



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Michael J. Johnson
CDRA Director
By Brett Storey, Senior Management Analyst

DATE: June 22, 2010

SUBJECT: Reimbursement agreement with the Tahoe Regional Planning Agency in an amount not to exceed \$150,000 to support the proposed Kings Beach Biomass Facility.

ACTION REQUESTED:

Authorize the Board Chairman to sign a reimbursement agreement, with the Tahoe Regional Planning Agency (TRPA) for an amount not to exceed \$150,000 for cost to cover a project consultant which TRPA has hired as well as their costs to support the Kings Beach Biomass Facility Project.

BACKGROUND:

In an effort to continue with the Board's direction regarding biomass utilization, through various studies and planning efforts, County staff has reached a point of progressing to the next step in implementing the Board's goal of constructing a biomass-to-energy facility in the Tahoe Basin. Staff believes that it is appropriate to move forward and request the land entitlement and environmental review process to begin for both Placer County and TRPA. To pursue this effort in a timely fashion TRPA and Placer County have agreed to work in tandem to ensure that the land use and environmental entitlements are adequately studied and the process is fully reviewed for the design and development of the proposed Kings Beach Biomass Facility. Your board has already approved the hiring of Ascent Environmental Inc. on May 18, 2010 to perform the EIR/EIS review and now TRPA has hired a consultant [which the County will reimburse through its Department of Energy (DOE) grant and this reimbursement account] to guide TRPA's permitting process dealing with our proposed biomass facility. TRPA has selected Mr. Jon-Paul Harries to perform the project coordination for the TRPA to ensure this process meets our project deadlines and all requirements. Mr. Harries has recent experience performing similar operations for TRPA and the county in the Kings Beach area. Attached is the TRPA justification and Mr. Harries contract for your review.

Staff expects that this process will still be able to reach the goal of breaking ground in 2012 with full operations starting in 2013 for the facility.

FISCAL IMPACT:

The 'not-to-exceed' total amount of the contract is \$150,000 and is reimbursable from the Department of Energy congressionally-directed grant which has been approved by your Board on May 18, 2010.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Agency Director

Attached to this report for the Board's information/consideration are:

- Attachment 1: Reimbursement Agreement with TRPA for a Proposed Placer County Biomass Facility
- Attachment 2: TRPA Justification Memo Information
- Attachment 3: Consultant Service Agreement between TRPA and Jon-Paul Harries

cc: Holly Heinzen, Assistant CEO
Scott Finley, Supervising Deputy County Counsel



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AQ 2010-15

**REIMBURSEMENT AGREEMENT FOR A PROPOSED
PLACER COUNTY BIOMASS FACILITY**

THIS AGREEMENT MADE AND ENTERED INTO THIS 25 day of May, 2010, BY AND BETWEEN the COUNTY OF PLACER, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and TAHOE REGIONAL PLANNING AGENCY, (a bi-state Agency created by Public Law 96-551), hereinafter referred to as "TRPA".

WITNESS

WHEREAS, the COUNTY and TRPA are involved in the development of a Biomass Project within the Jurisdiction of TRPA; and

WHEREAS, the COUNTY requested TRPA complete and expedited review of the project application and relevant materials necessary for a TRPA permit; and

WHEREAS, the TRPA has agreed to hire a qualified outside contractor to review and prepare documents for a complete permit application and TRPA through Board adoption; and

WHEREAS, the COUNTY has agreed to reimburse TRPA in a timely fashion for all expense incurred during the course of project scoping, evaluation, and permitting including all TRPA staff time; and

NOW, THEREFORE, COUNTY and TRPA in consideration of the mutual covenants herein set forth agree as follows:

1. BASIS OF AGREEMENT. TRPA hereby agrees to complete review of the documents as stated in the Scope of Services incorporated herein. In exchange, COUNTY agrees to pay TRPA as set forth in Item 5 below.

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2. SCOPE OF SERVICES.

The subject consultant shall perform:

- a. Manage and participate in general project coordination and communications between consultant, TRPA and Placer County, including meetings, phone calls, emails, mailings, etc. At the direction of TRPA and/or Placer County, this may include travel and attendance at agency or ad hoc public/private meetings and discussions directly related to the development and permitting of a Biomass Plant in Placer County, and also may include travel and attendance at meetings/presentations on matters related to, though not necessarily directly related to the development and permitting of a Biomass Plant in Placer County.
- b. Review and become familiar with current biomass-to-energy technologies, systems, industry trends, Best Available Control Technologies (BACT), and the potential environmental impacts associated with the construction and operation of a Biomass Plant within the Tahoe Basin.
- c. In coordination with other TRPA staff, review and comment on all technical, logistical, and operational studies requested by and/or submitted to TRPA.
Consultant review
- d. Assist in identification and development of preferred alternative based on conformance with TRPA's Regional Plan and the direction of TRPA.
- e. Review, comment and approval of Draft environmental documents (i.e. Environmental Impact Statement) and their distribution.
- f. Review, comment, and approval of Final environmental documents, including any changes to Draft documents and the adequacy of responses to public comments.
- g. Process, review, and recommendation of any TRPA policy or code language modifications.
- h. Generation and completion of TRPA Advisory Planning Commission (APC), Hearings Officer, and/or Board staff summaries.
- i. Completion and presentation of the necessary documents and materials for the environmental certification process, project approval, and community plan amendments, Code amendments, or other policy documents based on conformance with TRPA's Regional Plan and direction of TRPA.
- j. Generation of TRPA Governing Board (GB) staff summaries and recommendations for environmental certification, project approval, community

plan amendments, Policy or Code amendments, based on conformance with TRPA's planning documents and the direction of TRPA.

- k. Preparation and delivery of presentations, on behalf of TRPA staff, at TRPA's, APC, Hearings Officer, and GB meetings, including TRPA staff recommendations for environmental certification, project approval, and any proposed amendments to the community plan, Goals and Policy, or Code of Ordinances.
- l. Attendance and availability at Placer County's Planning Commission and Board of Supervisors Meetings.
- m. If a project alternative is approved by the TRPA GB, then generation of the TRPA permit and special conditions for project development, including any project changes or amendments directed by the TRPA GB.
- n. Consultant review does not include analysis of matters relating to environmental justice.

All work completed will be done in conformance with the direction and approval of TRPA.

- 3. SERVICES OF TRPA. The services required of TRPA under this Agreement shall consist of the review of all materials including not limited to those provided under the Scope of Services noted above and all other services in conjunction with the development, environmental review, and finalization of a permit for a biomass facility in Placer County.
- 4. TIME OF COMPLETION. TRPA agrees to review all work within the Scope of Services within a timely manner of receipt of materials.
- 5. FINANCIAL AGREEMENT. The COUNTY agrees to provide an escrow account in the sum of \$100,000 to TRPA prior to start of contract to be used to pay TRPA's outside consultant and internal staff. The County agrees to maintain this account at no less than \$25,000 and agrees to provide payment to TRPA within 20 days notice of the escrow account dropping below \$25,000. The COUNTY agrees to reimburse TRPA through this escrow account for costs associated with the outside consultant retained for under this agreement. The consultant costs are limited to \$125 per hour with a maximum amount of \$150,000. The COUNTY additionally agrees to reimburse TRPA through this escrow account for costs associated with the direct, indirect, and overhead costs for all TRPA staff time associated with the development and permitting this project. Since the full scope of this work will not be known until additional-scoping and environmental issues are addressed, it is not possible to provide a detailed cost for TRPA staff time. However, the anticipated staff and associated billing rates are shown below for this project.

Anticipated Staff and hourly billing Rate

Ms. Joanne Marchetta, Executive Director	145.71/hr.
Mr. Jerry Wells, Deputy Executive Director	115.00/hr.
Ms. Nicole Rinke, Legal Staff	113.63/hr.
Ms. Brenda Hunt, TRPA staff	70.21/hr.
Ms. Jill Miller, TRPA staff	44.71/hr.
Mr. Charles Emmett, TRPA staff	84.53/hr.
Unknown TRPA Environmental Planner 1	84.53/hr.
Unknown TRPA Environmental Planner 2	84.53/hr.
Unknown TRPA Environmental Planner 3	84.53/hr.
Unknown TRPA Environmental Planner 4	84.53/hr.
Unknown TRPA Environmental Planner 5	84.53/hr.

*TRPA estimates a total of 150-300 hours of staff time are necessary for this project.

6. ACCOUNTING. TRPA shall provide the COUNTY an itemized billing for hours associated with this project on a monthly basis. This will be provided no later than 30 days after the end of the billing month. This statement will include an hourly breakdown of the person(s) working on the project.
7. RECORDS. TRPA shall maintain at all times complete detailed records with regard to services performed under this Agreement. TRPA shall retain all records for a period of at least three (3) years after the conclusion of the scope of work.
8. EMPLOYEES OF TRPA. All persons performing services for TRPA shall be solely employees of TRPA and not employees of COUNTY. The COUNTY shall be solely responsible for reimbursement of the salaries, overhead, indirect costs, and other benefits, including Workers' Compensation, of all such personnel.
9. CONFLICT OF INTEREST. TRPA warrants and covenants that no official or employee of the COUNTY, nor any business entity which an official of the COUNTY has an interest, has been employed or retained to solicit or aid in the procuring of this Agreement, nor that any such person will be employed in the performance of this Agreement without immediate divulgence of such fact to the COUNTY.
10. NONDISCRIMINATION. During the performance of this Agreement, TRPA shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or sex. TRPA shall insure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. TRPA shall comply with the provisions of the Fair

Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

11. TRPA shall give written notice of its obligation under this clause to labor organizations with which it has a collective bargaining or agreement.
12. TRPA shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
13. NON-ASSIGNABILITY. This Agreement, and the rights and duties thereunder, shall not be assigned in whole or in part without the express written consent of TRPA of the COUNTY.
14. ATTORNEYS' FEES. TRPA and COUNTY agree, in the event COUNTY or TRPA prevails in any action, suit, or proceeding commenced by COUNTY or TRPA to compel the performance of this Agreement or to seek damages for breach thereof, that each party shall be responsible for its own legal fees and costs, including attorney's fees, in the preparation, implementation, and resolution of this agreement.
15. AMENDMENTS TO AGREEMENT. All amendments to this Agreement must be in writing with written approval by the COUNTY's Director of Planning and the authorized agent of TRPA.
16. GENERAL COMPLIANCE WITH LAWS. TRPA shall exercise usual and customary care in its efforts to comply with applicable Federal, State and local laws, statutes, rules and regulations that are in effect as of the date of this Agreement. TRPA shall comply with all laws regarding payment of prevailing wages, including, without limitation, California Labor Code Section 1720, as such laws may be amended or modified. TRPA agrees to comply with any directives or regulations issued by the California State Department of Industrial Relations or any other regulatory body of competent jurisdiction.
17. JURISDICTION. This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Venue shall be the applicable United States District Court. The parties each waive any federal court removal rights they may have. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

18. SUSPENSION OR ABANDONMENT WITH OR WITHOUT CAUSE. COUNTY may suspend or abandon, by written notice, all or a portion of the work under this Agreement for any reason. TRPA may request that all or a portion of the work under this Agreement be suspended or abandoned for any reason by notifying COUNTY in writing. Suspension or abandonment shall only be valid upon receipt of written approval of the request by COUNTY.
19. CANCELLATION. This Agreement may be canceled by the Director of Public Works upon the giving five days advance written notice. Such notice shall be personally served or given by United States Mail.
20. In the event of cancellation by COUNTY, TRPA shall be paid for all work performed and reasonable and un-cancelable expenses to the date of cancellation, unless this cancellation is a result of non-performance by the TRPA, in which case TRPA shall be paid for all work performed to the date of cancellation, less any estimated increased cost in the completion of the Scope of Services due to such cancellation, but in no event less than zero.
21. In the event of cancellation initiated by the TRPA, TRPA shall be paid for all work performed to the date of cancellation, less any estimated increased cost in the completion of the Scope of Services due to such cancellation, but in no event less than zero.
22. COVENANT AGAINST CONTINGENT FEES. The TRPA warrants that they have not employed or retained any company or person, other than a bona fide employee working for the TRPA, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
23. INDEMNITY. TRPA shall indemnify, defend and hold harmless COUNTY and its elected and appointed officials, employees, agents and contractors (collectively, "County Indemnitees") from and against any and all loss, liability, cost, claim, cause of action, demand, judgment, expense, (including reasonable attorneys' fees) or damage (collectively "Claims") arising from, or related to, TRPA's performance or failure to perform its obligations pursuant to this Agreement, except to the extent the same are attributable to the gross negligence or willful misconduct of the County Indemnitees.

24. COUNTY shall indemnify, defend and hold harmless TRPA and its appointed officials, employees, agents and contractors (collectively, "TRPA Indemnitees") from and against any and all any and all loss, liability, cost, claim, cause of action, demand, judgment, expense, (including reasonable attorneys' fees) or damage (collectively "Claims") arising from or related to Agency's performance or failure to perform its obligations pursuant to this Agreement, except to the extent the same are attributable to the gross negligence or willful misconduct of TRPA Indemnitees.
25. INSURANCE. Throughout the time period of this Agreement, the TRPA shall provide the following minimum insurance coverages as listed below. Contemporaneous with the signing of this Agreement, the TRPA shall file with COUNTY a Certificate of Insurance, indicating companies acceptable to COUNTY, with a Best's Rating of no less than A:VII. Documentation of such rating acceptable to the COUNTY shall be provided at the same time Insurance Certificates are submitted.

In the event any policy is canceled prior to the completion of the project and the TRPA does not furnish a new certificate of insurance prior to cancellation, the COUNTY may obtain the required insurance and deduct the premium(s) from Agreement monies due the TRPA.

General Liability Insurance:

TRPA shall maintain Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of TRPA, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Contractual liability insuring the obligations assumed by TRPA in this Agreement.

One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

If TRPA carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- FIVE HUNDRED THOUSAND (\$500,000) each occurrence
- FIVE HUNDRED THOUSAND (\$500,000) aggregate

If TRPA carries a Commercial General Liability (Occurrence) policy:

- (1) The limits of liability shall not be less than:
 - FIVE HUNDRED THOUSAND (\$500,000) each occurrence (combined single limit for bodily injury and property damage).
 - FIVE HUNDRED THOUSAND (\$500,000) Personal Injury Liability.
 - FIVE HUNDRED THOUSAND (\$500,000) for Products-Completed Operations.
 - FIVE HUNDRED THOUSAND (\$500,000) General Aggregate.
- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be TWO MILLION DOLLARS (\$2,000,000).

Automobile Liability Insurance:

TRPA shall maintain automobile liability insurance covering bodily injury and property damage in an amount no less than (\$500,000) combined single limit for each occurrence.

Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

22. DISPUTES. All claims, counter-claims, disputes, and other matters in question between COUNTY and TRPA that cannot be settled by agreement between the parties will be presented to the Board of Supervisors of COUNTY and the TRPA Governing Board for consideration. In the event the Board of Supervisors cannot resolve the matter or matters to the satisfaction of the parties, either party may undertake whatever legal actions against the other, as it deems necessary.
23. REMEDIES. In the event of breach of any condition or provision hereof, the COUNTY shall have the right, by prior written notice to the TRPA, to terminate the agreement and pay only for work completed before the date of the notice, without prejudice to any other rights or remedies of the COUNTY.
24. NOTICES. All notices, and approvals or demands of any kind required or desired to be given by the COUNTY and TRPA shall be in writing and shall be deemed served or given upon delivery if personally delivered or faxed, or, if mailed, forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid to the addresses shown below. COUNTY and TRPA may from time to time by written notice to the other designate another place for receipt of future notices.

COUNTY: Attention: Brett Story
Placer County Planning Department
175 Fulweiler Avenue
Auburn, CA 95603
Telephone (530) 886-5334
Fax (530) 745-3080

TRPA: Attention: Charles Emmett
Tahoe Regional Planning Agency
P.O. Box 5310
128 Market Street
Stateline, NV 89449
Telephone (775) 589-5288
Fax (775) 588-4527

25. ENTIRE AGREEMENT. This document represents the entire agreement between the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands the year and date first above written.

APPROVED

Placer County

By: _____ Date _____
MR. Kirk Uhler
Chairman, Board of Supervisors

By: _____ Date _____
Placer County Counsel

APPROVED

Tahoe Regional Planning Agency

By: _____ Date _____
Joanne Marchetta
Executive Director

By: _____ Date _____
Rhonda McFarlane
Finance Director

By: _____ Date _____
TRPA Counsel

ATTACHMENTS:

Attachment A - Federal Tax ID Number

214



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 PO Box 5310
 Stateline, NV 89449-5310

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 128 Market Street
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AQ 2010-06

Request for Proposal Justification Memorandum

TO: JOANNE S. MARCHETTA, EXECUTIVE DIRECTOR

FROM: Charles Emmett

REQUEST: Authorize execution of a Request for Proposal to hire a contractor to guide TRPA's permitting process dealing with a proposed biomass facility in Placer County. TRPA estimates the cost of this work at \$125 per hour with a not to exceed cost of \$150,000 over the period of fiscal years 2009/2010 and 2010/2011.

Justification: The proposed project will be require an EIS level document and has the potential to require an extra ordinary amount of staff time to guide the permitting process. The project proponent has requested expedited review of this project in order to meet both funding and construction deadlines. The Agency does not have the necessary resources at this time to meet the needs of the proponent.

Background: This is a fully reimbursable contract being funded by Placer County. It is anticipated that an EIR/EIS level document is needed for the installation of a biomass facility in the Region. Placer County is acting as the applicant and has agreed to provide full funding for the contractor and all TRPA staff time necessary to complete this permitting process.

Selection Process: TRPA solicited formal bids for this proposal. These solicitations were done in two phases (1) direct mailing of the RFP to five consultants known to be familiar with this work; and (2) advertised this RPF on TRPA's web site. We received two formal bids from the following consultants (attached):

- | | |
|-----------------------------|----------|
| 1. Patrick Angell, PMC Inc. | \$96,505 |
| 2. Mr. Jon Paul Harries | \$90,000 |

Staff including Mr. Jerry Wells, Ms. Theresa Avance, Ms. Brenda Hunt, and Mr. Charles Emmett conducted interviews with the both parties on May 19, 2010. There were six interview questions with a total of 100 possible points. PMC Inc. obtained an average score of 49.5 and Mr. Jon Paul Harries received an average score of 88.5. All four parties ranked Mr. Jon Paul Harries as the highest scoring consultant and concluded this consultant provided far better understanding of what was requested by TRPA.

Supplies & Services: Description of supplies and services needed and departments that are affected.

- **Operations** – Support from operations will include Deputy Director participation on the selection committee and various staff and public meetings as the project is developed.



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AQ 2010-04

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") is made this 25 day of May, 2010, (the "Effective Date") by and between the Tahoe Regional Planning Agency, a bi-state regional planning agency created by Public Law 96-551 (1980) (hereinafter the "TRPA"), and Jon-Paul Harries (hereinafter the "Consultant") TRPA and the Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

- A. The Consultant desires to perform and assume responsibility and obligations for the services and provision of products, as hereinafter described on the terms and conditions set forth herein.
- B. TRPA desires to contract for such services and products as hereinafter described on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, TRPA and the Consultant agree as follows:

OPERATIVE PROVISIONS

SECTION I

ENGAGEMENT AND SERVICES OF THE CONSULTANT

1. Engagement of Consultant. TRPA hereby engages the Consultant, subject to the terms and conditions set forth in this Agreement, to perform the services and provide products as set forth in Exhibit "A" (the "Services and Products"). The Consultant agrees to perform the Services and provide Products in accordance with the terms and conditions of this Agreement.
2. Performance of the Consultant. The Consultant accepts the relationship of trust and confidence established between TRPA and the Consultant by the terms of this Agreement. The Consultant covenants with TRPA to furnish its best skill, judgment and efforts, and to cooperate with TRPA and any other consultants or contractors engaged by TRPA in the provision of products and performance of the services. The Consultant covenants to use its best efforts to perform its duties and obligations under this Agreement in an efficient, expeditious, and economical manner, consistent with the best interests of TRPA.
3. The Consultant's Personnel. The Consultant shall provide adequate and experienced administrative and management personnel to perform the services.
4. The Consultant's Responsibilities for Costs and Expenses. The Consultant shall be responsible for all costs and expenses incurred relative to the Consultant, personnel of the Consultant, and subcontractors of the Consultant, in connection with the

performance of the Services, including, without limitation, payment of salaries, fringe benefits contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expense, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

SECTION II

RESPONSIBILITIES OF THE CONSULTANT

1. Personnel. The Services shall be performed by the Consultant or under its supervision. The Consultant represents that it possesses the professional and technical personnel required to perform the Services. TRPA retains the Consultant on an independent contractor basis and the Consultant is not an employee of TRPA. The personnel performing the Services on behalf of the Consultant shall at all times be under the Consultant's exclusive direction and control. The Consultant shall pay all expenses including, without limitation, salaries, fringe benefit contributions, payroll taxes, withholding taxes and other taxes or levies, and all other amounts due such personnel or due others as a result of the performance by such personnel of the Services in connection with their performance of the Services and other amounts due such personnel in connection with their performance of Services. The Consultant shall also be responsible for all reports and documentation required for its employees.
2. Cooperation/Project Administrator. The Consultant shall work closely and cooperate fully with TRPA's designated Project Administrator, and any other agencies which may have jurisdiction or interest in the Services. The Project Administrator will administer this Agreement. The Project Administrator, or his/her designee, shall be the principal officer of the TRPA, for liaison with the Consultant, and shall review and give approval to the details of the Services as they are performed. The TRPA designates Mr. Charles Emmett, Principal Planner, as its Project Administrator, but reserves the right to appoint another person as Project Administrator upon written notice to the Consultant.
3. Project Manager. The Consultant shall designate and assign a project manager ("Project Manager"), who shall coordinate all phases of the Services. The Project Manager shall be available to the TRPA at all reasonable times. The Consultant designates Mr. Jon-Paul Harries to be its Project Manager.
4. Time of Performance. The Products to be provided and Services to be performed by the Consultant under and pursuant to this Agreement shall be conducted in accordance with Exhibit 'A'.
5. Report Materials. At the completion of the Services and upon delivery of Products, the Consultant shall deliver to the TRPA all documents, catalogs, quotes, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant, or prepared by others for the use and/or benefit of the Consultant, or otherwise provided to the Consultant by the TRPA or by others under this Agreement (the "Report Materials"). Any work product produced by the Consultant pursuant to this Agreement and any Report Materials provided for the use/or benefit of the Consultant shall be considered the property of the TRPA and shall be delivered to the TRPA upon the expiration or termination of this Agreement.

Any text work product shall be submitted to TRPA together with a copy in a digital format that is compatible with either: 1) Microsoft Word for Windows, or 2) Excel for Windows. Any graphic work product submitted to TRPA in digital format must be submitted in one of the following formats: 1) Adobe Illustrator; 2) EPS (encapsulated postscript); 3) Adobe Photoshop files; 4) Tiff files; 5) Pict files; or, 6) ARC/Info graphic files. Any graphic work product prepared for TRPA shall, whenever feasible, also be submitted with a copy in digital format compatible with one of the six formats outlined above.

6. TRPA Policy. The Consultant shall discuss and review all matters relating to the provision of Products and Services with the Project Administrator in advance of all critical decision points in order to ensure that the Services are provided and Products are delivered in a manner consistent with the goals and policies of the TRPA.
7. Conformance to Applicable Requirements. All aspects of the provision of Products and Services by the Consultant shall at all times conform to applicable city, county, state, and federal requirements and be subject to approval of the Project Administrator and TRPA.
8. Indemnification. The Consultant hereby agrees to protect, defend, indemnify, and hold TRPA, its officers, employees and agents, free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by TRPA arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the TRPA) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this Agreement, to the extent that the above are caused by negligent acts, errors, omissions, or willful misconduct, of the Consultant. The Consultant's obligation shall include the duty to defend any action or actions filed in connection with any of said claims, liens, debts, personal injuries, death, or damages. This provision is not intended to create any cause of action in favor of any third party against the Consultant or the TRPA or to enlarge in any way the Consultant's liability, but is intended solely to provide for indemnification of TRPA from liability for damages or injuries to third persons or property arising from the Consultant's negligent performance, errors, omissions or willful misconduct, pursuant to this Agreement.
9. Standard of Care; Licenses. The Consultant represents and warrants that it and all personnel engaged in providing Products and performing Services are and shall be fully qualified and are authorized or permitted under state and local law to perform such Services. The Consultant shall provide Products and perform the Services in a skillful and competent manner. The Consultant shall be responsible to TRPA for any errors or omissions in the execution of its duties hereunder. The Consultant represents and warrants that it and all personnel engaged in providing Products and performing the Services have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

10. Insurance. Without limiting the Consultant's indemnification of the TRPA, the Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement a policy or policies of insurance of the type and amounts described below, signed by a person authorized by that insurer to bind coverage on its behalf, and satisfactory to the TRPA, in its sole discretion. The Consultant shall provide to the TRPA certificates of insurance and copies of policies, if requested by the TRPA, of the following insurance, with Best's Class A - or better carriers:

- (1) Commercial general liability insurance covering third party liability risks, including, without limitation, contractual liability, in a minimum amount of \$1 million combined single limit per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this project, or the general aggregate limit shall be twice the occurrence limit. The Policy shall add as insured's the TRPA, its Board, Advisory Commission, officials, officers and employees, and agents for all liability arising from the Consultant's Services as described herein.
 - (2) Commercial auto liability and property insurance covering any owned and rented vehicles of the Consultant in a minimum amount of \$1 million combined single limit per accident for bodily injury and property damage.
 - (3) Professional liability insurance covering errors and omissions on the part of the Consultant, in a minimum amount of \$1 million per claim on a claims made form. Such insurance shall include coverage or an extended reporting period for two years beyond the completion of the Consultants performance of this agreement pursuant to the terms and conditions described herein.
 - (4) Any additional forms of insurance, which the Consultant and/or TRPA determine may be necessary for its proper protection and performance of this Agreement.
- A. Said policy or policies shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days prior notice has been given in writing to the TRPA. Cancellation or modification of insurance coverage may be grounds for immediate termination of this agreement. The Consultant shall give TRPA prompt and timely notice of any claims made or suits instituted in association with or arising out of the Consultant's performance of this Agreement.
- B. The Consultant shall include subcontracting consultants, if any, as insured's under its policies, or shall furnish separate certificates and endorsements for each subcontractor. All coverage for each subcontractor shall be subject to the requirements stated herein.

11. Prohibition Against Assignment.

- A. The Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly by operation of law, without the prior written consent of the TRPA. Any attempt to do so without the

prior written consent of the TRPA 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.

- B. The sale, assignment, transfer, or other disposition of any of the issued and outstanding capital stock of the Consultant, if the Consultant is a corporation or of the interest of any general partner or joint venture or syndicate member or co-tenant of the Consultant, if the Consultant is a partnership or a joint venture, or a syndicate or a co-tenancy, which shall result in changing the control of the Consultant, shall be deemed an assignment of this Agreement. For purposes of this paragraph, "control" means the ownership of fifty percent (50%) or more of the voting power of the corporation or fifty percent (50%) or more of the voting power of a partnership, joint venture, syndicate, or co-tenancy.
12. Progress. The Consultant is responsible to keep the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Products and the Services, activities performed and planned, and any meetings that have been scheduled or are desired relative to the provision of Products and Services or relative to this Agreement.
13. Confidentiality. No news releases, including photographs, public announcements, or confirmations of the same, of any part of the subject matter of this Agreement or any phase of the provision of Products and Services shall be made without prior written consent of the TRPA. The information which results from provision of Products and Services in this Agreement is to be kept confidential unless the release of information is authorized by TRPA.
14. Scheduling. The Consultant shall generally have no obligation to work any particular schedule, provided the Consultant will coordinate with the TRPA in achieving the results sought under the terms of this Agreement.
15. No Set Hours/Right to Contract. The Consultant's obligation hereunder is to complete the Services and to meet any deadlines set forth therein for the provision of Products. Except as provided herein, the Consultant has no obligation to work any particular hours or days or any particular number of hours or days. In this regard, the Consultant retains the right to contract for similar Services with any other entity, public or private.
16. Results. The TRPA agrees that it will have no right to control or direct the details, manner, or means by which the Consultant accomplishes the results of the Services performed hereunder.

SECTION III

RESPONSIBILITIES OF TRPA

1. Compensation. In consideration of the provision of Products and performance by the Consultant of the Services, the TRPA shall pay to the Consultant the amount/amounts as quoted and set forth in Exhibit "B" (the "Compensation").
2. Extra Work. The Consultant shall not receive additional Compensation for any extra work or Products provided unless such extra work or provision of Products has been authorized by the TRPA as an amendment to this Agreement prior to the

commencement of the extra work. The TRPA shall pay the Consultant for extra work and/or products in accordance with the schedule set forth in Exhibit "B".

3. Invoicing. The Consultant shall submit invoices to the TRPA on a monthly basis as set forth in Exhibit "B." Each invoice will be itemized, identify the project name or number, indicate the balance left on the contract net of the current invoice expenses, include the dates of work performed, and when applicable the percentage of completion for each task.
4. Payment to Consultant. TRPA shall make payments to the Consultant within thirty (30) days following the date of receipt of the invoice unless TRPA disputes the amount of the Compensation the Consultant claims it is owed under this Agreement. Payments shall be made on the basis of estimated task costs set forth in Exhibit "A."
5. Withholding.
 - A. Disputed Sums. The TRPA may withhold payment of any portion of the Compensation if payment is disputed until resolution of the dispute with the Consultant. Such withholding by the TRPA shall not be deemed to constitute a failure to pay by the TRPA. The Consultant shall not discontinue the provision of Products or performance of Services for a period of thirty (30) days from the date Compensation is withheld hereunder. The Consultant shall have an immediate right to appeal to the TRPA with respect to withheld amounts. The determination of the TRPA with respect to such matters shall be final. The Consultant shall be entitled to receive interest on any portions of the Compensation withheld which are thereafter deemed to be properly payable to the Consultant at the rate of five percent (5%) per annum, simple interest.
 - B. Retention. The TRPA shall have the right to retain an amount equal to ten percent (10%) of the Compensation ("Retention"). The Retention shall be released to the consultant upon final approval and acceptance of the Products and Services by TRPA. The TRPA shall have the right, without further liability to the Consultant, to utilize the Retention to satisfy obligations of the TRPA relative to the Services in the event the Consultant does not complete the Services satisfactory to the TRPA.

SECTION IV TERMINATION

1. Termination. The Consultant or TRPA may terminate this agreement upon thirty (30) days prior written notice. If the Agreement is so terminated, the Consultant shall be compensated for all completed services rendered up to and including the day of termination.

2. Termination Upon Event of Default. TRPA may immediately terminate this Agreement upon an Event of Default, defined below. Upon a termination of this Agreement, the TRPA shall pay to the consultant the part of the Compensation which would otherwise be payable to the Consultant with respect to the Services which had been completed as of the date of termination, less the amount of all previous payments with respect to the Compensation.
3. Events of Default. Each of the following events shall constitute an "Event of Default":
 - A. The Consultant fails to observe, perform, or comply with any material term, covenant, agreement, or condition of this Agreement which is to be observed, performed, or complied with by the consultant, of such failure to continue uncured for three (3) calendar days after the TRPA gives the Consultant notice of any failure and specified the nature of such failure.
 - B. The Consultant commits any fraud, misrepresentation, breach of fiduciary duty, willful misconduct, or intentional or breach of any provision of this Agreement.
4. Budget Contingency Clause
 - A. Limitation of TRPA Liability. The maximum amount to be encumbered under this Agreement for the 2009/2010 and 2010/2011 fiscal years ending June 30, 2011 shall not exceed \$150,000.
 - B. It is mutually agreed that if the TRPA Budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the TRPA shall have no liability to pay any funds whatsoever to the Consultant or to furnish any other considerations under this Agreement and the Consultant shall not be obligated to perform any provisions of this Agreement.
 - C. If funding for any fiscal year is reduced or deleted by the TRPA Budget for purposes of this program, the TRPA shall have the option to either cancel this Agreement with no liability occurring to the TRPA, or offer an Agreement amendment to the Consultant to reflect the reduced amount.

SECTION V

GENERAL PROVISIONS

1. Nondiscrimination by the Consultant. The Consultant represents and agrees that the Consultant, its affiliates, subsidiaries, or holding companies do not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, handicap, national origin, ancestry, creed, physical disability (including HIV and AIDS), medical condition, age, marital status, denial of family and medical care leave, and denial of pregnancy disability

- leave. Such nondiscrimination shall include, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.
2. TRPA's Rights to Employ Other Consultants. The TRPA reserves the right to employ other consultants in connection with this project.
 3. Conflicts of Interest.
 - A. The Consultant or its employees may be subject to the provisions of Article III (a)(5) of the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Gov't Code Section 66801, N.R.S. 277.200), which requires disclosure of any defined economic interest and prohibits such persons from attempting to influence Agency decisions affecting certain economic interests.
 - B. The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose financial interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.
 - C. If subject to the Compact or the Act, the Consultant shall conform to all requirements of the Compact or the Act, as required. Failure to do so constitutes a material breach and is grounds for termination by this Agreement by the TRPA.
 4. Assignments and Subcontractors. The Consultant shall not subcontract any portion of the Services or provision of Products except as expressly stated herein, without prior written consent of the TRPA. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.
 5. Notices. All notices required hereunder shall be given in writing to the following addresses or such other addresses as the parties may designate by written notice:

To the TRPA: Tahoe Regional Planning Agency
Attn: Mr. Charles Emmett, Principal Planner
128 Market Street
PO Box 5310
Stateline, Nevada 89449-5310
PHONE (775) 589-5288
EMAIL cemmett@trpa.org

To the Consultant: Mr. Jon-Paul Harries
6560 EAGLE RIDGE RD
PENN GROVE, CA 94951
PHONE: (530) 277-1033
EMAIL: jpintahoe@yahoo.com

Notice shall be deemed received as follows, depending upon the method of transmittal by facsimile, as of the date and time sent; by messenger, as of the date

delivered; and by U.S. Mail, certified, upon receipt requested, as of 72 hours after deposit in the U.S. Mail.

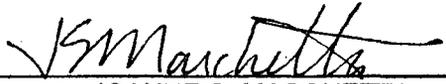
6. Authority to Enter Agreement. The Consultant warrants that it has all requisite power and authority to conduct its business and to execute and deliver, and to perform all of its obligations under this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement so as to bind each respective Party to perform the conditions contemplated herein. If the Consultant is a corporation or partnership, the Consultant also warrants that it is duly organized, validly existing in good standing under the laws of the State of California, and will continue to be so during the term of this Agreement
7. Severability/Illegality. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect. The illegality of any provision of this Agreement shall not affect the remainder of this Agreement.
8. Time is of the Essence. Time is of the essence in this Agreement, and all parties agree to execute all documents and to proceed with due diligence to complete all covenants and conditions set forth herein.
9. Attorneys' Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
10. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada. Any lawsuit brought to enforce this Agreement shall be brought in the appropriate court in Nevada.
11. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any of the provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be deemed a waiver and no waiver shall be binding unless executed in writing by the party making the waiver. No waiver, benefit, privilege, or service voluntarily given or performed by other parties shall give the other party any contractual right by custom, estoppel, or otherwise.
12. Days. Any term in this Agreement referencing time, days, or period of performance shall be deemed to be calendar days and not workdays.
13. Entire Agreement. This Agreement contains the entire agreement of the TRPA and the Consultant and supersedes any prior or written statements or agreements between the TRPA and the Consultant. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties.
14. Binding on Assigns. Each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the respective parties.

15. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.
16. Captions. The captions of the various articles and paragraphs of this Agreement are for the convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or of any part or parts of this Agreement.
17. Construction. In all cases, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any party, it being agreed that the parties or their agents have all participated in the preparation of this Agreement.
18. Cooperation/Further Acts. The parties shall fully cooperate with one another in attaining the purposes of this Agreement and, in connection therewith, shall take any such additional further acts and steps and sign any such additional documents as may be necessary, appropriate, and convenient as related thereto.
19. Survival. The obligations of the Consultant under this Agreement including, without limitation, the obligations set forth in Section II, Paragraph 8 (Indemnification), and Section II, Paragraph 10 (Insurance), as they relate to the Services, shall survive the termination or expiration of this Agreement.
20. Incorporation of Recitals and Exhibits.
 - A. The "Recitals" constitute a material part hereof, and are hereby incorporated by reference herein as though fully set forth.
 - B. The "Exhibits" constitute a material part hereof, and are hereby incorporated by reference herein as though fully set forth.
21. References: All references to the Consultant shall include all personnel, employees, agents, and subcontractors of the Consultant.
22. No Funds to Unqualified Aliens. Under law, no funds received under this Agreement shall be paid to any alien who is "not a qualified alien" within the meaning of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Act"). The Consultant shall be responsible to ensure that no funds the Consultant receives from TRPA are paid to any employee or subcontractor in violation of this Act.
23. Certification Regarding Lobbying. The Consultant certifies that no funds received under this Agreement have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of a Member of the Legislature or Congress, or an employee of a Member of the Legislature or Congress.
24. Certification Regarding Debarment and Suspension. The Consultant certifies to the best of its knowledge and belief that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

- B. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (24)(b) of this Agreement; and
- D. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or Local) terminated for cause of default.

IN WITNESS WHEREOF, the parties hereto have accepted and made and executed this Agreement upon the terms, conditions, and provisions set forth above as of the Effective Date.

TAHOE REGIONAL PLANNING AGENCY

BY: 
JOANNE S. MARCHETTA
EXECUTIVE DIRECTOR

Date: 6/4/10

JON-PAUL HARRIES

BY: 
JON-PAUL HARRIES

Date: 06/02/10

EXHIBIT A

Kings Beach Biomass Scope of Work Agreement for the Permit Consultant

- Manage and participate in general project coordination and communications between consultant, TRPA and Placer County, including meetings, phone calls, emails, mailings, etc. At the direction of TRPA and/or Placer County, this may include travel and attendance at agency or ad hoc public/private meetings and discussions directly related to the development and permitting of a Biomass Plant in Placer County, and also may include travel and attendance at meetings/presentations on matters related to, though not necessarily directly related to the development and permitting of a Biomass Plant in Placer County.
- Review and become familiar with current biomass-to-energy technologies, systems, industry trends, Best Available Control Technologies (BACT), and the potential environmental impacts associated with the construction and operation of a Biomass Plant within the Tahoe Basin.
- In coordination with other TRPA staff, review and comment on all technical, logistical, and operational studies requested by and/or submitted to TRPA. Consultant review *does not* include analysis of procedures to validate Carbon Credits or Offsets, or the potential trading markets of such Credits and Offsets.
- Assist in identification and development of preferred alternative based on conformance with TRPA's Regional Plan and the direction of TRPA.
- Review, comment and approval of Draft environmental documents (i.e. Environmental Impact Statement) and their distribution.
- Review, comment, and approval of Final environmental documents, including any changes to Draft documents and the adequacy of responses to public comments.
- Process and review of TRPA community plan amendment application - to be submitted by Placer County dependent on identification of preferred alternative.
- Process, review, and recommendation of any TRPA policy or code language modifications.
- Generation and completion of TRPA Advisory Planning Commission (APC), Hearings Officer, and/or Board staff summaries.
- Completion and presentation of the necessary documents and materials for the environmental certification process, project approval, and community plan

amendments, Code amendments, or other policy documents based on conformance with TRPA's Regional Plan and direction of TRPA.

- Generation of TRPA Governing Board (GB) staff summaries and recommendations for environmental certification, project approval, community plan amendments, Policy or Code amendments, based on conformance with TRPA's planning documents and the direction of TRPA.
- Preparation and delivery of presentations, on behalf of TRPA staff, at TRPA's, APC, Hearings Officer, and GB meetings, including TRPA staff recommendations for environmental certification, project approval, and any proposed amendments to the community plan, Goals and Policy, or Code of Ordinances.
- Attendance and availability at Placer County's Planning Commission and Board of Supervisors Meetings.
- If a project alternative is approved by the TRPA GB, then generation of the TRPA permit and special conditions for project development, including any project changes or amendments directed by the TRPA GB.
- Consultant review *does not* include analysis of matters relating to environmental justice issues.

All work completed will be done in conformance with the direction and approval of TRPA.

Total cost for services to be performed shall not exceed \$125/hour or \$150,000 total and expires June 30, 2011.

Kings Beach Biomass Project
Two Party Contract for Permit Consultant
Exhibit B – Compensation
May 25, 2010

Exhibit B Compensation

All work completed will be done in conformance with the direction and approval of TRPA.

Total cost for services to be performed shall not exceed \$125/hour or \$150,000. The contract expires on June 30, 2011 or upon receipt of termination by TRPA. Consultant will submit monthly invoices by the 7th of each month. TRPA will provide payment within 30 days of invoice.

