

MEMORANDUM
OFFICE OF THE
BOARD OF SUPERVISORS
COUNTY OF PLACER

TO: Honorable Board of Supervisors
FROM: John McEldowney, Program Manager, Office of Emergency Services
DATE: December 10, 2013
SUBJECT: FY 2013-14 Placer County Fire Mitigation Services Agreement

ACTION REQUESTED

Authorize the County Executive Officer to sign a renewal agreement not to exceed \$56,000 between Alphonse G. Alves, Principle of Proactive Customer Services, and Placer County for fire mitigation services and to oversee updates and implementation of the Wildfire Prevention Plan services designated in the Biomass Strategic Plan.

BACKGROUND

On May 21, 2013, the Board of Supervisors approved funding from the emergency Economic Stabilization Act of 2008, Title III discretionary funds to include \$51,000 for Fire Mitigation Program Services oversight. Those services include, but are not limited to leading the Fire Safe Councils and Fire Safe Alliance activities, grant writing, attending project team meetings, supporting the Defensible Space Inspection Program and Chipper Program, supporting Project Canyon Safe in Auburn and making recommendations for future projects to the Project Management Team. In addition, \$5,000 was approved for use from the Secure Rural Schools & Community Self Determination Act of 2000 Title III to be used to update the Biomass Strategic Plan.

Each year beginning in 2007, the Board of Supervisors has supported expert consultant services for fire mitigation services and a biomass program to be proactive in lowering the probability of catastrophic wildfires in the county. The current agreement represents an increase from \$40,000 to \$56,000 to reflect the expanded scope of services as defined in Exhibit A, sections 1 (f-h), 2 (e-i) and 3 (e).

FISCAL IMPACT

There is no additional net county cost to the General Fund as a result of these actions. Funding for Fire Mitigation Services is included in the FY 2013-14 Budget.

ATTACHMENT

FY 2013-2014 Fire Mitigation Services Agreement including Exhibit A, Scope of Services and Exhibit B, Payment for Services Rendered.

Administering Agency: Placer County Executive Office

Contract No.

Contract Description: PROFESSIONAL SERVICES OF PROACTIVE CUSTOMER SERVICES FOR FIRE MITIGATION SERVICES

CONTRACTOR SERVICES AGREEMENT FY 2013-14

THIS AGREEMENT is made at Auburn, California, as of November 1, 2013 by and between the County of Placer, ("County"), and Proactive Customer Services. ("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 "Scope of Services."
2. **Payment.** The County shall pay Contractor for services rendered pursuant to this Agreement up to a maximum of \$56,000 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. **Hold Harmless And Indemnification Agreement.** The Contractor 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. 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 Placer 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 Placer County means Placer County or its officers, agents, employees, and volunteers.

10. **Insurance.** Contractor 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.

11. **Worker's Compensation:**

Contractor represents that it has no employees and, therefore, is not required to have Workers Compensation coverage.

Contractor agrees that it has no rights, entitlements or claim against County for any type of employment benefits or workers' compensation or other programs afforded to County employees.

12. **General Liability Insurance:**

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Contractor, 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 Contractor 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 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:

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

D. If Contractor 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:

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
- Two million dollars (\$2,000,000) General Aggregate

(2) The insurance coverage provided by Contractor shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims

Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

13. **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 Contractor, 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."

14. **Automobile Liability Insurance.** Contractor will carry 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.

15. **Additional Insurance Requirements.**

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

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

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

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

copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

16. **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.
17. **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.
18. **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.
19. **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.
20. **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, 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 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.
21. **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.*
 22. **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.
 23. **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.

24. **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.
25. **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.
26. **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.
27. **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.
28. **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.
29. **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
Office of Emergency Services
Attn: John McEldowney
2968 Richardson Drive
Auburn, CA 95603

Phone (530) 886-5306
Fax: (530) 886-5343

CONTRACTOR:

Proactive Customer Services
Attn: George Alves
630 Fowler Road
Newcastle, CA 95658

Phone: (916) 645-9234
Fax: (196) 785-9339

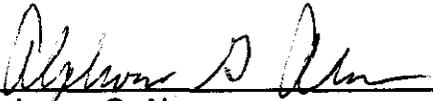
Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

Executed as of the day first above stated:

COUNTY OF PLACER

By: _____
David Boesch
County Executive Officer

PROACTIVE CUSTOMER SERVICES *



Alphonso G. Alves,
Principle Owner

Approved As to Form:

Mark Rathe
Deputy County Counsel

**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 **PROACTIVE CUSTOMER SERVICES FOR FIRE MITIGATION COORDINATOR SERVICES**

As directed by the County Executive Officer, or his designee, perform the following tasks and duties, November 1, 2013 through October 31, 2014, as identified below:

Proactive Customer Services remuneration is set at \$67.00 per hour.

Contractor agrees to do the following:

1. Fire Safe Council Activities:
 - a) Recommend to Project Management Team (PM Team) responsible appointees to all Fire Safe Councils (FSC). Coordinate with the office of the Clerk of the Board to have PM Team-approved appointees formally appointed by the Board of Supervisors.
 - b) Continue facilitation of on-going start up of the Rural Lincoln Fire Safe Council (RLFSC) and coordination with the offices of the District 2 Supervisor and the Clerk of the Board to define the RLFSC membership and appointments.
 - c) Monitor the status of FSC members and coordinate replacements, as required.
 - d) Attend FSC meetings, as needed, to collect input for inclusion in County resourcing decisions and to represent County priorities to the FSC.
 - e) Monitor FSC progress in achieving community wildfire protection priorities and make resourcing recommendations to the PM Team based on risk and the community's ability to accomplish needed work.
 - f) Assist each FSC with the development and implementation of new plans to achieve the completion of projects outlined in the new 2012 Community Wildfire Protection Plan.
 - g) Assist with the development and sourcing of education documentation and materials.
 - h) Facilitate the actions of the new Placer County Grant Writer / Firewise Coordinator.

2. Fire Safe Alliance Activities:
 - a) Schedule, develop agendas for and chair all Fire Safe Alliance (FSA) meetings. Coordinate with the Resource Conservation District (RCD) for administrative support to include advertising FSA meetings, and taking/ distributing minutes.
 - b) Expand the FSA membership to include allied agencies as needed and appropriate to the FSA mission.
 - c) Provide the PM Team with feedback from the FSA with special emphasis on project priorities and resourcing recommendations.
 - d) Assist members of the FSA and public partners in identifying fire fuels reduction grant opportunities that focus on getting work done on the ground.
 - e) Develop a five year Strategic Plan (Alliance Strategy and Action Plan) for the Fire Alliance to achieve the goals and objectives outlined in the new Placer County Wildfire Protection and Biomass Strategic Plan.
 - f) Develop individual strategies, projects and timelines for the fire protection requirements in the Plan

- g) Establish and facilitate the actions of workgroup and subcommittees to achieve the Alliance strategies and plans.
 - h) Develop a process to monitor work being done on projects in the Placer County Strategic Plan, CWPP, and LHMP to ensure continuity and consistency of fire prevention projects and programs in these plans.
 - i) Facilitate yearly public outreach events. Coordinate Alliance member activities and community events such as community, County and State Fairs, and seasonal Home Shows.
3. Secure Rural Schools Projects:
- a) Coordinate between the Placer County Office of the CEO, USFS, CAL FIRE and other agencies as designated by the PM Team to accomplish Board of Supervisors approved projects. Projects include but are not limited to coordinating support for Project Canyon Safe in Auburn, funding a grant writer and a Firewise Communities coordinator, and supporting other, previously approved projects such as the defensible space inspection program, and the Chipper Program.
 - b) Make recommendations on future projects and prepare project write-ups in coordination with the PM Team.
 - c) Planning Projects: Monitor implementation of the 2012 Western Slope CWPP which updated the previous version and includes the rural Lincoln area.
 - d) Project Team Meetings: Attend PM Team meetings as required and provide a monthly activities report.
 - e) Assist with the development of County fire prevention strategies and program requirements in the upcoming Placer County Local Hazard Mitigation Plan update.

EXHIBIT B

**PAYMENT FOR SERVICES RENDERED
COUNTY OF PLACER
AND
PROACTIVE CUSTOMER SERVICES FOR
FIRE MITIGATION COORDINATOR SERVICES**

1. **AMOUNT OF PAYMENT:** COUNTY shall pay CONTRACTOR not to exceed a contract total amount of FIFTY SIX THOUSAND DOLLARS (\$56,000) 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 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 day of each month.