



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: January 25, 2011

SUBJECT: Contract with TSS Consultants in an amount not to exceed \$103,000 to support the Placer County Biomass Utilization Pilot Project.

ACTION REQUESTED:

Authorize the Chairman of the Board of Supervisors to sign a contract not to exceed \$103,000 with TSS Consultants to support Phase II of the congressionally directed Department of Energy (DOE) grant entitled "Placer County Biomass Utilization Pilot Project."

BACKGROUND:

In 2008, Placer County was awarded a biomass grant for \$492,000 to develop plans and perform studies for a potential wood biomass-to-energy facility within the Lake Tahoe Basin. Staff has made great strides in the work performed and, as a result, Senator Diane Feinstein directed that another \$1,427,250 be awarded to Placer County for Phase II of the development of this facility, which the BOS accepted on May 18, 2010. As Placer County staff and consultants near the completion of the first phase of our DOE grant, we are moving forward with our second phase. This phase has been moving forward with the conceptual design and environmental analyses and is now ready to begin the integration of the biomass technology into the design and testing portion of the work.

TSS, Inc. has been providing valuable technical services regarding biomass utilization projects to the County for the past few years. TSS has been the lead technical group for the proposed biomass facility in the Tahoe Basin. Their staff has extensive experience in developing and analyzing these types of projects.

The amount of funding and rates of TSS has been negotiated with the DOE and they are considered qualified and approved. As such, TSS has been determined by our Procurement department to be the only contractor that can support this effort in the capacity listed below. The recommendation is that TSS continues to assist the County by providing technical support for the Biomass Utilization Pilot Project in the following tasks:

- Assist County in the overall Project management and reporting to the DOE.
- Assist County with the environmental impact analyses conducted for Placer County Planning Department and Tahoe Regional Planning Agency
- Assist County with land entitlement analyses
- Assist County with future facilities management plan development, preparation of Request for Proposals for the power plant facility, and review and selection of vendor(s).
- Lead preparation of technology integration studies
- Assist County and Air Pollution Control District with emissions testing of selected candidate power generation technologies

FISCAL IMPACT:

The amount of the contract is not to exceed \$103,000 and is reimbursable from the DOE Grant entitled "Placer County Biomass Utilization Pilot Project" and is currently budgeted in the Planning Services Division budget.

Attachment 1: TSS Contract for these services

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

Administering Agency: Placer County Planning Department

Contract No. _____

CONSULTANT SERVICES AGREEMENT
FOR PROFESSIONAL SERVICES
RELATED TO DOE PLACER COUNTY BIOMASS UTILIZATION PILOT PROJECT
EFFECTIVE DATE: Jan 25, 2011

THIS AGREEMENT is made at Auburn, California, effective as of January 25, 2011, by and between the County of Placer, ("County"), and TSS Consultants, ("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 \$103,000 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 January 25, 2011. As of that date, this Agreement shall replace and supersede for all purposes Contract No. 12767 between County and Consultant, which shall be terminated effective as of June 30, 2010.
5. **Term.** This Agreement shall commence on January 25, 2011, and run through December, 2012. The County may extend this Agreement for an additional term of up to twelve (12) months upon providing Consultant written notice no later than October 31, 2012. 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
 - One 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
 - One 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
 - One million dollars (\$1,000,000) General Aggregate
 - (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. **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.
- 11. **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.
- 12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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, and Consultant hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.
237. **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:

TSS Consultants
Attn: Frederick Tornatore
2724 Kilgore Road
Rancho Cordova, CA 95670

Phone: (916) 638-8811 ex 112
Fax: (916) 638-9326

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: Robert Weygandt, Chairman of the Board of Supervisors'

Approved As to Form – County Counsel:

By: _____

CONSULTANT – TSS CONSULTANTS *

By: _____

Name: Tad Mason

Title: President/Treasurer

By: _____

Name: Frederick Tornatore

Title: Secretary/Vice 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
SCOPE OF SERVICES
COUNTY OF PLACER
AND
TSS CONSULTANTS FOR
DOE PLACER COUNTY BIOMASS UTILIZATION PILOT PROJECT

As directed by the Community Development/Resource Agency Director, or his designee, perform the following tasks and duties, as identified below.

Consultant agrees to do the following:

a. General

This scope of work lists the Phase II, Stage 1 tasks that Consultant will perform on behalf of the County of Placer to further the analyses in conjunction with the Placer County Biomass Manager for the Department Of Energy (DOE) award # DE-FG36-08GO88026 "Placer County Biomass Utilization Pilot Project". Contractor has been the lead consultant for the first phase of this project and now will have the same designation for the second phase of this DOE award.

b. Specific Tasks within the Scope of Services

- Assist County in the overall Project management and reporting to the DOE.
- Assist County with the environmental impact analyses conducted for Placer County Planning Department and Tahoe Regional Planning Agency
- Assist County with land entitlement analyses
- Assist County with future facilities management plan development, preparation of Request for Proposals for the power plant facility, and review and selection of vendor(s).
- Lead preparation of technology integration studies
- Assist County and Air Pollution Control District with emissions testing of selected candidate power generation technologies