



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

DATE: June 22, 2009

SUBJECT: \$248,441.00 Contract with Advanced Energy Strategies to support the Middle Fork American River Hydroelectricity Project.

ACTION REQUESTED

Authorize the Board Chairman to sign a Contract with Advanced Energy Strategies (AES) in an amount not to exceed \$248,441 to support the Middle Fork American River Hydroelectric Project.

BACKGROUND

Advanced Energy Strategies, specifically Mr. Dean R. Tibbs, Ph.D., has 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. AES has become a critical member of the Middle Fork Project (MFP) team which has been charged with developing all aspects of the new license including the creation of Power Marketing plan and a Business Plan to run the process beginning in 2013. Staff requests that AES continue to provide guidance and technical details in the following areas to support the County in coordinating with Placer County Water Agency (PCWA) for this critical re-licensing effort. Specific work tasks would include:

- Guide the County in the development of a Strategy and a Marketing and Business Plan associated with Middle Fork American River Hydroelectric Project
- Assist the County with Relicensing Efforts
- Assist with developing analytic tools associated with the MPF relicensing, including hydro-electric modeling, cost-benefit and economic modeling and analyses
- Assist the County in Regulatory outreach as requested
- Other activities as determined by the County

FISCAL IMPACT

If approved, the contract amount, not to exceed \$248,441.00, is reimbursable from the Middle Fork Project Financing Authority and is currently budgeted.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Agency Director

Attached to this report for the Board's information/consideration are:

ATTACHMENTS:

Exhibit 1: Contract and Scope of Services - Advanced Energy Strategies

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 MIDDLE FORK AMERICAN RIVER HYDROELECTRIC PROJECT
EFFECTIVE DATE: July 1, 2010

THIS AGREEMENT is made at Auburn, California, effective as of July 1, 2010, by and between the County of Placer, ("County"), and Advanced Energy Strategies, Inc., ("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 \$248,441 during the Term of this Agreement. Payment shall be made in accordance with the personnel rates and reimbursable charges specified in Exhibit B, attached hereto and incorporated herein by reference. Consultant shall bill County not more often than monthly for the work performed pursuant to this Agreement. Billing submitted by the Consultant shall be itemized by work activity as defined in the Scope of Services and by personnel charged at rates as specified in Exhibit B. County shall review and pay approved charges within thirty (30) days of receipt of the invoice.
3. **Facilities, Equipment and Other Materials, and Obligations of County.** Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.
4. **Prior Agreement Superseded.** This Agreement shall be effective as of July 1, 2010. 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 July 1, 2010, and run through June 30, 2011. The County may extend this Agreement for an additional term of up to twelve (12) months upon providing Consultant written notice no later than May 31, 2011. Any such notice shall specify the length of the extension of the Term.
6. **Independent Consultant.** At all times during the term of this Agreement, Consultant shall be an independent Consultant and shall not be an employee of the County. All persons performing services for CONSULTANT shall be solely employees of CONSULTANT and not employees of COUNTY. CONSULTANT shall be solely responsible for the salaries and other benefits, including Workers' Compensation, of all such personnel.
7. **Licenses, Permits, Etc.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.
8. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant

to the Scope of Services specified in Exhibit A. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

9. **Hold Harmless and Indemnification Agreement**

The CONSULTANT hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CONSULTANT agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONSULTANT. CONSULTANT also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONSULTANT or the COUNTY or to enlarge in any way the CONSULTANT'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONSULTANT'S performance pursuant to this contract or agreement.

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

INSURANCE:

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

WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

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

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

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

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

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

GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONSULTANT, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Contractual liability insuring the obligations assumed by CONSULTANT in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONSULTANT carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

D. If CONSULTANT carries a Commercial General Liability (Occurrence) policy:

- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) for Products-Completed Operations
 - Two million dollars (\$2,000,000) 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
 - Two million dollars (\$2,000,000) 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. **Indemnity.** Consultant hereby agrees to protect, defend, indemnify, and hold the County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement. Consultant agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Consultant. Consultant also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Consultant or the County or to enlarge, in any way, the Consultant's liability but is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from Consultant's performance pursuant to this contract or agreement.

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

- 11. **Consultant Not Agent.** Except as County may specify in writing Consultant shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied pursuant to this Agreement to bind County to any obligation whatsoever.

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

rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

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

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

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: Kirk Uhler, 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

By: _____

Name: Juanita A. Tibbs,

Title: Corporate Secretary

**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 THE
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 development of Strategy and a Marketing and Business Plan associated with Middle Fork American River Hydroelectric Project
 - i. Provide assessment for strategic positions regarding the Project
 - ii. Give guidance in marketing the MFP in order to choose an MFP energy partner
 - iii. Assist in establishing the new relationship with the chosen MFP partner
- Assist County with relicensing efforts for the Middle Fork American River Hydroelectric Project
 - i. Provide analysis of stakeholder assessments and identify strategies to confirm county positions
 - ii. Attend meetings associated with the relicensing process as needed
 - iii. Provide assistance to county management regarding relicensing process, progress and positions, and support for required decisions as requested
- 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. Assist with developing analytical tools associated with the MFP relicensing, including hydro-electric modeling, cost-benefit and economic modeling and analyses to support the marketing and business plan and relicensing efforts. Attend various meetings to accomplish the above as necessary.

- Other activities as determined by County
- c. AES Activities to perform work scope
- These tasks outlined in this Work Scope will be accomplished through various activities, including:
 - i. Attending internal meetings with County and PCWA staff as part of various project teams to develop positions, strategies, and implementation actions on a requested basis.
 - ii. Attending external meetings with various stakeholders, interested parties, and other groups in support of the various work tasks and objectives on a requested basis.
 - iii. Attending meetings with County and MFP management to keep them informed as to the progress and decisions that will be necessary as part of this process on a requested basis.
 - iv. Developing and using AES financial models in support of the tasks defined in this Scope of Services, including integrating its models with hydroelectric and other models created by other consultants to the MFP relicensing process.
 - v. Other AES in-house efforts, including drafting and reviewing various documents, researching policy and business issues, developing strategies in support of team objectives, and other forms of internal effort on a requested basis.
- d. AES Reporting
- AES will provide a monthly report with each billing invoice explaining AES activities for that month.

EXHIBIT B

PAYMENT RATES

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

Dick Maclay: \$192.40 per hour

AES Analyst: \$145.60 per hour

AES Jr. Analyst: \$ 112.50 per hour

