



**COUNTY OF PLACER**  
**Community Development/Resource Agency**

**PLANNING SERVICES**  
**DIVISION**

Michael J. Johnson, AICP  
Agency Director

Paul Thompson, Deputy Director

**MEMORANDUM**

**TO:** Honorable Board of Supervisors

**FROM:** Michael J. Johnson, CD/RA Director 

**DATE:** June 21, 2011

**SUBJECT:** \$196,680 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 \$196,680 to support the Middle Fork American River Hydroelectric Project.

**BACKGROUND**

Advanced Energy Strategies (AES), 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. Mr. Tibbs 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 by the Middle Fork Finance Authority and County Executive Office with developing all aspects of the new license including the creation of a Power Marketing plan and a Business Plan to run the Power Scheduling and Power Sales 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:

- Guide the County in the development of a Strategy and a Marketing and Business Plan associated with the Middle Fork American River Hydroelectric Project
- Assist the County with the development of the Terms and Conditions of the Power Sales process
- 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 Relicensing efforts and Regulatory outreach as requested
- 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 exception to competition in accordance with the County Purchasing Policy 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 your Board, the contract with Advanced Energy Strategies, not to exceed \$196,680, is available through the County Executive Office's budget appropriation for "Community & Agency Support" and is reimbursed by the Middle Fork Financing Authority through monthly invoicing.

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

**ATTACHMENTS:**

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

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

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**  
**EFFECTIVE DATE: July 1, 2011**

**THIS AGREEMENT** is made at Auburn, California, effective as of July 1, 2011, 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 \$196,680.00 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, 2011. As of that date, this Agreement shall replace and supersede for all purposes Contract No. 12767 between County and Consultant, which shall be terminated effective as of June 30, 2011.
5. **Term.** This Agreement shall commence on July 1, 2011, and run through June 30, 2012. The County may extend this Agreement for an additional term of up to twelve (12) months upon providing Consultant written notice no later than May 31, 2012. Any such notice shall specify the length of the extension of the Term.
6. **Independent Consultant.** At all times during the term of this Agreement, Consultant shall be an independent Consultant and shall not be an employee of the County. All persons performing services for CONSULTANT shall be solely employees of CONSULTANT and not employees of COUNTY. CONSULTANT shall be solely responsible for the salaries and other benefits, including Workers' Compensation, of all such personnel.
7. **Licenses, Permits, Etc.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

8. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to the Scope of Services specified in Exhibit A. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

9. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

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

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

**INSURANCE:**

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

**WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

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

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

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

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

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

GENERAL LIABILITY INSURANCE:

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONSULTANT, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
- (1) Contractual liability insuring the obligations assumed by CONSULTANT in this Agreement.
- B. One of the following forms is required:
- (1) Comprehensive General Liability;
  - (2) Commercial General Liability (Occurrence); or
  - (3) Commercial General Liability (Claims Made).
- C. If CONSULTANT carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
- One million dollars (\$1,000,000) each occurrence
  - Two 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
    - Two million dollars (\$1,000,000) General Aggregate
  - (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).
- E. Special Claims Made Policy Form Provisions:
- CONSULTANT shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:
- (1) The limits of liability shall not be less than:
    - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
    - One million dollars (\$1,000,000) aggregate for Products Completed Operations
  - (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: Robert Weygandt, 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 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

- Assist County in developing and supporting new power marketing partnership
  - i. Work with PCWA to develop and implement power marketing arrangements that support the County's participation in the MFP
  - ii. As requested, assist with developing analytical tools and concepts associated with the MFP power marketing relationship, including strategic and cost-benefit and economic and analysis. Attend various meetings to accomplish the above as necessary.
  - iii. Assist in establishing the new relationship with the chosen MFP partner
- Assist the County in developing a Strategy and a Marketing and Business Plan associated with Middle Fork American River Hydroelectric Project
  - i. Continue to provide assessment for strategic positions regarding the County's participation in the Project
  - ii. Give guidance in marketing the MFP in order to choose an MFP energy partner
  - iii. Assist in developing management tools to implement the power marketing business plan.
- Assist County with relicensing efforts for the Middle Fork American River Hydroelectric Project
  - i. Provide assistance to county management regarding relicensing process, progress and positions, and support for required decisions as requested
  - ii. Attend meetings associated with the relicensing process as needed
- Other activities as determined by County

**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