RESOLUTION - ACTION REQUESTED 2014-657

MEETING: December 16, 2014

TO: The Board of Supervisors

FROM: Doug Wilson, Interim Public Works Director

RE: Approve a Contract for Services with Teichert Construction

RECOMMENDATION AND JUSTIFICATION:
Approve a Contract for Services with Teichert Construction for the Mt. Bullion Cutoff Reconstruction, Phase 2 in the Not To Exceed Amount of $786,490 and Authorize the Board of Supervisors Chair to Sign the Contract.

During the bid opening, it was noted that only one of the three bidders included the contractor’s license numbers for their subcontractors. It was also noted that county specifications did not specify that they are required to submit that information. Since the project is funded under the State Transportation Improvement Program (STIP) with oversight from Caltrans, staff consulted with Caltrans Local Assistance staff for a recommendation. They recommended that staff request the contractor to provide the subcontractors' license numbers and award the project to the apparent low bidder unless additional discrepancies were identified in their bid. No additional discrepancies have been identified. A condition of the STIP funding is that the contract be awarded prior to December 31, 2014.

The Mt. Bullion Cutoff Road reconstruction is funded under the State Transportation Improvement Program (STIP) with a budget allocation of $2,149,000 and received approval at the June 25, 2014, California Transportation Commission meeting.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On December 10, 2013, The Board of Supervisors' adopted the 2014 Regional Transportation Improvement Program (RTIP).

On October 28, 2014 Resolution #2014-564 the Board of Supervisors approved the plans and specifications and authorized the Public Works Director to solicit bid proposals and award the project to the lowest responsible bidder.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve; the project would not proceed and funding would be lost.

FINANCIAL IMPACT:
Funds in the amount of $2,149,000 are allocated in the STIP County Road Project budget 511-1311-781-0649. This project is funded 100% with no County match required.

ATTACHMENTS:
Contract for Services with Teichert Construction-Mt. Bullion Cutoff Phase 2 (PDF)
Bid Results for Mt. Bullion Cutoff Phase 2 (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hoagland
Mary Hoagland, Interim CAO 12/10/2014

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Janet Bibby, District III Supervisor
SECONDER: Lee Stetson, District I Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
CONTRACT FOR SERVICES

This Contract made this 17th day of December, 2014 between:

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

and

CONTRACTOR: Teichert Construction
P. O. Box 520
Visalia, CA 93625

ARTICLE 1. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective on December 16, 2014, and shall terminate December 31, 2015, unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Contract 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 Contract.

2.02 Contractor Qualifications: Contractor represents that Contractor has the necessary experience and technical skills to provide services under this Contract.

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

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to furnish the following services:
Contractor shall provide the services described in Exhibit “A” attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with County and the results of the work shall be 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 including measures to protect the safety of the traveling public and Contractor's employees. 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 Contract. County may not control, direct, or supervise Contractor's assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these 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: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed in the not to exceed amount of $783,490. 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. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

- [ ] Total sum to be paid upon completion of services.
- [x] Incremental payments based on the following schedule:
  - Submittal of invoices

  **Funding Source: 511-1311-781-0649**

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 materials, equipment, 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 Contract. 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.

Revised 5/06/13
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 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) to cover such claims or in an amount determined appropriate by the County Risk Manager. 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 Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. By execution of this Contract, 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 Contract 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 other named insureds will be called on to cover a loss covered thereunder. 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 **Certificate of Insurance:** Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth in paragraphs 5.03 and 5.05 which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.

5.05 **Workers' Compensation:** During the term of this Contract 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.

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

5.07 **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.

5.08 Records: It is understood and agreed that all plans, studies, specifications, 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 Contract 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 Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.

5.09 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.

5.10 Assignability of Contract: It is understood and agreed that this Contract 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 Contract 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 to provide access to all documents as permitted by law necessary to the performance of Contractor’s duties under this Contract.

6.02 Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF CONTRACT

7.01 Termination on Occurrence of Stated Events: This Contract 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 Contract or materially breach any of its provisions, County, at County’s option, may terminate this Contract by giving written notification to Contractor.
7.03 **Termination for Convenience of County:** County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract 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 Contract 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 Contract and all obligations of County arising from this Contract 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 Contract, 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 Contract supersedes any and all contracts, 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 contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract 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 Contract is held by a court or 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 Contract, the prevailing Party will be entitled to reasonable attorney’s 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 contract 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 Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.

8.07 **Governing Law:** This Contract 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 Contract shall be held exclusively in a state court in the County of Mariposa.

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

**CONTRACTOR:**  
Teichert Construction

By:  
(signature)  
12/5/14  
(date)

**COUNTY:**  

By:  
KEVIN CANN, Chair  
Mariposa County Board of Supervisors  
12/17/14  
(date)

APPROVED AS TO FORM:

Steven W. Dahlem  
County Counsel  
12/17/14  
(date)

**ATTEST:**  

Rene LaRoche  
Clerk of the Board

Revised 5/06/13
EXHIBIT "A"

PROPOSAL TO THE COUNTY OF MARIPOSA

DEPARTMENT OF PUBLIC WORKS

PROJECT NO. – 07-16B

NAME OF BIDDER     A. Teichert & Son Inc. dba Teichert Construction

BUSINESS P.O. BOX  520

CITY, STATE, ZIP  Fowler, CA 93625

BUSINESS STREET ADDRESS   303 N. West Street

CITY, STATE, ZIP  Visalia, CA 93291

TELEPHONE NO:  AREA CODE (  ) 559-833-3100

FAX NO:  AREA CODE (  ) 559-833-3055

CONTRACTOR LICENSE NO.  8

The work for which this proposal is submitted is for construction in conformance with the special provisions (including the payment of not less than the State general prevailing wage rates or Federal minimum wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in conformance with the California Department of Transportation Standard Plans, dated 2010, the Standard Specifications, dated 2010, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

Bids are to be submitted for the entire work. The amount of the base bid for comparison purposes will be the total of all items. The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

(a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount as the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;

(b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the COUNTY OF MARIPOSA’S Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the items total shall prevail.
The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the COUNTY OF MARIPOSA, and that discretion will be exercised in the manner deemed by the COUNTY OF MARIPOSA to best protect the public interest in the prompt and economical completion of the work. The decision of the COUNTY OF MARIPOSA respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the 2 bonds in the sums required by the State Contract Act, with surety satisfactory to the COUNTY OF MARIPOSA, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the COUNTY OF MARIPOSA that the contract has been awarded, the COUNTY OF MARIPOSA may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the COUNTY OF MARIPOSA.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal is accepted, that he will contract with the COUNTY OF MARIPOSA, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefor the following prices, to wit:
**MT. BULLION CUTOFF ROAD RECONSTRUCTION – PROJECT # 07-16B**

**ADDENDUM #1**

USE THIS FORM TO SUBMIT BID

**Bid Schedule**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>ITEM DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>EXTENSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CONSTRUCTION AREA SIGNS</td>
<td>LS</td>
<td>1</td>
<td>5,300-</td>
<td>5,300-</td>
</tr>
<tr>
<td>2</td>
<td>TRAFFIC CONTROL</td>
<td>LS</td>
<td>1</td>
<td>45,000-</td>
<td>45,000-</td>
</tr>
<tr>
<td>3</td>
<td>OBLITERATE EXISTING BITUMINOUS SURFACING</td>
<td>LS</td>
<td>1</td>
<td>75,000-</td>
<td>75,000-</td>
</tr>
<tr>
<td>4</td>
<td>CUT BANK EXCAVATION - FRACTURED ROCK &amp; SOIL</td>
<td>CU YD</td>
<td>2,000</td>
<td>20-</td>
<td>40,000-</td>
</tr>
<tr>
<td>5</td>
<td>5-STRAND FIELD FENCE W/ T-POSTS @ 10' O.C.</td>
<td>LIN FT</td>
<td>10,500</td>
<td>4-</td>
<td>94,500-</td>
</tr>
<tr>
<td>6</td>
<td>FINISH GRADING TO REQUIRED WIDTH</td>
<td>LS</td>
<td>1</td>
<td>9-</td>
<td>94,500-</td>
</tr>
<tr>
<td>7</td>
<td>CLASS II AGGREGATE BASE 3/4&quot; (MAX-MED)</td>
<td>TON</td>
<td>2,000</td>
<td>30-</td>
<td>60,000-</td>
</tr>
<tr>
<td>8</td>
<td>HOT MIX ASPHALT CONCRETE TYPE &quot;B&quot; 3/4&quot; (MAX-MED)</td>
<td>TON</td>
<td>3,400</td>
<td>90-</td>
<td>306,000-</td>
</tr>
<tr>
<td>9</td>
<td>TYPE &quot;A&quot; AC DIKE</td>
<td>LIN FT</td>
<td>10,000</td>
<td>2.50-</td>
<td>25,000-</td>
</tr>
<tr>
<td>10</td>
<td>STRIPING – CENTERLINE (2 COATS)</td>
<td>LIN FT</td>
<td>10,500</td>
<td>1-</td>
<td>10,500-</td>
</tr>
<tr>
<td>11</td>
<td>PAVEMENT MARKINGS</td>
<td>SQ FT</td>
<td>10</td>
<td>75-</td>
<td>750-</td>
</tr>
<tr>
<td>12</td>
<td>RAISED PAVEMENT MARKERS</td>
<td>EA</td>
<td>860</td>
<td>4-</td>
<td>3,440-</td>
</tr>
<tr>
<td>13</td>
<td>EROSION CONTROL</td>
<td>SQ/ YD</td>
<td>6,000</td>
<td>1-</td>
<td>6,000-</td>
</tr>
<tr>
<td>14</td>
<td>SHOULDER BACKING</td>
<td>TON</td>
<td>2,000</td>
<td>21-</td>
<td>42,000-</td>
</tr>
</tbody>
</table>

**MT. BULLION CUTOFF OVERLAY PROJECT**

TOTAL IN FIGURES: $ 783,490- 

Amount of Base Bid, written out:

Seven-hundred, Eighty-Three Thousand, Four Hundred and Ninety Dollars and Zero Cents

**Alternate #1**

<table>
<thead>
<tr>
<th>UNIT</th>
<th>PRICE</th>
<th>EXTENSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>TON</td>
<td>3,400</td>
<td>41-</td>
</tr>
</tbody>
</table>

TOTAL ALTERNATE #1 IN FIGURES: $ 139,400-

**SIGNATURE OF BIDDER:** [Signature]