



MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE OFFICE
COUNTY OF PLACER

TO: Honorable Board of Supervisors

FROM: Holly L. Heinzen, Interim County Executive Officer

DATE: June 5, 2012

SUBJECT: Contract with Tibbs Consulting to Support the Middle Fork American River Hydroelectricity Project

ACTION REQUESTED

Authorize the Board Chair to sign a contract with Tibbs Consulting in an amount not to exceed \$98,000 to support the Middle Fork American River Hydroelectric Project (MFP).

BACKGROUND

Dean R. Tibbs, Ph.D., (formerly of Advanced Energy Strategies) has been providing valuable technical services to the County during the past several years for the MFP. Dr. Tibbs and his staff have extensive background in government and private energy projects. Dr. Tibbs has become a critical member of the MFP team, which has been charged by the Middle Fork Project Finance Authority and County Executive Office with developing and implementing 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) beginning in May 2013. Staff requests that Tibbs Consulting be provided a contract to continue to provide guidance and technical expertise in the following areas to support the County in coordinating with Placer County Water Agency for this critical license implementation and power operations start-up:

- Guide the County in the development of a Strategy and a Marketing and Business Plan associated with the MFP.
- Assist the County with the development of the policies and practices of the Middle Fork Project Finance Authority
- Assist with developing analytic tools associated with the MFP license implementation, including hydro-electric modeling, cost-benefit and economic modeling and analyses
- Other activities 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's 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 the Board, the contract with Tibbs Consulting not to exceed \$98,000 is available through the County Executive Office's budget appropriation for "Community & Agency Support" and will be reimbursed by the Middle Fork Project Financing Authority.

Attachment: Contract and Scope of Services - Tibbs Consulting

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

THIS AGREEMENT is made at Auburn, California, effective as of June 5, 2012 ("Effective Date"), 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 \$98,000.00 during the Term of this Agreement or any Term Extension unless amended pursuant to Section 22. 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. **Contract No. 12767.** Upon its Effective Date, this Agreement shall replace and supersede Contract No. 12767 except for invoices submitted for work performed prior to this Agreement's Effective Date, which shall be processed and paid pursuant to the terms of Contract No. 12767.
5. **Term.** This Agreement shall commence on the Effective Date (June 5, 2012) and terminate on June 30, 2013. The County may elect to extend this Agreement for one (1) additional term of up to a maximum of twelve (12) months upon providing Consultant written notice no later than May 31, 2013 ("Term Extension"). Any such notice shall specify the length of the Term Extension. Any Term Extension is subject to the amendment requirements of Section 22.
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.

A. **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.

B. **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".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the CONSULTANT.

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

C. GENERAL LIABILITY INSURANCE:

1. 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:
 - (a) Contractual liability insuring the obligations assumed by CONSULTANT in this Agreement.
2. One of the following forms is required:
 - (a) Comprehensive General Liability;
 - (b) Commercial General Liability (Occurrence); or
 - (c) Commercial General Liability (Claims Made).
3. 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 (\$2,000,000) aggregate
4. If CONSULTANT carries a Commercial General Liability (Occurrence) policy:
 - (a) 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 (\$2,000,000) General Aggregate
 - (b) 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).
5. 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:

 - (a) 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
 - Two million dollars (\$2,000,000) General Aggregate
 - (b) The insurance coverage provided by CONSULTANT shall contain language providing coverage up to one (1) year 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.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

D. ENDORSEMENTS:

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

1. "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."
2. "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."
3. "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."

E. 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.

F. 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 one (1) year 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.

G. ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The CONSULTANT shall be responsible for all deductibles in all of the CONSULTANT's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

CONSULTANT's Obligations - CONSULTANT's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - CONSULTANT shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the CONSULTANT to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

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 Sub-Consultants 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.
22. **Amendment.** All amendments to this Agreement must be in writing and executed by properly authorized representatives of County and Consultant.

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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, 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.
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.

THIS AGREEMENT is hereby executed as of the day first above stated:

COUNTY OF PLACER

By: _____
Printed Name/Title: Jennifer Montgomery, Chair
Board of Supervisors

Approved As to Form – County Counsel:

By: _____

Approved As to Content – Community Development/Resource Agency:

By: _____
Printed Name/Title: Michael J. Johnson, Agency Director

CONSULTANT – TIBBS CONSULTING *

By: _____
Printed Name/Title: Dean R. Tibbs, Ph.D., 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
TIBBS CONSULTING
FOR SERVICES RELATED TO MIDDLE FORK AMERICAN RIVER HYDROELECTRIC
PROJECT

As directed by the County Executive Officer, 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 tasks that Consultant will perform on behalf of the County of Placer on an “as needed” basis. Both the Consultant and the County agree that, due to the nature of the Project, 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. Consultant will provide a written estimate of expected professional time and cost prior to accepting an assignment.

b. Specific Tasks within the Scope of Services

- Guide the County in the development of a Strategy and a Marketing and Business Plan associated with the Middle Fork American River Hydroelectric Project
 - i. Continue to provide support to the County’s participation in the development of internal capabilities to ensure that the team can be in a position to operate the project without the assistance of an outside power partner.
 - ii. Provide guidance to staff that will assist in preparing the Marketing and Business Plan that can guide the project for the foreseeable future.
- Assist the County with the development of the policies and practices of the Middle Fork Project Finance Authority
 - i. Assist County staff in developing policies and practices that keep the project fiscally sound and ensure that Placer County’s interests are well represented.
 - ii. Provide economic and planning guidance to assist in the development of the dispersal of projected revenue policies for the County.
- Assist with developing analytic tools associated with the MPF license implementation, including hydro-electric modeling, cost-benefit and economic modeling and analyses
- Other activities as determined by the County

EXHIBIT B

PAYMENT RATES

Dean R. Tibbs, Ph.D.: \$244.40 per hour
Dick Maclay: \$192.40 per hour
Senior Analyst: \$145.60 per hour
Junior Analyst: \$ 112.50 per hour