describe business and background, including the size, location, capacity, type of firm, and year established.
- b) If applicable, sub-consultants (including licensed architect, electrical engineer and/or other engineer(s), qualified cost estimator, environmental consultants, etc.): List sub-consultants with individual addresses, telephone numbers, facsimile numbers, email addresses, and areas of expertise.

## **3. Project Personnel**

Description of organization, management, and team members. Provide a description of team/consultant organization and a work plan that identifies the personnel to be assigned to each task. The organization description should clearly identify the project manager and the day-to-day contact person for the project. Contract terms will not permit substitution of lead personnel without prior approval by AMP. Include a description of qualifications of the professional personnel to be employed with a summary of similar works performed and a resume for each professional.

## **4. Related Experience and Examples of Work**

Describe the proposer's experience as follows:

Experience implementing and operating at least two similar programs performed in the last five years in California of similar size and complexity to AMP's and provide the following information:

- 1. Brief program description
- 2. Total program budget, with rebates and administrative costs split out
- 3. Number of projects completed
- 4. kWh/year savings (first year)
- 5. Lifetime utility cost per kWh
- 7. Results of the total resource cost test
- 8. Example of a customer audit report
- 11. Examples of the post installation project verification procedure
- 12. Tracking & Reporting – Provide an example.
- 13. Title 24 - Provide evidence of knowledge and/or experience with the new CA Title 24 Building Energy Standards effective July 1, 2014.
- 14. Energy efficiency calculations - Provide information on the basis and source of the energy savings estimations used. Note that AMP has a lighting calculator as



part of the California Municipal Utilities Association's recent Savings Estimation Technical Resource Manual (TRM - May 2014). If the proposer does not use AMP's TRM, the results of the proposers lighting calculator, HVAC, and refrigeration measures, must be similar to the TRM, and the proposer must provide proof that the results are the similar. This is the link to TRM lighting calculator, [www.alamedamp.com/lighting-calculator](http://www.alamedamp.com/lighting-calculator), and the link to the TRM is [http://cmua.org/wpcmua/wp-content/uploads/2014/05/CMUA- TRM-manual\\_5-5-2014\\_Final.pdf](http://cmua.org/wpcmua/wp-content/uploads/2014/05/CMUA-TRM-manual_5-5-2014_Final.pdf).

15. Customer satisfaction survey – provide an example.

## 5. References

References - Provide at least one client reference for each of the two programs described above, including contact name, title, company name, address, phone and email

## 6. Additional Documents Required

In addition to the information required in the previous section, the response must include the following:

- a) A statement that the firm is financially sound and has financial resources sufficient to successfully execute the contract.
- b) List the names of electric utilities, particularly small utilities, for which you provided similar services.
- c) AMP intends to enter into a relationship with a single responsible PA to deliver the required products and services. The PA may retain and employ sub-consultants as necessary in order to meet the requirements of the Program. Proposals shall identify all sub-consultants. Nothing contained in the contract shall create any contractual relation between any sub-consultant, PA-Approved Contractor, and AMP.

## 7. Fee Schedule

Proposers must provide their proposed program pricing for the initial contract term of two (2) years and each additional annual renewal period up to three (3) additional years – both administrative fees and rebates. The program pricing must be performance based—that is based upon the first year kWh savings of retrofits. The PA must pay the rebate directly to the PA-Approved Contractor. Proposers must also provide an estimate of the annual energy savings of the program, estimated cost of the program over the lifetime of the measures per kWh, and the estimated total resource cost test.

## 8. Contract

Comments and exceptions, if any, to AMP's standard contractor agreement, insurance requirements, and confidentiality agreement should be noted. It is understood that prospective consultants have reviewed the agreements (Attachments B and C) and will take exception only to those items identified in the proposals. If there are any concerns or proposed exceptions requested to the standard contractor agreement, these issues are to be discussed at the time of the interview.

## **IV. Selection Process**

### **A. Qualifications**

All proposals received by the due date will be evaluated by AMP. Only information which is received in response the RFP and input from references will be evaluated. AMP will judge responses of each proposing firm in several critical areas.

The selection process shall proceed as follows:

1. Based upon the submitted written responses to this RFP, the AMP selection panel shall select up to three consultant teams to interview.
2. At the interview, the selection panel will expect the consultant team to present its team members and their qualifications. The project manager must be present for the interview/presentation. The presentation will be followed by a question-and-answer period by the selection team.

AMP will not discriminate against any interested firm or individual on the grounds of race, creed, color, sex, age, disability, or national origin in the contract award. AMP reserves the right to reject any and all proposals at its discretion, thus not awarding the contract to any firm. AMP reserves the right to modify this RFP or the criteria for selection in any manner, to cancel this RFP, or to reject any one or more or all submittals.

AMP retains sole discretion to evaluate proposals and make an award to the Proposer that AMP deems to have the most responsive proposal. AMP reserves the right to invite the top candidate(s) for an oral interview, or to request additional clarifying information. The firm with the highest rating may be invited to negotiate a final agreement. If an agreement is not reached, negotiations may be terminated and commenced with the next most qualified firm. The recommendation of AMP shall be submitted to the Public Utilities Board for award of contract. Upon the approval of the Public Utilities Board, AMP will issue the Notice of Award and deliver the signed contract to the awarded Proposer.

### **B. Selection Criteria**

AMP will select the most qualified proposal based on the following factors.

1. Ability of the Firm to Carry Out and Manage the Proposed Project. An assessment of the past experience of the organization in general. Qualities and indicators that will receive consideration include the number and types of projects the organization or its employees have completed; the organization's ability to realize timetables and quality control objectives; and the demonstrated general ability to bring about a successful completion of the projects under the proposer's direction.
2. Capabilities of the Consultant Team Members. Assessment of the capabilities of the individuals that will be engaged in the project. Qualities and indicators that will receive consideration include what professionals will be doing/working on each task; the various professional, technical, and educational achievements; and the applicable experience of the proposed assigned staff, on similar projects.

3. Proximity to the Project Involved for the Proposer and/or Team. The application of this criteria shall include an assessment of the geographic proximity to the project; the location of the office from which the proposed project will be administered; the perceived response time and general availability of the proposer's management to be on site; the perceived effect that project management location will have on price; and the ability of the project to be expedited on a timely basis.
4. Willingness to Comply with the Proposed Agreement Terms. A sample agreement is attached as Attachments B and C. Proposals will be rated based on the exceptions taken to the proposed contract.
5. Fee schedule – both administrative fees and rebates, while not determinative, may be considered in the selection process.

## **V. Conditions of Request**

### **A. General Conditions**

AMP reserves the right to cancel or reject all or a portion or portions of the request for proposals without notice. Further, AMP makes no representations that any agreement will be awarded to any organization submitting a proposal. AMP reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto.

AMP also reserves the right to reject any sub-consultant or individual working on a consultant team and to replace the sub-consultant or individual with a mutually acceptable replacement.

Any changes to the proposal requirements will be made by written addendum.

### **B. Limitations**

All reports and pertinent data or materials shall be the sole property of the AMP, and may not be used or reproduced in any form without the explicit written permission of AMP.

AMP reserves the right to extend the time allotted for the proposal, to verbally examine the Proposer in person, request copies of previous work prepared by the consultant, and to request a best and final offer, should AMP deem that it is in its best interests to do so.

This RFP does not commit AMP to award a contract, or to pay any costs incurred in the preparation of the proposal. AMP reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified consultant, or to cancel this request in part or in its entirety. AMP may require the selected consultant to participate in negotiations and to submit such technical, price, or other revisions of their proposals as may result from negotiations. AMP reserves the right to negotiate all final terms and conditions of any contract entered into.

### **C. Liability of Costs and Responsibility**

AMP shall not be liable for any costs incurred in response to this request for proposals. All costs shall be borne by the person or organization responding to the request. Proposers are liable for all

errors and omissions contained in their proposals. The person or organization responding to the request shall hold AMP harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of AMP.

The selected lead consultant will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected lead consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

#### **D. Validity**

The proposer agrees to be bound by its proposal for a period of ninety (90) days commencing October 14, 2015, during which time AMP may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only that portion so amended or clarified.

#### **E. Standard Contractor Agreement**

A sample contractor agreement and confidentiality agreement has been provided in Attachments B and C, respectively, for the proposer's review and comment. If a proposer wishes to take exception to any of the terms and conditions contained in the agreements, these should be identified specifically; otherwise it will be assumed that the proposer is willing to enter into the agreements as they are written. Failure to identify contractual issues of dispute can later be the basis for AMP disqualifying a proposer. Any exceptions to terms, conditions, or other requirements must be clearly stated. Otherwise, AMP will consider that all items offered are in strict compliance with the RFP, and the successful proposer will be responsible for compliance. AMP will consider such exceptions as part of the evaluation process which may constitute the sole grounds for rejection of the proposal. The agreements will not be executed by AMP without first being signed by the proposer.

#### **F. Permits and Licenses**

Proposer, all of proposer's sub-consultants and PA-Approved Contractors, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License which will be required in connection with the performance of services hereunder.

#### **G. Oral and Written Explanations**

AMP shall not be bound by oral explanations or instructions given at any time during the process or after the award. Oral explanations given during the review process and after award become binding when confirmed in writing by an authorized AMP official. Written responses to question(s) asked by one proposer will be provided to all proposers who received Requests for Proposals.

#### **H. Proposer's Representative**

The person signing the proposal must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

## **I. Insurance**

General Liability, Automobile, Professional Liability, and Worker's compensation insurance are required in the amount set forth in the attached sample contractor agreement. In the event that PA employs sub-consultants, such sub-consultants shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by PA.

**SCOPE OF SERVICES  
FOR  
A NON-RESIDENTIAL DIRECT-INSTALL LIGHTING, HVAC, AND  
REFRIGERATION RETROFIT PROGRAM**

Create and implement a direct-install non-residential lighting, HVAC, refrigeration retrofit program that will provide cost-effective, reliable energy savings and rebates to customers, and that supports AMP greenhouse gas emissions reduction efforts. The program will be a “one-stop shop” for all non-residential customers that will provide a seamless customer experience from audit to installation to rebate.

The Program Administrator (PA) will provide all necessary services including but not limited to:

1. Kick Off

The Project Manager and pertinent staff for the Program Administrator (PA) shall attend a “kick-off” meeting at AMP to discuss program design and implementation details related to the contract, within ten (10) days of the contract start date.

**Deliverables:**

- Notes from the project kick-off meeting.

2. Program Design

Program design will include development of program Standards and Procedures for all aspects of the program, a list of cost-effective energy efficiency measures, technical requirements similar to AMP’s existing requirements, appropriate rebates, quality assurance and controls, program tracking and reporting, and final report. The PA will develop all templates and forms consistent with these standards and procedures.

Rebates must be performance-based, according to the actual first year kWh reduced for retrofits. The rebate for A1 participants will be capped at 90% of the total project cost and for all others the cap is 80%. The PA will pay the rebate directly to the PA-Approved Contractor. If the estimated rebate is greater than \$100,000, prior approval from AMP is required. AMP must approve all aspects of program design.

**Deliverables:**

- Program Standards and Procedures including but not limited to: program forms such as a customer site access agreement, customer audit report, work order for PA-Approved Contractors, quality assurance and controls protocols, weekly, monthly, and final reports that includes program goals, approach, results, conclusions, and recommendations.
- List of energy efficiency measures, technical requirements, warranty requirements, and corresponding rebates (draft and final).

3. Energy Savings

AMP requires the actual equipment and hours of operation be used in calculating the energy savings. Additionally, photographs must be taken of the types of existing equipment for each customer retrofit project. The photographs must be filed with the customer application. If there are difficulties in determining details on the actual conditions, the default values for equipment and hours of operation should be taken from

the “Savings Estimation Technical Reference Manual for the California Municipal Utilities Association (TRM)” May 5, 2014; or a comparable source approved by AMP. AMP requires the PA use the TRM as the default. If the PA wishes to use another source for estimating energy savings, the PA must do comparison runs to ensure the results of their sources and the TRM are reasonably similar and approved by AMP.

**Deliverables:**

- Comparison runs of the PA estimated energy savings to the “Savings Estimation Technical Reference Manual for the California Municipal Utilities Association (TRM)” May 5, 2014 if the PA is not using the TRM.

4. PA-Approved Contractors and Retrofit Project Costs

The PA will determine participation requirements for retrofit PA-Approved Contractors, recruit and train qualified PA-Approved Contractors, and maintain quality assurance of PA-Approved Contractors’ work. The PA will establish fair market value for equipment and contractor labor rates. The PA will pay the rebate directly to the PA-Approved Contractor. The PA will also establish agreements to ensure PA-Approved Contractors meet program requirements. PA-Approved contractors must have appropriate licenses for the work they will perform, e.g., CA Contractors C-10, City of Alameda Business License, have the ability to offer contract performance and payment bonds as an option to customers, and obtain all appropriate permits. AMP must approve participation requirements for PA-Approved Contractors.

**Deliverables:**

- Participation requirements for PA-Approved Contractors.
- PA-Approved Contractor participation agreement.
- Proof of appropriate licenses.
- Proof of appropriate insurances.
- List of participating PA-Approved Contractors.

5. Program Marketing

AMP believes the most successful marketing approach to non-residential customers is the PA approaching customers directly at their place of business. The bulk of the marketing efforts of the PA will be this approach.

6. Energy Audits

The PA will be responsible for obtaining a signed authorization from the customer allowing the auditor access to the customer facility prior to the walk-through of the facility.

The PA will also take responsibility for getting a signed Consent Release Form if the participant agrees to participate in a customer testimonial for use on AMP’s website, Facebook, or other marketing collateral. It is not necessary for the customer to agree to this; the Consent Release Form is optional.

The PA will collect information about the customer including site-specific information (e.g., AMP account number, service address, square footage, and ownership status), contact information (e.g., name, title, phone number, and email address), language needs, and hours of operation.

The PA will be responsible for conducting the energy audit at the customer's facility that will include lighting, HVAC, and refrigeration. The audit will include digital photos of the customer's existing types of equipment.

The PA will analyze the energy efficiency opportunities at the facility and develop a comprehensive list of retrofits that leverages low-cost/no-cost measures against those with a longer payback.

The PA will generate a customer proposal/audit report that includes at a minimum:

- a. Description and quantities of existing equipment
- b. Recommended measures, including specifications and costs
- c. Expected gross project cost
- d. Net project costs
- e. AMP rebate
- f. Energy savings (kWh/year)
- g. Electric bill savings
- h. Simple payback

**Deliverables:**

- Signed customer site access authorization form
- Signed Consent Release form
- Customer information
- Customer proposal/audit report
- Photos of existing customer equipment as an electronic file

7. Customer Project Approval

The PA must market the retrofit project to customers and manage the project for customers. When the customer approves the proposal, the PA will create a Work Order and send that to the qualifying PA-approved contractor(s) to start the retrofit process.

8. Project Installation

- The PA will ensure that any PA-Approved Contractors work with customer to complete the project installation at a time and manner that is agreeable to the customer. The PA will provide oversight of retrofit PA-Approved Contractors and post installation inspections on all projects. The PA will arrange for the installation of specified equipment and provide construction management services. These services may include scheduling, ensuring compliance with recycling or disposal requirements, inspections, managing equipment warranty cycles, verifying required permits, and other construction management tasks as necessary. PA will comply with all applicable local, State and Federal regulations regarding permits, building and safety codes, construction, and waste disposal. PA will ensure that all customer information is secure. There shall be no work stoppage for more than one week unless it has been prearranged and mutually agreed upon by AMP and PA.

When the retrofit has been completed by the PA-Approved Contractor, the PA will complete the post-install inspection, and the customer will sign off that the project has been completed and they are satisfied.

When a project has been installed and approved, the PA will provide the rebate directly to the PA-Approved Contractor. The PA-Approved Contractor will invoice the customer directly for the net cost of the retrofit (total cost minus the rebate).



**Deliverables:**

- Customer signed approval to proceed
- Work Order to PA-Approved Contractor
- Customer sign-off after retrofit completed

## 9. Coordination with Other Agencies

There are other programs from AMP and from other utilities and agencies that may complement the efforts of this program. The contractor will be responsible for referring customers to other programs, such as:

- a. Pacific Gas & Electric for gas measures
- b. East Bay Municipal Utility District for water conservation
- c. Alameda County Green Business Program, to be certified as a green business
- d. Energy Star's Portfolio Manager
- e. AMP's Alameda Green program to purchase Green-e Energy Certified clean energy
- f. Financing - CaliforniaFIRST Property Assessed Clean Energy (PACE) program sponsored by the California Statewide Communities Development Authority ("California Communities"). PACE, of which the City of Alameda has joined, allows commercial property owners to use municipal bonds to finance energy efficiency, water efficiency and renewable energy upgrades, which the owners repay through a special assessment on their annual property tax bill. Interested commercial customers may apply through the [www.californiafirst.org](http://www.californiafirst.org) web portal.

## 10. Tracking and Reporting

Weekly and monthly project and program tracking reporting must upload directly and reliably into MS Excel. The PA will develop a tracking and reporting database to collect, store, and report the following data:

- a. Project – Account name, business name, account #, rate schedule
- b. Project status
- c. Business type
- d. Description of existing equipment and quantity
- e. Proposed equipment and quantity, labor cost, equipment cost, tax
- f. Square feet of facility audited
- g. kWh reduced
- h. kW reduced
- i. Rebate amount
- j. Weekly, Monthly and program-to-program date expenses

**Deliverables:**

- Weekly and monthly tracking and reporting database as described above

## 11. Customer Survey

Design and implement a customer participant survey to measure customer satisfaction with the program and identify opportunities for program improvements. The survey may be done using an online survey tool.

**Deliverables:**

- Customer survey form

- Results and analysis of customer surveys

12. Final Report

The PA will prepare a final report that describes the program goals, approach, results in terms of cost and benefits, energy and demand savings, Total Resource Cost Test and utility and customer levelized cost, conclusions, and recommendations of the work performed under this contract.

**Deliverables:**

- Outline of the final report (draft and final)
- Final report (draft and final)

**CONTRACTOR AGREEMENT**

PS 09-15-01

THIS AGREEMENT, entered into this \_\_\_ day of \_\_\_\_\_ 2015, by and between ALAMEDA MUNICIPAL POWER, a department of the CITY OF ALAMEDA, a municipal corporation (hereinafter referred to as "AMP"), and Click here to enter Contractor Name., Choose an item., whose address is Click here to enter Address., Click here to enter City., Click here to enter State/Zip. (hereinafter referred to as "Contractor"), is made with reference to the following:

**RECITALS:**

- A. AMP is a department of the City of Alameda, a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. AMP has a need for a Program Administrator for a Nonresidential Direct-Install Lighting, Heating Ventilation and Air Conditioning, and Refrigeration Retrofit Program. On September 16, 2015 AMP issued a Request for Proposal and reached out to the consultant's on AMP's bidders list, and posted the Request for Proposal on AMP's website. AMP interviewed qualified firms, and selected the firm that best meets AMP's needs.
- C. Contractor is specially trained, experienced and competent to perform the special services which will be required by this Agreement.
- D. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- E. AMP and Contractor desire to enter into an agreement for materials and labor for implementation and ongoing services upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

**1. TERM:**

The term of this Agreement shall commence on the 4th day of January 2016, and shall terminate on the 31st day of December 2017 unless terminated earlier as set forth herein.

This agreement may be mutually amended on a year-by-year basis, for up to three (3) additional years, based on satisfactory performance of all aspects of this contract.

**2. SERVICES TO BE PERFORMED:**

Contractor shall perform each and every service set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference.

**3. COMPENSATION TO CONTRACTOR:**

Contractor shall be compensated for services performed pursuant to this Agreement in the

amount set forth in Exhibit "B" which is attached hereto and incorporated herein by this reference. Payment shall be made by checks drawn on the treasury of the City, to be taken from the AMP fund.

Total compensation for identified work scope is not to exceed amount of \$1,100,000.00.

**4. TIME IS OF THE ESSENCE:**

Contractor and AMP agree that time is of the essence regarding the performance of this Agreement.

**5. STANDARD OF CARE:**

Contractor agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by AMP nor have any contractual relationship with AMP.

**6. INDEPENDENT PARTIES:**

Contractor hereby declares that it is engaged in an independent business and agrees to perform its services as an independent contractor and not as the agent or employee of the City. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services. None of the benefits provided by AMP to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from AMP to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

**7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Contractor assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal or state rules and regulations. Contractor shall indemnify, defend, and hold AMP harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Contractor.

**8. NON-DISCRIMINATION:**

Consistent with AMP's policy that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, an AMP employee, or a citizen by Contractor or Contractor's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**9. INDEMNIFICATION:**

Contractor shall indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, and employees (“Indemnitees”) from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys’ fees (“Claims”), arising from or in any manner connected to Contractors’ negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor. However, Contractor shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

Indemnification For Claims for Professional Liability: As to Claims for professional liability only, Contractor’s obligation to defend Indemnitees (as set forth above) is limited to the extent to which its professional liability insurance policy will provide such defense costs.

**10. INSURANCE:**

On or before the commencement of the term of this Agreement, Contractor shall furnish AMP with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C, D and E. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to AMP, City of Alameda by certified mail, Attention: Risk Manager."

It is agreed that Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to AMP and licensed to do insurance business in the State of California.

Endorsements naming AMP, City of Alameda, its City Council, boards and commissions, officers and employees, as additional insured shall be submitted with the insurance certificates.

**A. COVERAGE:**

Contractor shall maintain the following insurance coverage:

**(1) Workers' Compensation:**

Statutory coverage as required by the State of California.

**(2) Liability:**

Commercial general liability coverage in the following minimum limits:

|                |                                   |
|----------------|-----------------------------------|
| Bodily Injury: | \$2,000,000 each occurrence       |
|                | \$3,000,000 aggregate - all other |

Property Damage: \$1,000,000 each occurrence

If submitted, combined single limit policy with aggregate limits in the amounts of \$3,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automotive liability coverage in the following minimum limits:

Bodily Injury: \$500,000 each occurrence

Property Damage: \$100,000 each occurrence

or

Combined Single Limit: \$1,000,000 each occurrence

(4) **Professional Liability:**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Contractor in the amount of at least \$2,000,000.

**B. SUBROGATION WAIVER:**

Contractor agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to his/her insurance for recovery. Contractor hereby grants to AMP, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or AMP with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against AMP by virtue of the payment of any loss under such insurance.

**C. FAILURE TO SECURE:**

If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, AMP shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

**D. ADDITIONAL INSURED:**

AMP, City of Alameda, its City Council, boards and commissions, officers, and employees shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension

thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

**E. SUFFICIENCY OF INSURANCE:**

The insurance limits required by AMP are not represented as being sufficient to protect Contractor. Contractor is advised to confer with Contractor's insurance broker to determine adequate coverage for Contractor.

**11. CONFLICT OF INTEREST:**

Contractor warrants that it is not a conflict of interest for Contractor to perform the services required by this Agreement. Contractor may be required to fill out a conflict of interest form if the services provided under this Agreement require Contractor to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

**12. PROHIBITION AGAINST TRANSFERS:**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of AMP. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Contractor from AMP under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to AMP by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Contractor is a partnership or joint venture or syndicate or co-tenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

**13. SUBCONTRACTOR APPROVAL:**

Unless prior written consent from AMP is obtained, only those people and subcontractors whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**14. PERMITS AND LICENSES:**

Contractor, at his/her sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, that may be required in connection with the performance of services hereunder.

**15. REPORTS:**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement, shall be the exclusive property of AMP. Contractor shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to AMP the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of AMP, and all publication rights are reserved to AMP.

B. All Reports prepared by Contractor may be used by AMP in execution or implementation of:

- (1) The original Project for which Contractor was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original project; and/or
- (4) Other AMP projects as appropriate.

C. Contractor shall, at such time and in such form as AMP may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single sided.

E. No Report, information or other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by AMP.

**16. RECORDS:**

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by AMP that relate to the performance of services under this Agreement.

Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of AMP or its designee's at all proper times, and gives AMP the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting



documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by AMP's preliminary examination or audit of records, and AMP's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Contractor shall reimburse AMP for all reasonable costs and expenses associated with the supplemental examination our audit.

**17. NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to AMP shall be addressed to AMP at:

Alameda Municipal Power  
2000 Grand Street  
Alameda CA 94501  
Attention: Meredith Owens, Project Manager

All notices, demands, requests, or approvals from AMP to Contractor shall be addressed to Contractor at:

Click here to enter Contractor Name.  
Click here to enter Contractor Address.  
Click here to enter City, State Zip Code.  
Attention: Click here to enter text.

**18. TERMINATION:**

In the event Contractor fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Contractor from AMP of written notice of default, specifying the nature of such default and the steps necessary to cure such default, AMP may terminate the Agreement forthwith by giving to the Contractor written notice thereof.

AMP shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

**19. COMPLIANCES:**

Contractor shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by AMP.

**20. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.)

Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**21. ADVERTISEMENT:**

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from AMP to do otherwise.

**22. WAIVER:**

A waiver by AMP of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**23. INTEGRATED CONTRACT:**

This Agreement and the corresponding Confidentiality Agreement being signed on same date, represent the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both AMP and Contractor.

**24. INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

**25. CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

**ATTACHMENT B**

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

Click here to enter Contractor Name.  
Click here to enter Company Type.

ALAMEDA MUNICIPAL POWER, a  
Department of the City of Alameda  
A Municipal Corporation

By \_\_\_\_\_

By \_\_\_\_\_

Glenn O. Steiger  
General Manager

\_\_\_\_\_  
(Please print or type name)

RECOMMENDED FOR APPROVAL:

Title \_\_\_\_\_  
(If Corporation: President or Vice President)

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

APPROVED AS TO FORM:  
City Attorney

\_\_\_\_\_  
(Please print or type name)

By \_\_\_\_\_

Andrico Q. Penick  
Assistant City Attorney

Title \_\_\_\_\_  
(If Corporation: Secretary or Treasurer)

## MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "**Agreement**") is made this \_\_\_\_ day of \_\_\_\_, 2015 between the City of Alameda, a municipal corporation (the "**City**") and \_\_\_\_\_ located at \_\_\_\_\_ ("**Contractor**") with reference to the following:

- A.** For purposes of this Agreement, the terms "**Receiving Party**" and "**Disclosing Party**" shall include the respective party's agents, employees and representatives.
- B.** In the course of their dealings with each other and in order to engage in discussions and exchanges of information relating to the business and products of both parties, including but not limited to discussions of related technical and business initiatives, to determine whether the parties wish to enter into a business relationship for their mutual benefit ("**Business Purpose**"), the undersigned parties may, from time to time, disclose certain technical, business and other information, some of which may be Confidential Information, as that term is later defined in this Agreement. The parties hereby desire to establish and set forth their mutual obligations with respect to the use and disclosure of such Confidential Information.
- C.** In consideration of the mutual disclosures, promises and obligations contemplated herein, the parties agree as follows:
- 1.** "**Confidential Information**" means any company proprietary information, technical data or trade secrets or know-how, including but not limited to business models, product plans, products, customer technical requirements, software, programming techniques, services, suppliers, supplier lists, customers, customer lists, customer technical requirements, markets, developments, inventions, processes, contracts, business structures, technology, designs, drawings, engineering, apparatus, techniques, hardware configuration information, marketing, forecasts, business strategy, or finances disclosed and identified by the parties as being Confidential Information, in writing, orally or by drawings or inspection of samples, parts or equipment.
  - 2.** Notwithstanding the foregoing, "Confidential Information" shall **not** include information or disclosure that the Receiving Party can demonstrate:
    - A.** Is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public;
    - B.** Was known by the Receiving Party before receiving such Confidential Information from the Disclosing Party;
    - C.** Is received from a third party without restriction on disclosure and without breach of a nondisclosure obligation, except in the case of customer contracts;
    - D.** Is independently developed by the Receiving Party without use of or reference to the Confidential Information by persons who had no access to the Confidential Information;
    - E.** Was authorized for disclosure by the Disclosing Party.

**3. Each party shall limit (to the extent practicable) the disclosure of Confidential Information to the other party.** The Confidential Information that is disclosed shall be used solely for the Business Purpose and shall not be used for any other purpose. All Confidential Information supplied by a party, unless otherwise agreed to in writing, shall remain the property of the Disclosing Party.

**4.** Each party agrees:

- A. To hold the other party's Confidential Information in strict confidence subject to the terms of this Agreement;
- B. Not to disclose such Confidential Information to any third party, except as specifically authorized herein or as specifically authorized by the other party in writing;
- C. Not to disclose the nature of discussions or the proposed business relationship between the parties or the existence of this Agreement or of any of the terms and conditions contained herein without the prior written consent of the other party;
- D. To use all reasonable precautions to prevent the unauthorized disclosure of the other party's Confidential Information;
- E. Not to use any Confidential Information for any purpose other than to carry out the Business Purpose specific to the Disclosing Party.

**5.** Each party may only disclose the other party's Confidential Information to its responsible employees and consultants who have a "need-to-know" such Confidential Information in order to carry out the Business Purpose, only if such persons are advised of the confidential nature of the disclosure and are bound by written agreement or by legally enforceable code of professional responsibility to protect against the disclosure of the Confidential Information.

**6.** Each party may disclose the other party's Confidential Information if and to the extent that such disclosure is required by applicable law, provided that the Receiving party uses reasonable efforts to limit the disclosure by a request for confidential treatment and provides the Disclosing Party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.

**7. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.**

**8.** Upon the request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party all copies of the Confidential Information, will destroy all notes, abstracts and other documents that contain Confidential Information, and will provide to the Disclosing Party a written certification of an officer of the Receiving Party that it has done so.

**9.** Nothing in this Agreement shall be construed as granting any property or other rights (express or implied) to the Receiving Party, by license or otherwise, to any of the Disclosing Party's Confidential Information, except as specifically stated herein.

**10.** Each party acknowledges that the covenants and agreements made in this Agreement are reasonable and are required for the reasonable protection of the parties and that the unauthorized use or disclosure of the other party's Confidential Information would cause irreparable harm to the other party. Accordingly, each party agrees that the other party will have the right to obtain an immediate injunction against any breach or threatened breach of this Agreement and to enjoin the other party from engaging in any activity in violation hereof, to enforce the specific performance obligations hereunder; and that no claim by the party against the other party or its successors or assigns will constitute a defense or bar to the specific enforcement of such obligations, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach. The prevailing party in any such action shall be entitled to recover, in addition to the relief granted, the costs and expenses of enforcement, including reasonable attorney's fees.

**11.** In addition to the protections provided to the parties herein, the parties agree that any Confidential Information provided by Contractor is and shall remain the sole intellectual property of Contractor and will not be modified or used outside of its intended Business Purpose.

**12.** In addition to the protections provided to the parties herein, the parties agree that any Confidential Information provided by AMP is and shall remain the sole intellectual property of AMP and will not be modified or used outside of its intended Business Purpose.

**13.** This Agreement shall apply to all Confidential Information disclosed by one party to the other party on or after the Effective Date. The mutual obligations contained in this Agreement will remain in effect for two (2) years after the date of the last disclosure of Confidential Information, at which time this Agreement will terminate. As to specific Confidential Information which loses its confidential status, this Agreement shall terminate as to that Confidential Information at that time.

**14.** No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege.

**15.** This Agreement constitutes the complete and exclusive understanding reached between the parties with reference to the subject matter herein and supersedes all prior communications and agreements, whether oral or written. The terms and conditions set forth herein shall be modified, replaced, assigned or rescinded only in writing and signed by a duly authorized representative of each party. If one or more of the provisions in this Agreement are deemed void by law, the remaining provisions will continue in full force and effect.

**16.** This Agreement will be construed and enforced according to the laws of the State of California, U.S.A. without application of the principles of conflict of laws. This Agreement is not, however, intended to limit any rights that the parties may have under trade secret, copyright or patent laws which may apply to the subject matter of this Agreement both during and after the term of this Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

Click here to enter Contractor Name.  
Click here to enter Company Type.

ALAMEDA MUNICIPAL POWER, a  
Department of the City of Alameda  
A Municipal Corporation

By \_\_\_\_\_

By \_\_\_\_\_

Glenn O. Steiger  
General Manager

\_\_\_\_\_  
(Please print or type name)

RECOMMENDED FOR APPROVAL:

Title \_\_\_\_\_  
(If Corporation: President or Vice President)

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

APPROVED AS TO FORM:  
City Attorney

\_\_\_\_\_  
(Please print or type name)

By \_\_\_\_\_

Andrico Q. Penick  
Assistant City Attorney

Title \_\_\_\_\_  
(If Corporation: Secretary or Treasurer)