

CALIFORNIA ASSOCIATION OF RESOURCE CONSERVATION DISTRICTS

Fee-For-Service Resource Packet for RCD's

Contract, Board Policy and Guide

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RESOURCE

CONSERVATION DISTRICT

Board of Directors Policy: Fee-For-Service/Business Development (TEMPLATE)

Effective:

The following is the accepted policy of the Resource Conservation District. It is the policy of the board of directors to revise this statement by changes, additions, or deletions at any time it is felt necessary, so long as it is decided by vote in a regular meeting of the board.

Purpose

The purpose of this policy is to provide rules and guidance for the RCD in the area of business development, specifically related to Fee-For-Service (FFS) type work. It is a stated goal of the RCD to diversify funding sources by securing contract work with public and private partners. This policy will support that goal by outlining what type of work will be provided and what limitations exist.

Identification of Services

This section identifies the type of services provided by the RCD that are available as FFS. The list calls out specific services that represent the full breadth of what the RCD is historically possible of providing. Actual ability to provide services will depend on staff qualifications and availability.

1. Habitat Restoration Project Management and Design
2. Landowner Outreach
3. Construction Monitoring
4. Irrigation Efficiency Certification
5. Volunteer Coordination
6. Fish Surveys
7. Invasive Species Control
8. Etc.

Project Solicitation and Bidding Process

While a robust FFS program is desirable to the RCD, the District must prioritize the type of projects it seeks and identify a procedure for bidding on and securing contracts. All FFS work must support the mission of the RCD and generally support resource conservation in our local community. With this understanding, we identify the following project types as high priority for the RCD to solicit and complete. The high priority work is:

1. Direct contracts with private landowners
2. Outreach work that connects landowners and local or state government agencies
3. On-the-ground projects that directly benefit local resources

With these priority project types identified, it is the role of the RCD Leadership to seek out and solicit opportunities for the RCD to conduct FFS work. Identifying opportunities and building relationships with possible clients is a long and time-consuming endeavor that needs to be part of the RCD work plan on a

regular basis. Specific tasks should be assigned to both staff and directors, with the roles defined as follows:

- **Staff role:** Whenever possible, the identification and solicitation of possible FFS opportunities should be included in the job description of the DM/ED. This requires the availability of unrestricted funding to pay for time spent exploring opportunities and building relationships. Annual adjustments to the DM's performance goals will be required to ensure FFS solicitation goals are in line with funding and other programmatic priorities. Regardless of this situation, no more than 10% of the Manager's time will be spent directly on FFS project solicitation.
- **Directors' role:** RCD Directors will be asked to identify possible FFS opportunities as part of their duties to help govern and support the District. Directors can represent the RCD at relevant meetings and provide networking for the RCD in the local community as ways to provide FFS opportunities to the RCD. Directors need to be aware of any possible conflict of interest with their participation in RCD business and should consult the Board's Conflict of Interest Policy for clarification.

Bidding Policy: Most bidding requirements will depend on the specifications of the potential project. However, The RCD will only bid on a potential project if the following conditions are met:

1. **Supports the Mission:** FFS projects bid on by the RCD must support the mission statement and provide measurable conservation benefits in the local community.
2. **Adequate Staff Resources:** The RCD will only bid on projects that it has the ability to complete with current staff levels and expertise. The RCD will not hire additional full-time staff for FFS work after a contract is signed.
3. **Operations:** The RCD will only bid on projects that it currently has the technical capability to complete. Major equipment purchases or infrastructure improvements will not be made for the sole purpose of completing FFS projects or built into FFS contract budgets.
4. **Other Considerations:** The RCD will not bid on any project without addressing the concerns of staff or Directors, provided they are made in a timely and respectful manner.

Anti-Competition Policy and Program Limitations

Conducting FFS work introduces the RCD into the world of business and has the potential to put the District into direct competition with local firms. The RCD does not seek to compete directly with any private firm and therefore will not solicit projects without an invitation to do so. Additionally, The RCD will not conduct certain services that are already provided by multiple firms in the area. These services include, but are not limited to:

1. Water Quality testing
2. Crop Advising
3. Pest Control Advising
4. Landscape Design
5. Mitigation Work

FEE-FOR-SERVICE AGREEMENT BETWEEN
(TEMPLATE)

**The Resource Conservation District
and
Landowner/entity name here**

The Resource Conservation District, hereinafter referred to as RCD, hereby enters into a fee for service agreement with the landowner/entity name here, hereinafter referred to as _____ to provide outreach services for the _____ Project.

TERMS AND CONDITIONS

1. **Effective date and duration:** This contract shall be in effect upon the signing of both parties and shall be in effect until end date of agreement.
2. **Right of Termination:** Either party shall have the right to terminate this contract for any reason upon 15 day written notice to the other.
3. **Description of work, budget, and time line:** Per Appendix A entitled, "SCOPE OF WORK AND BUDGET AND TIME LINE".
4. **Costs:** Not to exceed _____ without written authorization from landowner/entity. Fees, printing, postage and other related expenses will be billed as occurred, and the RCD will provide copies of receipts for these items with their invoices. The mileage reimbursement rate is \$.56 per mile (or current rate allowable by the Internal Revenue Service).
5. **Status of RCD:** All services shall be performed as an independent contractor.
6. **Indemnification:** RCD hereby agrees to indemnify and hold harmless landowner name, its officers, agents and employees from and against any and all claims, demands, injuries, losses, expenses (including attorney's fees), damages and liability of every and any nature arising from or in any way relating to: any breach of the terms of the Agreement by RCD or anyone performing any part of the RCD's services; and, any actual or alleged act or omission of RCD or anyone performing any part of the RCD's services except to the extent such an act or omission results from sole negligence or willful misconduct of landowner name.
7. **Insurance:** Before commencing any services hereunder on property location, RCD shall submit to landowner/entity name a certificate of insurance evidencing insurance of the types and minimum amounts specified below, which insurance shall be procured and maintained at the RCD's expense. Such certificates shall certify that the following minimum coverage's shall be in effect:

- a. Worker's Compensation and Employer's Liability Insurance in amount not less than the minimum coverage's required by law.
 - b. Comprehensive General Liability Insurance
 - Bodily Injury Limits: \$500,000.00/\$500,000.00
 - Property Damage Limits: \$1,000,000.00/\$1,000,000.00
8. **Applicable Law and Forum**: This Contract shall be construed and interpreted according to California law.
9. **Nondiscrimination**: RCD shall comply with all applicable federal, state, and local laws, rules and regulations in regard to non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability or national origin.
10. **Merger**: This writing is intended both as a final expression of the Contract between the parties hereto with respect to included terms and as a complete and exclusive statement of the terms of the Contract, pursuant to Code of Civil Procedure 1956. No modification of this Contract shall be effective unless and until modification is evidenced by a writing signed by both parties.
11. **Assignment and Delegation**: Neither party hereto shall assign, sublet or transfer any interest in or duty under this Contract without consent of the other, nor no assignment shall be of any force or affect whatsoever unless and until the other party shall have so consented.
12. **Invoices**: RCD will invoice landowner/entity at the beginning of each month. All invoices will include details of work accomplished. The landowner/entity will reimburse RCD within fifteen (15) days of receipt of invoice.

For **THE RESOURCE CONSERVATION DISTRICT**

RCD Representative, Title
For **Business Name/Entity**

Date

Landowner name, Title

SCOPE OF WORK

The landowner/entity is contracting with The Resource Conservation District for services to provide _____ . Work will include:

SCOPE of WORK

BUDGET

TIMELINE

Work shall begin beginning date and continue through ending date.

Contract and Board Policy Template User's Guide

Purpose: The purpose of this guide is to provide direction and additional resources for RCD leadership in the area of Fee-For-Service (FFS) work and Business Development. Specifically, this document will guide the user through the contract and board policy development process using the two attached templates. These templates are designed to be straight-forward examples of the actual, legal documentation needed by RCDs who pursue FFS projects. These “plug and play” templates can be easily modified by any District to fit their own needs.

RCD Fee-For-Service Contract

The attached FFS agreement/contract was developed by the Sonoma RCD. This document is used to enter into agreement to do FFS work and is a suitable basis for any RCD to follow. The template has been edited so that the user need only to enter their RCD name and that of the client/project at the appropriate places. All aspects of the template can and should be updated by the user to ensure the document meets their specific needs. The following sections will provide ideas and examples of what to consider when filling out the FFS agreement template.

Title and Introduction: This section clearly identifies the name of your RCD and that of your client. It describes what the agreement is for in general terms (FFS) and names the project or property the work will take place on.

Terms and Conditions: The following sections will further define the responsibilities of both parties and the limitations of liability assumed by each. Again, careful consideration should be given to each section in order to ensure the terms and conditions are acceptable to your RCD.

- 1. Effective Date and Duration:** Enter the start and end date for the entire project timeline. Be sure to include time for all tasks you expect payment for. Start date can be set or on day agreement is signed by both parties.
- 2. Right of Termination:** Explain what terms are acceptable for either party to terminate the contract conditions. Set a timeline for notification and exactly what issues are eligible for termination. * The template does not define specific terms for termination*
- 3. Description of Work, Budget and Timeline:** The contents of this section will typically be provided as an attachment or appendix due to the amount of information. The Scope of Work and Budget should be constructed so that all billable tasks are identified and all costs linked to project deliverables. Budget numbers should be based on pre-determined billable rates for staff

and equipment, IRS approved mileage and industry standards for administration/overhead. The project timeline must include all items the RCD expects to bill the client for.

4. **Costs:** Set a maximum amount for the agreement, but leave an option to adjust amount up, in agreement with client, during project implementation. Identify costs to be passed directly on to customer, RCD billable rates, mileage rate and equipment rates as desired.
5. **Status of RCD:** The RCD can state its role and status in the project. Most likely the role will be identified as contractor or subcontractor, but each RCD should take care to correctly identify their status. Further clarification on this subject is available [HERE](#).
6. **Indemnification:** The indemnification section protects each party from the negative consequences of a breach of contract by the other party. This section should identify what liabilities the client is protected from, given a breach of terms by the RCD. Likewise, the section should identify what liabilities the RCD is protected from given a failure on the client's part to complete the contract. This section is highly important and should be reviewed by your District leadership and legal counsel, if possible. Further information on contract language is available [HERE](#).
7. **Insurance:** The insurance section outlines the RCD's responsibility to show proof of insurance at specified coverage amounts. The coverage categories and amounts should be identified, as well as the client, project name and location. Proof of insurance from the RCD's insurance must be provided to the client and should be included with contract documentation. For further information on insurance contact your carrier or click [HERE](#).
8. **Applicable Law and Forum:** This section sets the governing body and set of laws that will apply to the contract. This will always be the State of California???.
9. **Nondiscrimination:** The RCD must state its nondiscrimination policy. Depending on the client, certain additional considerations may need to be made regarding access, discrimination and working conditions. The RCD should ask the client to make clear all policies and requirements for contractors.
10. **Merger:** This section should include language regarding the finality of the contract terms and conditions and can include the applicable State Code. Provide the specific requirements necessary for altering the terms of the contract.
11. **Assignment and Delegation:** Spell out the terms necessary for either party to transfer or delegate responsibilities under the contract to another entity. You may choose to disallow this altogether.
12. **Invoices:** This final section outlines the accounting steps both parties should take for prompt submission and payment of invoices. This section can include the invoice schedule for the RCD, repayment timeline for the client and allowable exceptions to the policy.

EXAMPLE: The FFS Contract Template contains specific language that is available for use by any RCD.

Appendices: A separate Scope of Work and timeline document will typically be attached to the agreement as an appendix. This document will outline the project deliverables and timeframe for completion. The goal for the RCD should be to have a Scope of Work that provides a solid project

outline to measure success against, but that also allows adequate flexibility for the District to get the job done as it sees fit.

RCDs are encouraged to add additional terms and modify the format of the template as needed to best suit their project. Careful review of all the terms of the template document should be done by any RCD looking to use the tool for real-world purposes.

Fee-For-Service Board of Directors Policy

Effective: Set date policy to be effective from

Begin the document with a statement that clearly identifies it as a policy of the Board of Directors

EXAMPLE: The following is the accepted policy of the Resource Conservation District. It is the policy of the board of directors to revise this statement by changes, additions, or deletions at any time it is felt necessary, so long as it is decided by vote in a regular meeting of the board.

Purpose

Clearly state the purpose, scope or jurisdiction of the policy. It may be useful to include background information on the creation of the policy and what issues it seeks to address. You can identify what goals or plans the policy supports if applicable.

EXAMPLE: The purpose of this policy is to provide rules and guidance for the RCD in the area of business development, specifically related to Fee-For-Service (FFS) type work. It is a stated goal of the RCD to diversify funding sources by securing contract work with public and private partners. This policy will support that goal by outlining what type of work will be provided and what limitations exist.

Identification of Services

If the policy being created pertains only to FFS work, it is advisable to clearly outline what services the RCD is able to, or willing to offer. This clarification is important because the RCD should build its FFS program around its current capabilities in order to ensure product delivery. It is possible to revise the policy at any time to include new capabilities as they come on-line.

You can further refine this section by including priority project types to link your services to. This can help to better link your FFS policy to any existing planning documents by identifying the specific areas you will focus your efforts. This also helps further define and clarify the FFS program.

EXAMPLE: While a robust FFS program is desirable to the RCD, the District must prioritize the type of projects it seeks and identify the exact services offered. All FFS work must support the mission of the RCD and generally support resource conservation in our local community. With this understanding, we identify the following project types as high priority for the RCD to solicit and complete. The high priority work is:

- 1. Direct contracts with private landowners*
- 2. Outreach work that connects landowners and local or state government agencies*
- 3. On-the-ground projects that directly benefit local resources*

The following list identifies additional products and services offered by the RCD on a fee basis. The list is comprehensive and represents the current capabilities of the District.

- 4. Habitat Restoration Project Management and Design*
- 5. Landowner Outreach*
- 6. Construction Monitoring*
- 7. Irrigation Efficiency Certification*
- 8. Volunteer Coordination*
- 9. Fish Surveys*
- 10. Invasive Species Control*
- 11. Etc.*

Project Solicitation and Bidding Process

With the scope of the FFS program defined, clear roles for staff and directors should be outlined to help guide the solicitation and procurement of FFS projects. Clear authority to solicit and enter into contract should be assigned to specific positions and identified in the policy. In addition, the amount of time spent by staff looking for and bidding on projects should be identified. You can limit/encourage staff time spent on FFS project development by specifying the appropriate amount of time per week/month/year for an employee to spend looking for FFS work. This clarification can help keep FFS program development from encroaching on other RCD commitments.

If possible, it is advisable to develop a specific bidding process or package for your RCD if you are interested in larger scale FFS projects. Requirements for bidding on local, state, federal and tribal projects can be researched and considered by the RCD for inclusion in their FFS program. These requirements can be quite extensive and can require the alteration or development of additional Board policies. You can also set your own requirements for the RCD to meet when going to bid on a project. These requirements can help ensure the RCD only engages in work it is able to complete, helping ensure high quality work and customer service.

More information on bidding requirements can be found [HERE](#).

EXAMPLE: Identifying opportunities and building relationships with possible clients is a long and time-consuming endeavor that needs to be part of the RCD work plan on a regular basis. Specific tasks are assigned to both staff and directors, with the roles defined as follows:

- **Staff role:** *Whenever possible and following established guidelines, the identification and solicitation of possible FFS opportunities should be carried out by the District Manager. The DM is encouraged to identify and attend community meetings and events pertaining to local conservation in order to build relationships and identify opportunities. The DM is authorized to meet with potential clients, outline projects and provide bids/proposals. The DM CANNOT enter into a contract without the consent of the Board. No more than 10% of the Manager's time, on an annual basis, will be spent directly on FFS project solicitation or proposal/bid development.*
- **Directors' role:** *RCD Directors are asked to identify possible FFS opportunities as part of their duties to help govern and support the District. Directors can represent the RCD at relevant meetings and provide networking for the RCD in the local community as ways to provide FFS opportunities to the RCD. Board officers are responsible for reviewing and signing contracts, as outlined in the bylaws. Directors need to be aware of any possible conflict of interest with their participation in RCD business and should consult the Board's Conflict of Interest Policy for clarification.*

Bidding Policy: *Most bidding requirements will depend on the specifications of the potential project. However, The RCD will only bid on a potential project if the following conditions are met:*

5. *Supports the Mission: FFS projects bid on by the RCD must support the mission statement and provide measurable conservation benefits in the local community.*
6. *Adequate Staff Resources: The RCD will only bid on projects that it has the ability to complete with current staff levels and expertise. The RCD will not hire additional full-time staff for FFS work after a contract is signed.*
7. *Operations: The RCD will only bid on projects that it currently has the technical capability to complete. Major equipment purchases or infrastructure improvements will not be made for the sole purpose of completing FFS projects or built into FFS contract budgets.*
8. *Other Considerations: The RCD will not bid on any project without addressing the concerns of staff or Directors, provided they are made in a timely and respectful manner.*

Anti-Competition Policy and Program Limitations

RCDs may determine that some services are outside their appropriate role in the community. You may want to include certain consideration in your policy to address projects that meet the above stated criteria, but still pose a potential conflict of interest for the RCD. The District should research the local business community and understand what services are covered by private firms. Clear direction on how the RCD can deal with possible competition with these firms should be included in the policy. You may

want to identify specific services your RCD will not offer, or explain the process of how each potential project will be vetted for possible competition issues.

EXAMPLE: Conducting FFS work introduces the RCD into the world of business and has the potential to put the District into direct competition with local firms. The RCD does not seek to compete directly with any private firm and therefore will not solicit projects without an invitation to do so. Additionally, The RCD will not conduct certain services that are already provided by multiple firms in the area. These services include, but are not limited to:

- 6. Water Quality testing*
- 7. Crop Advising*
- 8. Pest Control Advising*
- 9. Landscape Design*
- 10. Mitigation Work*

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