RESOLUTION - ACTION REQUESTED 2014-330

MEETING: July 8, 2014
TO: The Board of Supervisors
FROM: Peter Rei, Public Works Director
RE: Approve a Professional Services Agreement with Fujii Civil Engineering

RECOMMENDATION AND JUSTIFICATION:
Approve a Professional Services Agreement with Fujii Civil Engineering in the not-to-exceed amount of $24,000 to assist with Solid Waste and Household Hazardous Waste engineering, and Authorize the Board of Supervisors Chair to Sign the Agreement.

Fujii Civil Engineering will provide services necessary to continue to comply with various permitting, grants and regulatory requirements.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Public Works has entered into Agreements with Fujii Civil Engineering for the past several years.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve; Public Works will be unable to meet permitting, grants and regulatory compliance requirements.

FINANCIAL IMPACT:
Funding in the amount of $24,000 is budgeted in the Professional Services, 601-0404-651-0418 line for FY 14/15.

ATTACHMENTS:
PSA with Fujii Civil Engineering (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Rick Benson, County Administrator
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: John Carrier, District V Supervisor
SECONDER: Janet Bibby, District III Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 8th day of July, 2014 between:

COUNTY: Mariposa County Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

and

CONTRACTOR: Fujii Civil Engineering
4495 Big Pine Lane
Concord, CA 94521

ARTICLE 1. TERM OF AGREEMENT

1.01 Agreement Term: This Agreement shall become effective on July 1, 2014, and shall terminate on June 30, 2015, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the express intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

2.02 Contractor Qualifications: Contractor represents that it has the necessary competence, experience and qualifications for the services to be performed.

2.03 Agreement Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to provide consulting services to the Department of Public Works for Solid Waste and Household Hazardous Waste for Fiscal Year 2014-2015 per Exhibit “A” attached. In addition to the standard annual service, the Contractor may be requested to perform additional service. Should these services become necessary, a Task Order will be prepared for each item of work and will be brought to the Board of Supervisors for approval as an amendment to this Agreement.

Additional Task Orders must be approved by the Board of Supervisors stating the scope of additional services, the method of payment, and any adjustment in Agreement time. All such services are to be coordinated with County and the results of the work shall be

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monitored by the Public Works Director or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Agreement. County may not control, direct, or supervise Contractor's responsibility for assistants or employees in the performance of those services. Contractor assumes full performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: The basis of payment for services under this agreement shall be “time and materials” with a not to exceed amount of $24,000.00. For task orders for additional services, the basis of payment will be designated in each Task Order.

a. For Task Orders designated as “time and materials”, the consultant shall be paid, and reimbursed for costs, a total sum not to exceed the amount shown in the Task Order. Payment will be made at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. In the event payments equal the "not to exceed" amount, Consultant shall complete all services required under this agreement without further compensation or cost reimbursement.

b. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein.

4.02 Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County. All invoices shall reference contract number.

4.03 Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.

4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.
ARTICLE 5. OBLIGATIONS OF CONTRACTOR

5.01 Tools and Instrumentalities: Contractor will supply all tools and instrumentalities, required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.02 Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney’s fees and other legal expenses, to the extent caused by the negligent performance of services by Contractor or Contractor’s assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000) or an amount as otherwise determined appropriate by the County Risk Manager to cover such claims. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.03 General Liability and Automobile Insurance: During the term of this Agreement Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least $1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or the named insureds will be called on to cover a loss covered hereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

5.04 Professional Liability Coverage: Contractor shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.

5.05 Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth in paragraphs 5.02, 5.03 and 5.04 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to County prior to the effective date of such cancellation.

5.06 Workers' Compensation: During the term of this Agreement Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.

5.07 Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System

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System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

5.08 **State and Federal Taxes:** As Contractor is not County's employee; Contractor is responsible for paying all required state and federal taxes. In particular:

a) County will not withhold FICA (Social Security) from Contractor's payments;
b) County will not make state or federal unemployment insurance contributions on behalf of Contractor;
c) County will not withhold state or federal income tax from payment to Contractor;
d) County will not make disability insurance contributions on behalf of Contractor;
e) County will not obtain workers' compensation insurance on behalf of Contractor.

5.09 **Records:** It is understood and agreed that all plans, studies, specifications, and data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Contractor shall maintain such records for a minimum of three (3) years or as otherwise required by law.

5.10 **Contractor's Books and Records:** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.11 **Assignability of Agreement:** It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

**ARTICLE 6. OBLIGATIONS OF COUNTY**

6.01 **Cooperation of County:** County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.

6.02 **Assignment:** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by County without the prior written consent of Contractor.
ARTICLE 7. TERMINATION OF AGREEMENT

7.01 Termination Occurrence of Stated Events: This Agreement shall terminate automatically on the occurrence of any of the following events:
   1. Bankruptcy or insolvency of Contractor;
   2. Death of Contractor.

7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Contractor.

7.03 Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

8.02 Entire Agreement of the Parties: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged and approved by the County as provided herein or as otherwise required by law.
8.03 Partial Invalidity: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.04 Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

8.05 Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this Agreement because of race, color, national origin, ancestry, disability, sex or religion of such person.

8.06 Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.

8.07 Governing Law: This Agreement and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Mariposa.

Executed at Mariposa, California, on the date and year first above written.

COUNTY:

[Signature]
KEVIN CANN, Chairman
Mariposa County Board of Supervisors
Date: 7-9-14

CONTRACTOR:

[Signature]
Curtis Fujii Civil Engineering
Date: 6-16-14

APPROVED AS TO FORM:

[Signature]
STEVEN W. DAHLEM
County Counsel
Date: 7/9/14

APPROVED BY:

[Signature]
PETER M. REI, PE
Public Works Director
Date: 6/18/14

Revised 5/06/13
June 11, 2014

Mr. Greg Ollivier  
Solid Waste and Recycling Manager  
Department of Public Works  
County of Mariposa  
4639 Ben Hur Road  
Mariposa, California 95338

Re: 2014-2015 Fiscal Year Solid Waste and Household Hazardous Waste Consulting Services, Mariposa County, California

Dear Mr. Ollivier:

Fujii Civil Engineering (FCE) is pleased to submit this proposal to provide engineering consulting services to Mariposa County (the County) related to solid waste management and household hazardous waste management during the County’s 2014-2015 Fiscal Year. The proposed scope of work continues the existing services provided by FCE. These services consist mainly of assistance complying with a wide variety of regulatory requirements related to the County’s solid waste and household hazardous waste management activities. FCE is uniquely qualified to provide these services for the following reasons:

- Familiarity with County solid waste facilities and activities.
- Familiarity with County household hazardous waste facilities and activities.
- Extensive overall solid waste and household hazardous waste management experience in California (and other states).

I have summarized the proposed scope of work below.

Scope of Work

Our proposed scope of work for standard annual services consists of the following activities:

- Routine Consulting Services – These services consist of regular recurring activities.
  - Prepare and submit annual Solid Waste Collection Vehicle Report to the California Air Resources Board.
  - Prepare and submit annual UWED/CRT (Universal Waste Electronic Devices/Cathode Ray Tubes) report to the Department of Toxic Substances Control.
  - Prepare and submit annual SB 20/50 Net Cost Report to CalRecycle.
  - Prepare and submit annual Methods Reports for transfer stations and the Mariposa County Landfill to CalRecycle.
  - Prepare and submit Annual Storm Water Report to the Regional Water Quality Control Board. (Note: County personnel collect samples and conduct quarterly
and monthly observations. FCE conducts the Annual Comprehensive Site Compliance Evaluation.)

- Prepare Annual Inflation Factor Report (for Financial Assurances) for submittal to CalRecycle.
- Prepare and submit Electronic Annual Report (EAR) to CalRecycle.
- Prepare and submit quarterly Disposal Reporting System (DRS) Reports to CalRecycle.
- Provide assistance for AB 939 Task Force meetings.
- Prepare Annual Landfill Capacity Report, using an aerial topographic map prepared by others and provided in an appropriate digital (CAD) format.

- Non-Routine Consulting Services – These consist of assisting the County in activities that are not planned or anticipated (such as responding to communications/questions from regulatory agencies). These also consist of anticipated, one-time activities, such as assisting the County in complying with the new Industrial General Permit (IGP) for storm-water discharges adopted recently by the State Water Resources Control Board. Potential activities during the upcoming fiscal year include, but are not limited to, the following items:
  - Provide assistance complying with the new IGP.
  - Respond to questions regarding the Electronic Annual Report. (NOTE: CalRecycle staff have advised local jurisdictions to expect more questions this year than in past years.)
  - Provide information to assist the County in addressing questions regarding long-term solid waste management.
  - Provide engineering assistance to landfill operations, such as engineering guidance regarding compliance items or fill sequencing.
  - Respond to inquiries from County staff regarding potential operational changes.
  - Provide assistance in responding to Regional Water Quality Control Board letters or comments regarding Annual Storm Water Reports.
  - Provide assistance in responding to communications or questions from regulatory agencies such as CalRecycle, the Regional Water Quality Control Board, the California Air Resources Board, and the Department of Toxic Substances Control.
  - Provide assistance in other matters, as requested by the County.

**Estimated Price**

The total proposed not-to-exceed budget for the services described above is $24,000 (200 hours at the current hourly rate of $120 per hour). This is the same as the FY 2013-2014 contract (for Standard Annual Services).

I wish to note the following regarding this proposed budget:
FCE will invoice the County monthly on a time and materials basis not to exceed the proposed budget shown above.

FCE will invoice the County only for staff hours. I will not invoice the County for such typical consulting expenses as mileage, copying, or postage/shipping. I do reserve the right to request payment for any unusual expenses, or third-party (sub-consultant) expenses (none currently proposed, or anticipated), but I will obtain County authorization prior to invoicing for any expenses.

Summary
I look forward to continuing to assist Mariposa County in their solid waste and household hazardous waste management activities, and I appreciate the opportunity to present this proposal to Mariposa County. Please contact me if you have any questions or comments.

Very truly yours,

Curtis G. Fujii, P.E.
Fujii Civil Engineering