

MEMORANDUM
OFFICE OF THE
County Executive
COUNTY OF PLACER

TO: Honorable Board of Supervisors

FROM: David Boesch, County Executive Officer
By Brett Storey, Senior Management Analyst

DATE: June 18, 2013

SUBJECT: Contract with Tibbs Consulting to support the Middle Fork American River Hydroelectric Project

Action Requested

Approve contract with Tibbs Consulting to support the Middle Fork American River Hydroelectric Project for FY 2013-14 in an amount not to exceed \$175,968, reimbursed through project revenue with no net county cost.

Background

Mr. Dean R. Tibbs, Ph.D., (formerly of Advanced Energy Strategies) has been providing valuable technical services to the County during the past several years on annual agreements for the Middle Fork American River Hydroelectric Project. Mr. Tibbs has extensive background in dealing with government and private energy projects. He has become a critical member of the Middle Fork Project (MFP) team, which has been charged by the Middle Fork Finance Authority and County Executive Office with developing and implementation of all aspects of the new license and operations including the creation of a Power Marketing plan and a Business Plan to run the Power Scheduling and Power Sales process which began in May of this year. Staff requests that Tibbs Consulting be provided a contract to continue to provide guidance and technical details in the following areas to support the County in coordinating with Placer County Water Agency (PCWA) for this critical license implementation and power operations start-up and other related matters for the County:

- (1) Work Supporting the Middle Fork Hydroelectric Project
 - (a) Represent the County on the MFPFA Energy Transactions Working Group, including participating in meetings, developing tools and evaluation techniques, reporting and updating staff and management, and other activities as required.
 - (b) Assist the County with the ongoing development and implementation of policies and practices of the Middle Fork Project Finance Authority.

- (c) Provide economic and planning guidance to assist the County with availability of MFP revenues and policies.
 - (d) Assist with the design, implementation and ongoing evaluation of an MFP power sales plan, including review of sales strategies, development of tools for sales strategies and evaluation, and ongoing interface with PCWA.
- (2) Assist the County in Other Energy-Related Matters
- (a) Assist as requested on other hydro-electric project relicensing efforts that have energy, water or economic impacts for Placer County, such as the NID Yuba /Bear project.
 - (b) Provide technical assistance related to water and energy policy matters where the County may have an economic development or land development interest.
- (3) Assist with other water and energy related matters on an as needed basis as determined by the County.

While the County typically contracts through the competitive bid process, the County's Purchasing Manager has approved an exemption to competition in accordance with the County' Purchasing Manual 1.3(a) which states competitive bidding is not required for the following purchases:

"...for expert and professional services which involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience, such as but not limited to: accountants, physicians, social service consultants, labor consultants, investigators, attorneys, architects, surveyors and engineers;"

Fiscal Impact

If approved by your Board, the contract with Tibbs Consulting Inc., not to exceed \$175,968, is available through the County Executive Office's budget appropriation for "Community & Agency Support" and is reimbursed by the new annual agreement between Placer County and PCWA which is planned to come to your Board on July 9, 2013. Any potential funds distributed prior to the annual agreement would be reimbursed by the Middle Fork Project Financing Authority through monthly invoicing.

Attachment: Contract and Scope of Services - Tibbs Consulting

cc: Holly Heinzen, Chief Assistant CEO
Robert Sandman, Deputy County Counsel

Administering Agency: Placer County Community Development/Resource Agency, Planning Services Division

Contract No. _____

CONSULTANT SERVICES AGREEMENT
FOR PROFESSIONAL SERVICES
RELATED TO MIDDLE FORK AMERICAN RIVER HYDROELECTRIC PROJECT
EFFECTIVE DATE: July 1, 2013

THIS AGREEMENT is made at Auburn, California, effective as of July 1, 2013, by and between the County of Placer, ("County"), and Tibbs Consulting, A sole proprietorship, ("Consultant"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide professional services in accordance with the Scope of Services specified in Exhibit A, attached hereto and incorporated herein by reference.
2. **Payment.** The County shall pay Consultant for services rendered pursuant to this Agreement up to a maximum of \$175,698.00 during the Term of this Agreement. Payment shall be made in accordance with the personnel rates and reimbursable charges specified in Exhibit B, attached hereto and incorporated herein by reference. Consultant shall bill County not more often than monthly for the work performed pursuant to this Agreement. Billing submitted by the Consultant shall be itemized by work activity as defined in the Scope of Services and by personnel charged at rates as specified in Exhibit B. County shall review and pay approved charges within thirty (30) days of receipt of the invoice.
3. **Facilities, Equipment and Other Materials, and Obligations of County.** Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.
4. **Prior Agreement Superseded.** This Agreement shall be effective as of July 1, 2013. As of that date, this Agreement shall replace and supersede for all purposes Contract No. 13146 between County and Consultant, which shall be terminated effective as of June 30, 2013.
5. **Term.** This Agreement shall commence on July 1, 2013, and run through June 30, 2014. The County may extend this Agreement for an additional term of up to twelve (12) months upon providing Consultant written notice no later than May 31, 2014. Any such notice shall specify the length of the extension of the Term.
6. **Independent Consultant.** At all times during the term of this Agreement, Consultant shall be an independent Consultant and shall not be an employee of the County. All persons performing services for CONSULTANT shall be solely employees of CONSULTANT and not employees of COUNTY. CONSULTANT shall be solely responsible for the salaries and other benefits, including Workers' Compensation, of all such personnel.
7. **Licenses, Permits, Etc.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

8. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to the Scope of Services specified in Exhibit A. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

9. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The CONSULTANT hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY 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 PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) 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, the contract or agreement. CONSULTANT agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONSULTANT. CONSULTANT also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONSULTANT or the COUNTY or to enlarge in any way the CONSULTANT'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONSULTANT'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

INSURANCE:

CONSULTANT shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-VII showing.

WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CONSULTANT'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

GENERAL LIABILITY INSURANCE:

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONSULTANT, 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 CONSULTANT in this Agreement.
- B. One of the following forms is required:
- (1) Comprehensive General Liability;
 - (2) Commercial General Liability (Occurrence); or
 - (3) Commercial General Liability (Claims Made).
- C. If CONSULTANT 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:
- One million dollars (\$1,000,000) each occurrence
 - Two million dollars (\$1,000,000) aggregate
- D. If CONSULTANT carries a Commercial General Liability (Occurrence) policy:
- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) for Products-Completed Operations
 - Two million dollars (\$1,000,000) 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).
- E. Special Claims Made Policy Form Provisions:
- CONSULTANT shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:
- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) aggregate for Products Completed Operations
 - (2) The insurance coverage provided by CONSULTANT shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

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

PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than \$1,000,000. If Consultant sub-contracts in support of Consultants work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the consultant shall contain language providing coverage up to six (6) months following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

- 10. **Indemnity.** Consultant hereby agrees to protect, defend, indemnify, and hold the County 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 the County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) 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 contract or agreement. Consultant agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Consultant. Consultant also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Consultant or the County or to enlarge, in any way, the Consultant's liability but is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from Consultant's performance pursuant to this contract or agreement.

As used above, the term "County" means Placer County or its officers, agents, employees and volunteers.

11. **Consultant Not Agent.** Except as County may specify in writing Consultant shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied pursuant to this Agreement to bind County to any obligation whatsoever.
12. **Assignment Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.
13. **Personnel.**
 - A. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Consultant shall remove any such person immediately upon receiving notice from County of the desire of County for removal of such person or persons.
 - B. Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A, Consultant agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or subconsultants named in the Project Team by Consultant without the prior written consent of County shall be grounds for cancellation of the agreement by County, and payment shall be made pursuant to Section 15 (Termination) of this Agreement only for that work performed by Project Team members.
14. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.
15. **Termination.**
 - A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Consultant. In the event County shall give notice of termination, Consultant shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:
 - 1) Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
 - 2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.
 - 3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Agreement not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall

not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

- B. Consultant may terminate its services under this Agreement upon thirty (30) days advance written notice to the County.
16. **Non-Discrimination.** Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.
17. **Records.** Consultant shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Consultant until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.
18. **Ownership of Information.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and Consultant agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Consultant harmless from any claim arising out of reuse of the information for other than this project.
19. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.
20. **Conflict of Interest.** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Consultant agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.
21. **Entirety of Agreement.** This Agreement contains the entire agreement of County and Consultant with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid. All amendments to this Agreement must be in writing and executed by properly authorized representatives of County and Consultant.
22. **Alteration.** No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by all parties, except as expressly provided in Section 15, Termination.
23. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this Agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California. Each party waives any federal court removal rights and/or rights based on original jurisdiction it may have.

24. **Notification.** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

COUNTY OF PLACER:

Placer County Planning Department
Attn: Brett Storey
3091 County Center Drive
Auburn, CA 95603

Phone: (530) 745-3011
Fax: (530) 886-5343

CONSULTANT:

Tibbs Consulting
Attn: Dean R. Tibbs
2927 La Salle Avenue
Concord, CA 94520

Phone: 925 521 0203
Fax: 925 521 0207

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

Executed as of the day first above stated:

COUNTY OF PLACER

By: _____

Printed Name/Title: Jim Holmes, Chair of the Board of Supervisors

Approved As to Form

By: _____
County Counsel

CONSULTANT – TIBBS CONSULTING *

By: _____

Name: Dean R. Tibbs, Ph.D.,

Title: President

**If a corporation, agreement must be signed by two corporate officers; one must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation.*

Exhibits

- A. Scope of Services
- B. Payment For Services Rendered

EXHIBIT A
COUNTY OF PLACER AND TIBBS CONSULTING
SCOPE OF SERVICES
FOR CONSULTING SERVICES DURING FISCAL YEAR 2013 - 2014

As directed by the County Executive Officer, or his designee, perform the following tasks and duties, as identified below.

1. Specific Tasks within the Scope of Services

(1) Work Supporting the Middle Fork Hydroelectric Project

- (a) Represent the County on the MFPFA Energy Transactions Working Group, including participating in meetings, developing tools and evaluation techniques, reporting and updating staff and management, and other activities as required.
- (b) Assist the County with the ongoing development and implementation of policies and practices of the Middle Fork Project Finance Authority.
- (c) Provide economic and planning guidance to assist the County with availability of MFP revenues and policies.
- (d) Assist with the design, implementation and ongoing evaluation of an MFP power sales plan, including review of sales strategies, development of tools for sales strategies and evaluation, and ongoing interface with PCWA. Consultant may bill county for an annual subscription of an approved power sales forecasting tool up to \$2,500 to support this effort.

(2) Assist the County in Other Energy-Related Matters

- (a) Assist as requested on other hydro-electric project relicensing efforts that have energy, water or economic impacts for Placer County, such as the NID Yuba /Bear project.
- (b) Provide technical assistance related to water and energy policy matters where the County may have an economic development or land development interest.

(3) Assist with other water and energy related matters on an as needed basis as determined by the County.

2. General

Both the Consultant and the County agree that, unless otherwise specified above, the level of work and ultimate completion of any given task is not herein defined. Rather, level of work and any written deliverables shall be determined or otherwise directed on an ongoing basis by the County. The primary deliverable provided by the Consultant is advice, participation and planning, measured by the number of hours of work performed. If requested, consultant will provide a written estimate of expected professional time and cost prior to accepting an assignment.

EXHIBIT B
PAYMENT RATES

Dean R. Tibbs, Ph.D.: \$244.40 per hour

