



COUNTY OF PLACER

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OFFICE OF
COUNTY EXECUTIVE
THOMAS M. MILLER, County Executive Officer

175 FULWEILER AVENUE / AUBURN, CALIFORNIA 95603

TELEPHONE: 530/889-4030

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www.placer.ca.gov

TO: Honorable Board of Supervisors

FROM: Thomas M. Miller, County Executive Officer
By Brett Storey, Senior Management Analyst

DATE: June 26, 2007

SUBJECT: Authorize Contract for Advanced Energy Strategies in an amount not to exceed \$225,000 to support the Middle Fork American River Hydroelectric Project

Action Requested:

Authorize BOS Chairman Kranz to sign contractual agreement with Dean Tibbs of Advanced Energy Strategies to support the Middle Fork American River Hydroelectric Project.

Background:

Advanced Energy Strategies, specifically Mr. Dean R. Tibbs, Ph.D. have been providing valuable technical services to the County during the past few years for the Middle Fork American River Hydroelectric Project. He and his staff have extensive background in dealing with government and private energy projects. We are asking to continue to provide guidance and technical details in the following areas to support the County Executive Office in coordinating with PCWA for this critical re-licensing effort. The CEO office has a permanent staff person assigned to this effort so the amount of consulting hours should be reduced from years past.

- Assist in development of County Strategy and Business Plan associated with Middle Fork American River Hydroelectric Project
- Assist County in participating in dealing with energy service providers that are/may be associated with the Middle Fork American River Hydroelectric Project
- Assist County in Regulatory Outreach as requested
- Assist County with Consortium Building
- Other activities as determined by County in support of the Project

Fiscal Impact:

The not to exceed amount of the contract is for not to exceed \$225,000 and is reimbursable from the Middlefork re-licensing.

TM/BS

Administering Agency: **Placer County Executive Office**

Contract No. _____

**Contract Description: PROFESSIONAL SERVICES OF ADVANCED ENERGY STRATEGIES
RELATED TO MIDDLE FORK AMERICAN RIVER HYDROELECTRIC PROJECT**

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of July 1, 2007, by and between the County of Placer, ("County"), and Advanced Energy Strategies. ("Contractor"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the services described in Exhibit A and Contractor's response to said document. Contractor shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. **Payment.** The County shall pay Contractor for services rendered pursuant to this Agreement up to a maximum of \$225,000 as set forth in Exhibit B. The payment specified in Exhibit B and Contractor's response to said document shall be the only payment made to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all billings for said services to County in the manner specified in Exhibit B.
3. **Facilities, Equipment and Other Materials, and Obligations of County.** Contractor 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. **Exhibits.** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
5. **Time for Performance.** Time is of the essence. Failure of Contractor to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.
6. **Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of the County. County shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. County shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement.
7. **Licenses, Permits, Etc.** Contractor represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Contractor to practice its profession. Contractor represents and warrants to County that Contractor 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 Contractor to practice its profession at the time the services are performed.
8. **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Contractor's obligations pursuant to this Agreement. 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. **Insurance.** Contractor shall file with County a Certificate of Insurance, with companies acceptable to County, with a Best's Rating of no less than A: VII showing the following coverage:

A. **Workers' Compensation and Employers' Liability Insurance**

- 1) Workers' Compensation Insurance shall be provided, as required, by any applicable law or regulation. Employers' 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.
- 2) If there is an exposure of injury to Contractor's employees under the U.S. Longshoremen and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.
- 3) Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County."
- 4) Contractor shall require all sub-Contractors to maintain adequate Workers' Compensation Insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

B. **General Liability Insurance**

- 1) Comprehensive General Liability or Commercial General Liability insurance shall be provided covering all operations by, or on behalf of Contractor, covering bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for contractual liability insuring the obligations assumed by Contractor 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 Contractor 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:
 - a) One million dollars (\$1,000,000) each occurrence;
 - b) One million dollars (\$1,000,000) aggregate.
- 4) If Contractor carries a Commercial General Liability (Occurrence) policy:
 - a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.

- b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, 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:

Contractor 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:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) aggregate for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.
- b) The insurance coverage provided by Contractor 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.

C. Endorsements:

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

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

D. Automobile Liability Insurance

- 1) Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- 2) Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

E. Professional Liability Insurance (Errors and Omissions)

- 1) Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than (\$1,000,000 dollars (\$2,000,000) in 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.

10. **Indemnity.** Contractor 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. Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Contractor. Contractor 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 Contractor or the County or to enlarge, in any way, the Contractor'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 Contractor'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. **Contractor Not Agent.** Except as County may specify in writing Contractor shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied pursuant to this Agreement to Bind County to any obligation whatsoever.

12. **Assignment Prohibited.** Contractor 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. Contractor 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 Contractor to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Contractor 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, Contractor agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or subcontractors named in the Project Team by Contractor 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.** Contractor 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 Contractor is engaged in the geographical area in which Contractor practices its profession. All products of whatsoever nature which Contractor 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 Contractor'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 Contractor. In the event County shall give notice of termination, Contractor shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

- 1) Contractor 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, Photostating, 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 Contractor pursuant to this Agreement.
- 3) County shall pay Contractor the reasonable value of services rendered by Contractor to the date of termination pursuant to this Agreement not to exceed the amount documented by Contractor 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 Contractor had Contractor completed the services required by this Agreement. In this regard, Contractor 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 Contractor. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

B. Contractor may terminate its services under this Agreement upon thirty- (30) working days' advance written notice to the County.

16. **Non-Discrimination.** Contractor 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.** Contractor 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 Contractor 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 Contractor agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Contractor 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.** Contractor 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, Contractor 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 Contractor 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. **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, and Contractor 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 Executive Office
 Attn: Brett Storey
 175 Fulweiler Ave
 Auburn, CA 95603

Phone: (530) 886-4651
 Fax: (530) 889-4095

CONSULTANT:

Advanced Energy Strategies, Inc.
 Attn: Dean R. Tibbs
 1390 Willow Pass Road, #610
 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

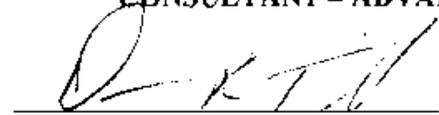
By: _____

Printed Name/Title: Bruce Kranz, Chairman of the Board of Supervisors'

Approved As to Form – County Counsel:

By:  _____

CONSULTANT – ADVANCED ENERGY STRATEGIES *

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
SCOPE OF SERVICES
COUNTY OF PLACER
AND
ADVANCED ENERGY STRATEGIES
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.

Advanced Energy Strategies are set at the following rates

Dean R. Tibbs, Ph.D.: \$235.00 per hour
Dick Maclay: \$185.00 per hour
AES Analyst: \$140.00 per hour
AES Jr. Analyst: \$ 85.00 per hour

Contractor 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

- Assist in development of County Strategy and Business Plan associated with Middle Fork American River Hydroelectric Project
 - i. Assist in assessing strategic import and positions regarding the Project
 - ii. Assist in assessing stakeholders' positions, goals and objectives, and strategies
 - iii. Assist in development "Game Plan" to promote County's position in Project.
- Assist County in participating in dealing with energy service providers that are/may be associated with the Middle Fork American River Hydroelectric Project
 - i. Participate with other stakeholders in discussions with energy service providers
 - ii. Assess Proposals provided by perspective energy service providers
 - iii. Attend meetings as required in order to gather information and promote County's position in Project

- Assist County in Regulatory Outreach as requested
 - i. Help develop Regulatory strategy
 - ii. Help develop and/or comment on presentations, discussion points or other materials as requested
 - iii. Participate and/or attend meetings as requested
- Assist County with Consortium Building
 - i. Assist in development stakeholder assessments and identify strategies
 - ii. Attend meetings with other stakeholders as requested
- Provide a quarterly report documenting activities in support of the Middle fork re-licensing project on behalf of Placer County
- Other activities as determined by County

EXHIBIT B

PAYMENT FOR SERVICES RENDERED
COUNTY OF PLACER
AND
ADVANCED ENERGY STRATEGIES
FOR SERVICES RELATED TO MIDDLE FORK AMERICAN RIVER HYDROELECTRIC PROJECT

1. AMOUNT OF PAYMENT. COUNTY shall pay CONTRACTOR not to exceed a contract total amount of TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000.00) during the term of this agreement as payment for all services set forth in Exhibit A, which includes payment in full for any reasonable out-of-pocket costs and expenses.
2. PAYMENT SCHEDULE. Monthly payments shall be made to CONTRACTOR within thirty (30) days of the last day of each month for services set forth in Exhibit A. Payment shall be made each month as documented, as payment in full for all services set forth in Exhibit A, which includes payment in full for any reasonable out-of-pocket costs and expenses. CONTRACTOR shall invoice COUNTY for services set forth in Exhibit A on a monthly basis (if work has been authorized and performed), by the 15th of each month.

