

NON-DISCLOSURE AGREEMENT
ALAMEDA MUNICIPAL POWER
BUILDING ENERGY USE BENCHMARKING

THIS AGREEMENT ("Agreement") is made and entered into effective on _____, by
and between Alameda Municipal Power and _____ with its
principal place of business at _____

WHEREAS, Owner is a participant in the Building Energy Use Benchmarking under the California Energy Data and Usage Disclosure Program ("Program") being administered by the California Energy Commission, in coordination with and facilitated by "Utility";

WHEREAS, certain buildings within Utility's service territory are qualified as "covered buildings", as part of the Program and are owned and controlled by Owner, as demonstrated in the Utility's Proof of Ownership form;

WHEREAS, Owner acknowledges that energy usage data for any and all customers, occupants, or tenants, hereinafter referred to individually or collectively as ("Customers") of such buildings is confidential and proprietary.

NOW, THEREFORE, in consideration of the covenants hereinafter contained and intending to be mutually bound hereby, the parties agree as follows:

- 1. Confidential Information.** Owner, its directors, officers, and employees shall not, without the express prior written consent of Customer, directly or indirectly disclose of any energy use data obtained from Utility, that is hereinafter deemed to be "Confidential Information", in any manner whatsoever, in whole or in part, except to the Customer and to those of its directors, officers, and employees who (a) need to know Confidential Information for the limited purpose of participating in the Program, (b) are informed of the confidential nature of the Confidential Information, and (c) agree to be bound by the terms of this Agreement. Subject to the provisions of this Agreement, Owner may use Confidential Information solely for the purpose of participating in the Program.
- 2. No Copying.** Any Confidential Information shall not be copied, reproduced, excerpted, or disclosed, in whole or in part, without the prior express written permission of Utility or the Customers or, except in connection with the uses authorized in Paragraph (1) above.
- 3. Remedies.** Owner expressly acknowledges and stipulates that Utility and/or Customers will experience irreparable injury, and damages that are difficult to quantify, as a result of disclosure of Confidential Information in violation of this Agreement. Owner agrees that, in

NON-DISCLOSURE AGREEMENT
ALAMEDA MUNICIPAL POWER
BUILDING ENERGY USE BENCHMARKING

addition to any other remedies it may have in law or in equity to enforce the provisions of this Agreement, in the event that Owner or any of its representatives discloses any Confidential Information in violation of this Agreement, Utility shall also have the right to require Owner to reimburse Utility and/or Customer for costs incurred in enforcing the terms of this Agreement (including legal fees, legal costs, and the cost of an appraisal).

4. Exceptions. The obligations of non-disclosure regarding Confidential Information shall not be binding on Owner where such Information (a) is known or in the possession of Owner at the time of disclosure to Owner by Utility; (b) is in the public domain; (c) becomes public knowledge through no fault of Owner; or (d) is required to be disclosed by court order or other governmental requirement, provided that Owner shall (i) immediately notify Utility of the existence, terms and circumstances surrounding the order or requirement; (ii) claim the Confidential Information as confidential trade secret information exempt from disclosure; (iii) consult with Utility on the advisability of taking legally available steps to resist or narrow the order or requirement; and (iv) fully cooperate with Utility and use best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed.

5. Disclaimer. The Confidential Information is not an offer or promise regarding future pricing or usage patterns. Utility makes no warranty, representation or guarantee regarding the accuracy, completeness, usefulness, or suitability of the Confidential Information. Utility, its directors, officers, employees, and agents shall have no liability for any losses or claims resulting from the use of the Confidential Information.

6. Term. The obligations of non-disclosure hereunder shall be in effect from the effective date of this Agreement to perpetuity until withdrawn by the Owner or Utility.

7. Choice of Law. This Agreement shall be construed and interpreted in accordance with and under the laws of the State of California, exclusive of those laws determined by application of California's choice of law principles. Venue in any action or proceeding shall be in the State of California. Owner agrees to submit to the personal jurisdiction of courts in the State of California.

8. Entire Agreement. The parties agree that there are no understandings, agreements, or representations, expressed or implied, related to the subject matter hereof, except as stated in this Agreement. This Agreement supersedes and merges all prior discussions and understandings, and constitutes the entire agreement among the parties. This Agreement, or any provision hereof, cannot be modified, waived, or amended except in a writing signed by all parties.

NON-DISCLOSURE AGREEMENT
ALAMEDA MUNICIPAL POWER
BUILDING ENERGY USE BENCHMARKING

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement effective the date first shown below.

ALAMEDA MUNICIPAL POWER

A Department of the City of Alameda
A Municipal Corporation

BUILDING OWNER/REPRESENTATIVE

Name of Representative *(Please print)*

Name of Owner/Representative *(Please print)*

Signature of Representative

Signature of Owner/Representative

Title

Title of Representative

Date

Date