

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT
MEMORANDUM
06/06/2022

TO: FRAQMD BOARD OF DIRECTORS

FROM: Christopher Brown AICP, APCO

SUBJECT: Authorize the APCO to enter into a one-year Professional Services agreement with Creating Answers to provide Bookkeeping, Controllership and CFO level support to the District not to exceed \$70,000.

RECOMMENDATION:

Authorize the APCO to enter into a one-year Professional Services agreement with Creating Answers to provide Bookkeeping, controllership and CFO level support to the District not to exceed \$70,000.

BACKGROUND:

Since 2019, the District has been in an agreement with Creating Answers to Provide bookkeeping, controllership, and CFO level support. In Phase 1, Creating Answers worked with the District to evaluate, develop, and implement in the areas of accounting and reporting technology, workflow, and policies/procedures. This includes converting the accounting system from a single-entry system to a double entry system. In Phase 2, Creating Answers shifted to testing and refining the newly established procedures as well as prepared for the Administrative Services Officer position transition.

For FY 22/23, Creating Answers will continue to work with staff on various financial/accounting tasks as well as continued work on the FY 20/21 and FY 21/22 Audits.

FISCAL IMPACT:

The District has included this item in the FY 22/23 proposed budget which is for consideration at this meeting

LIST OF ATTACHMENTS:

Attachment 1: Proposed Contract with Creating Answers

CONTRACTED SERVICES AGREEMENT

Administering Agency: Feather River Air Quality Management District

Contract No. 2022-01

Contract Description: PROFESSIONAL SERVICES CONTRACT TO PROVIDE BOOKKEEPING, CONTROLLERSHIP AND CFO LEVEL SUPPORT TO THE AIR POLLUTION CONTROL DISTRICT

THIS AGREEMENT is made at Yuba City, California, by and between the Feather River Air Quality Management District, ("District"), and Creating Answers ("Consultant"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in, **Exhibit A**. Consultant shall provide said services at the time, place, and in the manner specified in **Exhibit A**.
2. **Payment.** District shall pay Consultant 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 Consultant for services rendered pursuant to this Agreement. Consultant shall submit all billings for said services to District in the manner specified therein, or, if no manner is specified, then according to the usual and customary procedures which Consultant uses for billing clients similar to District. **The amount of the contract shall not exceed Seventy thousand dollars (\$70,000).**
3. **Expiration** This contract expires on June 30, 2023. No services performed after that date are eligible for reimbursement.
4. **Facilities, Equipment and Other Materials, and Obligations of District.** Unless otherwise specified, 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.
5. **Exhibits.** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
6. **Time for Performance.** Time is of the essence. Failure of Consultant to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.
7. **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 District. District shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement. District shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

8. **Licenses, Permits, Etc.** Consultant represents and warrants to District 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 District 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.
9. **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 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.
10. **Hold Harmless and Indemnification Agreement.** At all times during the performance of this agreement, Consultant agrees to protect, defend, and indemnify District in accordance with the provisions contained in **Exhibit C**.
11. **Insurance.** Consultant shall file with District concurrently herewith a Certificate of Insurance, in companies acceptable to District, for the coverage shown in Exhibit C. All costs of complying with these insurance requirements shall be included in Consultant's fee(s). These costs shall not be considered a "reimbursable" expense under any circumstances.
12. **Consultant Not Agent.** Except as District may specify in writing Consultant shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied pursuant to this Agreement to Bind District to any obligation whatsoever.
13. **Assignment Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of District, said approval to be in the sole discretion of District.
14. **Personnel.**
 - A. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, 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 District of the desire of District 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 subcontractors named in the Project Team by Consultant without the prior written consent of District shall be grounds for cancellation of the agreement by District,

and payment shall be made pursuant to Section 16 (Termination) of this Agreement only for that work performed by Project Team members.

15. **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 District 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.

16. **Termination.**
 - A. District shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Consultant. In the event District shall give notice of termination, Consultant shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event District 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, photocopies, 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) District shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.
 - 3) District 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 District 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, District 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 District such financial information as in the judgment of the District 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 District may have in law or equity.
 - B. Consultant may terminate its services under this Agreement upon thirty (30) working days advance written notice to the District.

17. **Non-Discrimination.** Consultant 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.

18. **Records.** Consultant shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to District, and District 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 District is satisfied that work of such value has been rendered pursuant to this agreement. However, District 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 District, and Consultant agrees to deliver reproducible copies of such documents to District on completion of the services hereunder. The District 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 District, nor any business entity in which an official of the District 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 District.
21. **Entirety of Agreement.** This Agreement contains the entire agreement of District 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.
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 16, 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 District of Sutter, 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 including requests for payment, shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

District:
Christopher D. Brown AICP
Feather River AQMD
541 Washington Avenue
Yuba City, CA 95991

Consultant:
Creating Answers
Attn: Shawna Fitzgerald, CEO
1040 Lincoln Rd., Ste. A131
Yuba City, CA 95991

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.

This agreement is effective on the date signed by both parties.

APPROVED FOR LEGAL FORM:

By: _____ Date: _____
Sutter County Counsel

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

By: _____ Date: _____
Christopher D. Brown AICP
Feather River Air Quality Management District

CONSULTANT

By: _____ Date: _____
Shawna Fitzgerald, CEO
Creating Answers

Exhibits

- A. Scope of Work
- B. Payment for Services Rendered
- C. Hold Harmless Agreement and Insurance Requirements

EXHIBIT A

**FRAQMD
22/23 Contract Scope
July 01, 2022 - June 30, 2023**

Task	Partner Hrs	Senior Acct Hrs	Amount of Hrs/Year	Annual Charge	Notes
Annual Budget Creation/Entry	7	1	8	1,570	Work with staff and committee to create and finalize the annual budget. Entry to QuickBooks.
Audit and Tax Support	40	16	56	10,000	Preliminary audit preparations; Onsite fieldwork; Process management.
Communications	4	2	6	1,040	
Grant/Bureaucratic Reporting	20	0	20	4,200	SCO reporting support/review; Monitor and improve financial grant tracking within QuickBooks.
High Level Analysis/Forecasting	35	5	40	7,850	Permitting plan cost analysis; Fully burdened rate analysis.
Meetings, Preparations, and Follow-up	65	0	65	13,650	Monthly accounting review; Financial statement preparations; Finance meetings; Board meeting presentations (up to 3).
Monthly Bookkeeping		36		3,600	Monthly account reconciliations
System Improvement/P&P Evaluation and Creation	80	20	100	18,800	Accounting procedures creation; Accounting staff role development and staff training; System improvement; Evaluate County usage process and potential to shift; Reporting process improvement.
				331	\$60,710

EXHIBIT B

PAYMENT FOR SERVICES RENDERED

Maximum Limit & Fee Schedule

Consultant's compensation shall be paid at the schedule shown below. Reimbursement of travel, lodging and miscellaneous expenses is not allowed unless authorized in advance by the APCO. All expenses of Consultant, including any expert or professional assistance retained by Consultant to complete the work performed under this contract shall be borne by the Consultant.

Total of all payments made under this agreement shall not exceed the amount shown in Section 2 of this contract.

Invoices

Invoices shall be submitted to District in a form and with sufficient detail as required by District, including this contract. Work performed by Consultant will be subject to final acceptance by the District project manager(s).

Payment Schedule

Maximum Hourly Payment Rate

\$210.00

Maximum sum payable under this contract: Forty-two thousand one hundred forty dollars (\$60,710)

Payments shall be made to Consultant within fifteen (15) days after the billing is received and approved by District unless otherwise specified. Invoices paid past thirty (30) days are subject to a 2% finance charge.

EXHIBIT C

HOLD HARMLESS AGREEMENT AND INSURANCE REQUIREMENTS

The Consultant hereby agrees to protect, defend, indemnify, and hold District 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 District arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of District) 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 District or to enlarge in any way the Consultant's liability but is intended solely to provide for indemnification of District 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 District means District or its officers, agents, employees, and volunteers.

1. Insurance Requirements

Consultant shall file with the District, concurrently herewith, Certificates of Insurance, in companies acceptable to District, with a Best's rating of no less than A: VII.

Each policy shall be endorsed with the following specific language: **Cancellation Notice: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the District Air Pollution Control District."**

Workers Compensation and Employers Liability Insurance

If Consultant represents that they have no employees, and does not hire Sub-Consultants with employees, then they are not required to have Workers Compensation coverage.

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.

Consultant shall require all Sub-Consultants to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed with District 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 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 Operation
 - 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 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 District, which consent, if given, shall be subject to the following conditions:

- a. The limits of liability shall not be less than:
 - (a) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

- (b) One million dollars (\$1,000,000) aggregate for Products Completed Operations
- (c) One million dollars (\$1,000,000) General Aggregate
- (d) 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:

- b. Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:
 - (a) "The District, 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 District with respect to any insurance or self-insurance programs maintained by the District and no insurance held or owned by the District 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 District."