

**MEMORANDUM  
DEPARTMENT OF PUBLIC WORKS AND FACILITIES  
COUNTY OF PLACER**

To: Honorable Board of Supervisors Date: December 8, 2015

From: Ken Grehm, Director of Public Works and Facilities  
By: Peter Kraatz, Assistant Director of Public Works

Subject: Engineering / Avalanche Control Agreement / Alpine Meadows Road

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**ACTION REQUESTED**

Approve an agreement with Alpine Meadows Ski Resort, LLC to provide avalanche control operations for the protection of Alpine Meadows Road in the maximum amount of \$65,000 annually, for the period of December 8, 2015 to June 30, 2022. Funding is provided through County Transient Occupancy Tax (\$43,000) and Road Fund (\$22,000).

**BACKGROUND**

The Alpine Meadows Ski Resort (Resort) has historically provided avalanche control operations on a section of Alpine Meadows Road for several years, in conjunction with their safety management of ski runs. The last agreement was executed in 2009 and expired earlier this year.

Keeping Alpine Meadows Road open and safe for ski resort access is important to the Resort, and they have the equipment and expertise necessary to provide avalanche control. For the County, it is important that this road remain open and operational to serve residents, emergency responders, and the traveling public.

It is also important to note that the services prescribed by the agreement are to provide avalanche control measures solely for the protection of Alpine Meadows Road and the County right-of-way. The measures to be performed by the Resort are not intended to protect, and cannot protect, property or people in known or unknown avalanche paths. In the event that the Resort cannot perform avalanche control measures, contact with County personnel would occur in order to implement potential emergency control measures such as road closure and informing residents to evacuate.

**ENVIRONMENTAL CLEARANCE**

The agreement is not considered a project and as such would not be subject to the California Environmental Quality Act (CEQA). Activities to be performed as identified in the agreement are related to operation and maintenance of existing facilities which is defined as a categorically exempt activity under Article 19 Section 15301 of CEQA.

**FISCAL IMPACT**

The annual estimated total budget for the Resort to provide avalanche control services on Alpine Meadows Road is \$65,000. In the event that an above normal year of snowfall translates into excessive avalanche control services being performed, the agreement provides opportunity for the Resort to request up to \$20,000 additional funding. However, this additional amount is not authorized by the agreement, nor assured; if such a requested is supported by the Department, a separate action for your Board's authorization would be required. Funding for this agreement is included in the Department's FY 2015-16 Final Budget and will be included in future proposed budgets.

Attachment 1 – Agreement

**AGREEMENT  
BETWEEN THE COUNTY OF PLACER AND ALPINE MEADOWS SKI RESORT, LLC, FOR  
ALPINE MEADOWS ROAD AVALANCHE CONTROL OPERATIONS**

THIS AGREEMENT is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, respectively, by and between the COUNTY OF PLACER, hereinafter referred to as COUNTY, and ALPINE MEADOWS SKI RESORT, LLC, hereinafter referred to as CONTRACTOR.

WHEREAS, Alpine Meadows Road is maintained by COUNTY on County right-of- way, and

WHEREAS, Alpine Meadows Road is located in known avalanche paths and can be affected by avalanches which originate on real property owned by third parties, and

WHEREAS, CONTRACTOR and COUNTY are both desirous of keeping Alpine Meadows Road free from closure due to avalanche hazard and avalanche blockage, and

WHEREAS, CONTRACTOR has valuable professional knowledge, experience, and skill in techniques of avalanche control, and

WHEREAS, COUNTY and previous owners of the Alpine Meadows ski area operations, have entered into previous agreements pertaining to avalanche control services for Alpine Meadows Road, and COUNTY and CONTRACTOR intend this agreement to replace and supersede all prior agreements between COUNTY and the Alpine Meadows ski area,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CONTRACTOR and COUNTY agree as follows:

1. COUNTY hereby retains CONTRACTOR to provide avalanche control service solely for the protection of Alpine Meadows Road and the County right-of- way on said road. It is understood and agreed that CONTRACTOR's avalanche control services are not intended to protect and cannot protect property or people in known or unknown avalanche paths.
2. CONTRACTOR agrees to conduct avalanche control operations as CONTRACTOR determines necessary by using reasonable avalanche hazard forecasting techniques for the purposes set forth in this agreement.
3. CONTRACTOR agrees to comply with the terms of this agreement and with all County ordinances and state and federal laws.
4. COUNTY agrees to reimburse CONTRACTOR for its actual and documented costs of avalanche control operations each fiscal year, commencing with July 1 and ending with June 30, in a total annual amount not to exceed Sixty-Five Thousand Dollars (\$65,000) per year. CONTRACTOR, at its option, may cease avalanche control operations after the end of its normal operating season for the Alpine Meadows ski area, at which point, COUNTY would no longer be obligated to reimburse CONTRACTOR for any further related expenses during that fiscal year. Should accrued costs during any given season approach the total annual amount of \$65,000, then CONTRACTOR will make contact

with COUNTY to request the potential to secure additional funds from COUNTY up to total annual amount of \$85,000. By virtue of this agreement, COUNTY does not guarantee any additional funding beyond a total annual amount of \$65,000 but commits to working collaboratively with CONTRACTOR to pursue additional funding if necessary. Payment shall be made based upon actual documented costs of providing such services. After CONTRACTOR has ceased avalanche control activities each fiscal year, CONTRACTOR shall submit written documentation, such as invoices and other records, demonstrating to the satisfaction of COUNTY that services have been rendered pursuant to the terms of this agreement, describing the costs, location, and extent of services. COUNTY shall pay CONTRACTOR within thirty (30) days of receipt by COUNTY of the documented costs of providing such services. The aforementioned limitation in payment shall not be construed to limit CONTRACTOR'S obligations under this agreement.

5. CONTRACTOR shall obtain from COUNTY and COUNTY will provide to CONTRACTOR, a valid encroachment permit for the purpose of avalanche control. CONTRACTOR shall not conduct any operations under this agreement unless the terms of said encroachment permit are being fully complied with. Nothing herein shall exempt CONTRACTOR from any COUNTY requirements for the issuance of said encroachment permit.
6. CONTRACTOR shall give COUNTY prior notice before conducting any services under this agreement. Said notice shall be given in the manner which the Director of Public Works and Facilities shall from time to time specify.
7. CONTRACTOR shall have the sole responsibility for obtaining and maintaining supplies and materials required for performing all services. CONTRACTOR shall take reasonable steps during avalanche control operations to inform occupants of homes in the area and users of the Alpine Meadows Road when operations will be conducted.
8. This agreement shall be for a term effective as of the most recent date of execution by COUNTY and CONTRACTOR and ending on June 30, 2022 unless one or both parties provide thirty (30) days written notice to terminate agreement prior to that date. This agreement shall replace and supersede all previous agreements between COUNTY and CONTRACTOR with respect to the subject matter hereof. To the extent CONTRACTOR incurs actual and documented costs of avalanche control operations under this Agreement in excess of \$65,000 during any single fiscal year, CONTRACTOR may suspend work under this agreement for the remainder of that fiscal year; provided, however, CONTRACTOR shall provide COUNTY with forty-five (45) days prior written notice of its intent to suspend work. If, after making commercially reasonable efforts, CONTRACTOR is unable to secure Insurance as described in Section 12 during any single fiscal year, CONTRACTOR shall notify COUNTY in writing and this agreement shall be suspended for the remainder of that fiscal year, with only the services rendered through date of suspension of the agreement eligible for reimbursement. If CONTRACTOR ceases avalanche control operations for any reason, COUNTY reserves the prerogative to close portions of Alpine Meadows Road as needed during periods of avalanche hazard.
9. CONTRACTOR shall have no obligation to conduct nor any liability for any avalanche hazard operations under the terms of this agreement if CONTRACTOR has been denied access to the land located above Alpine Meadows Road or otherwise cannot reasonably access or deploy avalanche control measures to the avalanche starting zones or

avalanche paths. In the event that CONTRACTOR cannot access the land to deploy avalanche control measures, contact with COUNTY shall be made within one (1) hour so that COUNTY can take emergency response measures and close public access to road if necessary.

10. This agreement, and the rights and duties hereunder, shall not be assigned in whole or in part without the express written consent of COUNTY except by CONTRACTOR to a purchaser or other conveyee of all or substantially all of the assets comprising the Alpine Meadows ski area.
11. Indemnification: The CONTRACTOR shall save, keep, hold harmless, defend, and indemnify COUNTY from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of property or personal injury received by reason of or in the course of CONTRACTOR'S employees' or subcontractors' performing work hereunder which is occasioned by any willful or negligent act or omissions of the CONTRACTOR, any of the CONTRACTOR'S employees, or any subcontractors, provided that such indemnity and hold harmless shall be limited to the amount of proceeds available under CONTRACTOR'S insurance policies for providing such services as required in subsequent sections of this agreement.

COUNTY shall save, keep, hold harmless, defend, and indemnify CONTRACTOR and its employees from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of any willful or negligent act or omission of COUNTY, or any of COUNTY'S subcontractors, provided that such indemnity and hold harmless shall be limited to \$10,000,000 and in accordance with COUNTY'S insurance policies.

As used above, the term COUNTY means PLACER COUNTY, its officers, agents, and employees.

12. Insurance: CONTRACTOR shall file with the COUNTY concurrently herewith a Certificate of Insurance, in companies reasonably 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 CONTRACTOR'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 canceled or materially changed without first giving thirty (30) days prior written notice to the County of Placer." CONTRACTOR shall require all subcontractors used hereunder to maintain

adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County of Placer upon demand.

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) Products and completed operations; (2) Contractual liability insuring the obligations assumed by CONTRACTOR in this Agreement; and (3) Broad form property damage (including completed operations). Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limits, where applicable, shall apply separately to CONTRACTOR'S work under the 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: Ten Million Dollars (\$10,000,000) each occurrence; Ten Million Dollars (\$10,000,000) aggregate.
- D. If CONTRACTOR carries a Commercial General Liability (Occurrence) policy: (1) The limits of liability shall not be less than Ten Million Dollars (\$10,000,000) each occurrence (combined single limit for bodily injury and property damage); Ten Million Dollars (\$10,000,000) for Products Completed Operations; Ten Million Dollars (\$10,000,000) 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 Ten Million Dollars (\$10,000,000).
- 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: Ten Million Dollars (\$10,000,000) each occurrence (combined single limit for bodily injury and property damage); Ten Million Dollars (\$10,000,000) aggregate for Products Completed Operations; Ten Million Dollars (\$10,000,000) 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.

Endorsements: Each Comprehensive or Commercial General Liability policy shall be endorsed with the following subjects:

"The County of Placer, its officers, agents, and employees are to be covered as additional insured for all liability arising in accordance with this Agreement."

"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."

"This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice 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 should include owned, non-owned, and hired automobiles/trucks.

13. Except as described in Section 6, notices and other communications shall be directed to the parties at the addresses shown below and sent via nationally-recognized overnight courier:

COUNTY: Ken Grehm  
Director of Public Works and Facilities  
3091 County Center Drive, Suite 220  
Auburn, CA 95603

cc: Peter Kraatz  
Assistant Director of Public Works and Facilities  
P.O. Box 336  
7717 North Lake Boulevard  
Kings Beach, CA 96143

CONTRACTOR: Scott Swietanski  
Vice President, Alpine Meadows Ski Resort, LLC  
2600 Alpine Meadows Road  
Tahoe City, CA 96145

cc: Andrew D. Wirth  
President/CEO, Alpine Meadows Ski Resort, LLC  
1901 Chamonix Place  
Olympic Valley, CA 96146

14. This agreement is only for the benefit of the parties hereto and their successors and proper assigns as set forth in Section 10 above. No other person or entity or property shall be entitled to rely hereon, receive any benefit here from, or enforce any provision hereof against any party hereto (or their respective successors or assigns).
15. Dispute Resolution. In the event a dispute, claim or controversy shall arise between the parties to this contract, the parties will first attempt to negotiate in good faith to resolve the dispute between the parties. If the dispute is not resolved between the parties, the parties agree to participate in at least four hours of mediation before a neutral mediator jointly selected by the parties prior to instituting any legal action. The cost of the mediation will be shared on an equal basis between the parties. The mediation shall take place in the County of Placer. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by the parties, their agents, employees, experts and attorneys, and by the mediator are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration, lawsuit or other

proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in mediation. Either party may commence mediation by providing the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting a mediator and scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith. All applicable statutes of limitation and defenses based on the passage of time shall not be tolled by the requirement that any dispute, claim or controversy related to this contract be submitted to mediation.

IN WITNESS WHEREOF the parties hereto have set their hands this day of \_\_\_\_\_ day of \_\_\_\_\_, 2015.

"COUNTY"  
COUNTY OF PLACER

"CONTRACTOR"  
ALPINE MEADOWS SKI RESORT, LLC

By: \_\_\_\_\_  
Chair, Board of Supervisors

By: \_\_\_\_\_  
Mike Livak  
Executive Vice President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVE AS TO FUNDS:

APPROVE AS TO FORM:

By: \_\_\_\_\_  
Auditor, Placer County

By: \_\_\_\_\_  
Resort Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVE AS TO FORM:

By: \_\_\_\_\_  
County Counsel, Placer County

Date: \_\_\_\_\_