

**PLACER COUNTY  
OFFICE OF EMERGENCY SERVICES**

**MEMORANDUM**

**TO:** Honorable Board of Supervisors

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

**DATE:** October 20, 2008

**SUBJECT:** Authorize the Chairman of the Board of Supervisors to Sign a Contract with Placer County Air Pollution Control District in an Amount Not to Exceed \$89,000 to Support the Placer County Biomass Utilization Pilot Project

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**ACTION REQUESTED**

Authorize the Chairman of the Board of Supervisors to sign a contract not to exceed \$89,000 with Placer County Air Pollution Control District (PCAPCD) to support the congressionally directed Department of Energy (DOE) grant entitled "Placer County Biomass Utilization Pilot Project."

**BACKGROUND**

At the direction of your Board, staff has created a plan to investigate building a biomass to energy facility via a DOE Grant. A team of technical consultants consisting of The Placer County Air Pollution Control District (PCAPCD), TSS, Steve Eubanks, Proactive Customer Services and Advanced Energy Strategies is proposed to complete the majority of the analyses regarding this grant.

The PCAPCD has been providing valuable technical services regarding biomass utilization projects to the County for the past few years. Their staff has extensive experience in developing and analyzing these types of projects. Further, the tasks they are being contracted for are necessary for Placer County to obtain a permit. They are only agency qualified for performing this task as per the Federal Clean Air Act.

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

- Assisting the County in the air/water emissions and carbon credit/emissions offsets study
- Assisting the County for the energy economics analysis
- Supporting the tasks for the biomass to energy technical requirements statement of work and requests for proposals (RFP) process development plan
- Performing all tasking in the new source review permit analysis
- Assisting the County for the communications plan and guidebook
- Other activities as determined by County in support of the Project

**FISCAL IMPACT**

The not to exceed amount of the contract is \$89,000 and is reimbursable from the congressionally directed Department of Energy Grant entitled "Placer County Biomass Utilization Pilot Project" and is currently budgeted.

**Attachment**

PCAPCD Contract for these services

**Administering Agency: Placer County Executive Office**

**Contract No.** \_\_\_\_\_

**Contract Description: PROFESSIONAL SERVICES OF PLACER COUNTY AIR POLLUTION CONTROL DISTRICT FOR DEPARTMENT OF ENERGY (DOE) PLACER COUNTY BIOMASS UTILIZATION PILOT PROJECT**

**CONTRACTOR SERVICES AGREEMENT**

**THIS AGREEMENT** is made at Auburn, California, as of November 1, 2008, by and between the County of Placer, ("County"), and the Placer County Air Pollution Control District ("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**. Contractor shall provide said services at the time, place, and in the manner specified in **Exhibit A**.
2. **Payment.** County shall pay Contractor for services rendered pursuant to this Agreement at the time and in the amount set forth in **Exhibit B**. The payment specified in **Exhibit B** 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**. **The amount of the contract shall not exceed Eighty Nine Thousand Dollars (\$89,000).**
3. **Exhibits.** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
4. **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.
5. **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.
6. **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.

7. **Hold Harmless and Indemnification Agreement.** The Contractor and the County hereby agree to mutually protect, defend, indemnify, and hold one another 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 either party arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of County or Contractor) 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. Both parties agree to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at their own expense.
8. **Insurance.** It is recognized that CONTRACTOR is a self insured public agency, and as such provides coverage for General Liability, Errors & Omissions and Worker's Compensation. CONTRACTOR shall maintain said insurance in full force and effect during the term of this contract.

9. **Workers Compensation:**

CONSULTANT 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:

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:

- (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 canceled or materially changed without first giving thirty (30) days' prior written notice to the County of Placer."

10. **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.

11. **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.
12. **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.
13. **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.
14. **Non-Discrimination.** Contractor shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical disability, mental disability,

medical condition, marital status, sex, age, or sexual orientation in contravention of the California Fair Employment and Housing Act, Government Code section: 12900, et seq.

15. **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.
16. **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.
17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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  
2968 Richardson Dr  
Auburn, CA 95603

Phone: (530) 886-5334  
Fax: (530) 886-5343

CONTRACTOR:

PCAPCD  
Attn: Tom Christofk  
3091 County Center Dr. Suite 240  
Auburn, CA 95603

Phone: (530) 745-2321  
Fax: (530) 745-2373

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.

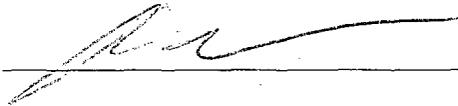
Executed as of the day first above stated:

**COUNTY OF PLACER**

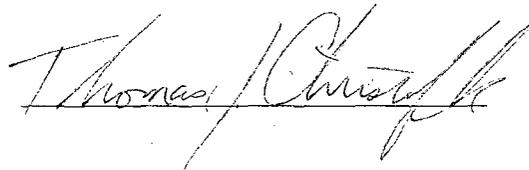
By: \_\_\_\_\_

Jim Holmes, Chairman of the Board of Supervisors

Approved As to Form – County Counsel:

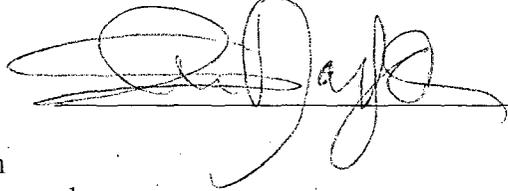
By:  \_\_\_\_\_

**PLACER COUNTY AIR POLLUTION CONTROL DISTRICT**

By:  \_\_\_\_\_

Thomas J. Christofk  
Director, Placer County Air Pollution Control District

Approved As to Form – Placer County Air Pollution Control District Counsel:

By:  \_\_\_\_\_

Christa Darlington  
Deputy County Counsel

**Exhibits**

- A. Scope of Work
- B. Payment for Services Rendered

## EXHIBIT A

### SCOPE OF SERVICES COUNTY OF PLACER AND PLACER COUNTY AIR POLLUTION CONTROL DISTRICT FOR DEPARTMENT OF ENERGY (DOE) -- PLACER COUNTY BIOMASS UTILIZATION PILOT PROJECT

As directed by the County Executive Officer, or his designee, perform the following tasks and duties, as identified below, starting November 1, 2008 and continuing until May 31, 2011.

Contractor agrees to do the following in conjunction with the Placer County Biomass Manager for DOE award # DE-FG36-08GO88026 "Placer County Biomass Utilization Pilot Project":

- 1) Assist the County with the air emissions and carbon emissions offsets study. Specifically, the Contractor will:
  - Determine criteria air pollutant and greenhouse gas emissions from the biomass to energy project.
  - Quantify air emissions that are avoided as the result of the biomass to energy project.
  - Quantify the increased rate of carbon sequestration in the treated forest as the result of the bio-energy sponsored forest biomass fuel thinning activities - to the extent possible relying on the U.S. Forest Service research efforts.
  - Determine projected criteria air and greenhouse gas emissions offset credits from the biomass to energy project, from the results of the previous tasks.
  - Assist in assessing the feasibility of establishing a local Placer County Carbon Offset Credit Trading market, with emphasis on activities including forest fuel thinning for improved forest health, and diversion of biomass to energy conversion that would have otherwise been consumed in the field.
  
- 2) Perform the new source review permit analysis. Specifically, the Contractor will:
  - Perform an engineering analysis which will include a compliance review of both the equipment (the facility and the fuel handling equipment) and emissions to any applicable federal, state, or air pollution rules, regulations, or laws. The review will include a Best Available Control Technology (BACT) analysis, the determination of required offsets, and the review of air dispersion and risk assessment modeling.
  - If the offset of emission increases of the facility are required, then emission reductions credits must be identified in sufficient quantify. The source of emission reductions must meet the criteria of being real, quantifiable, enforceable, and surplus. The Offset Study Task will provide information regarding avoided emissions as well as information to demonstrate that the criteria are met. The contractor will assist in the quantification of emission reductions to be garnered from avoided emissions based on the study information and adopted protocols and methods, and seek U.S. EPA and California Air Resources Board approval.

- 3) Assist the County with the energy economics analysis
- 4) Support the development of tasks for the biomass to energy technical requirements statement of work and requests for proposals (RFP) process development plan.
- 5) Assist the County with developing the communications plan and guidebook.
- 6) Assist with other project support activities, as negotiated and agreed upon by the Contractor and County.

**EXHIBIT B**

**PAYMENT FOR SERVICES RENDERED  
COUNTY OF PLACER  
AND  
PLACER COUNTY AIR POLLUTION CONTROL DISTRICT FOR  
DEPARTMENT OF ENERGY (DOE) - PLACER COUNTY BIOMASS UTILIZATION  
PILOT PROJECT**

1. AMOUNT OF PAYMENT. COUNTY shall pay CONTRACTOR a contract total amount not to exceed **Eighty Nine Thousand Dollars** (\$89,000) 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 ten (10) 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 15<sup>th</sup> of each month.

