RESOLUTION - ACTION REQUESTED 2014-582

MEETING: November 12, 2014

TO: The Board of Supervisors

FROM: Doug Wilson, Interim Public Works Director

RE: Approve a Contract with BC Construction for the Midpines Restroom Upgrade

RECOMMENDATION AND JUSTIFICATION:
Approve a Contract for Services with BC Construction in the Not to Exceed Amount of $183,805.10 for the Midpines Restroom Upgrade, and Authorize the Board of Supervisors Chair to Sign the Contract.

This project is funded through the Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA).

This project is funded 100%, no county match required.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On August 5, 2014, per Resolution No. 2014-394, the Board authorized Public Works to reject the bids for the Midpines Restroom Upgrade; authorized Public Works to re-bid the project and; authorized the Public Works Director to Award the project subject to available grant funding.

On May 27, 2014 the Board authorized Public Works to solicit bids for the Midpines Restroom Upgrade.

The bids were opened on September 3, 2014, and at that time, Hobbs Construction was the apparent low bidder with a bid of $172,250.00. However, the funding for this project is from Caltrans, utilized Caltrans Standard Specifications dated 2010 and does not include Federal Aid Funding. Mariposa County's Special Provisions for the Midpines Restroom project adopted the Caltrans Specifications by reference and specifically called out Section 2, "Bidding". Section 2-1.18 states in part:
Section 2-1.18 applies to a non-federal-aid contract.*
The small business preference is a reduction for bid comparison in the total bid submitted by the small business contractor by the lesser of the following amounts:
1. 5 percent of the verified total bid of the low bidder
2. $50,000"

Upon thorough review of the bid packages, it was determined that BC Construction had submitted documentation, and met the requirements to receive the small
business preference indicated in Section 2-1.18. After applying the 5 percent preference to BC Construction bid of $176,305.10 for comparison, the bid by BC Construction became the low bid.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**
Do not approve. The upgrades needed for the Midpines restroom will not be completed.

**FINANCIAL IMPACT:**
Sufficient funds are budgeted in fund 507-1306-776-0604, PTMIEA Midpines Restrooms.

**ATTACHMENTS:**
BC Construction Contract - Midpines Restrooms  (PDF)

**CAO RECOMMENDATION**
Requested Action Recommended

Mary Hodson  
Mary Hodson, Interim CAO  10/15/2014

**RESULT:**  ADOPTED [UNANIMOUS]
**MOVER:**  Lee Stetson, District I Supervisor
**SECONDER:**  Merlin Jones, District II Supervisor
**AYES:**  Stetson, Jones, Bibby, Cann, Carrier
CONTRACT FOR SERVICES

This Contract made this 21st day of October, 2014 between:

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

and

CONTRACTOR: BC Construction
43359 Oak Grove Court West
Coarsegold, CA 93614

ARTICLE 1. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective on October 21, 2014, and shall terminate June 30, 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 $183,805.10. 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.

or

[x] Incremental payments based on the following schedule:
   Submittal of invoices

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.

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:** BC Construction

By: **Robert S. Coltra**  
(signature)  
(021-2014)  
(date)

**COUNTY:** Public Works Department

By: **Kevin Cann, Chair**  
Mariposa County Board of Supervisors  
(date)

**ROBERT S. COLTRA**  
(printed name)

**DBA BC CONSTRUCTION**

**APPROVED AS TO FORM:**

By: **Steven W. Dahlem**  
County Counsel  
(date)

**ATTEST:**

**Rene' LaRoche**  
Rene' LaRoche  
Clerk of the Board
EXHIBIT "A"

PROPOSAL TO THE COUNTY OF MARIPOSA
DEPARTMENT OF PUBLIC WORKS
PROJECT NO. – 12-17

NAME OF BIDDER  Robert Scott Coltra dba RC Construction
BUSINESS P.O. BOX  43359 Oak Grove Court West
CITY, STATE, ZIP  Coarsegold CA 93614
BUSINESS STREET ADDRESS  43359 Oak Grove Court West
CITY, STATE, ZIP  Coarsegold CA 93614
TELEPHONE NO:  AREA CODE  (209) 628-5137
FAX NO:  AREA CODE  (659) 641-2438
CONTRACTOR LICENSE NO.  845514 (General Contractor)

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 May, 2006, the Standard Specifications, dated May, 2006, 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 bid for comparison purposes will be the total of all items, excluding the additive alternate.

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:

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;

(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.
CONTRACTOR'S BID – MIDPINES RESTROOMS
REVISED per ADDENDUM #1
(Use this form to submit Bid)

SITE

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<thead>
<tr>
<th>Bid Item</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Price</th>
<th>Extension</th>
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<tbody>
<tr>
<td>1</td>
<td>Traffic Control &amp; Signage</td>
<td>1</td>
<td>LS</td>
<td>500.00</td>
<td>500.00</td>
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<tr>
<td>2</td>
<td>Truncated Dome</td>
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<td>EA</td>
<td>400.00</td>
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<td>Underground Electrical Service</td>
<td>1</td>
<td>LS</td>
<td>11875.00</td>
<td>11875.00</td>
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<td>4</td>
<td>500 Gal. basin, 1 HP grinder pump and 2&quot; waste piping to existing septic system</td>
<td>1</td>
<td>LS</td>
<td>18056.00</td>
<td>18056.00</td>
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<td>5</td>
<td>Domestic Water line from existing water system.</td>
<td>1</td>
<td>LS</td>
<td>3642.00</td>
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<td>6</td>
<td>Luminaire panel, photocell lights with timer override</td>
<td>2</td>
<td>EA</td>
<td>9516.00</td>
<td>19032.00</td>
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<td>7</td>
<td>Re-striping (2 coats) of parking lot for revised traffic flow (include paint out existing stripping and fog seal prior to new stripping)</td>
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<td>LS</td>
<td>3800.00</td>
<td>3800.00</td>
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<td>Site Finish &amp; De-mobilization</td>
<td>1</td>
<td>EA</td>
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BUILDING

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<td>Building Complete (Include cost of Required Engineering)</td>
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<td>LS</td>
<td>108500.00</td>
<td>108500.00</td>
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<td>10</td>
<td>Permits and Fees</td>
<td>1</td>
<td>LS</td>
<td>4000.00</td>
<td>4000.00</td>
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<td>11</td>
<td>Concrete Apron</td>
<td>210</td>
<td>SF</td>
<td>23.81</td>
<td>5000.10</td>
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BASE BID TOTAL IN FIGURES: $176,305.10

Amount of BASE BID, written out:

ONE HUNDRED SEVENTY SIX THOUSAND THREE HUNDRED FIVE AND TEN CENTS.

ADDITIVE ALTERNATE – 1

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<th>Bid Item</th>
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<th>Price</th>
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<td>1</td>
<td>Demolish and remove existing restroom (including concrete slab)</td>
<td>1</td>
<td>LS</td>
<td>7500.00</td>
<td>7500.00</td>
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ADDITIVE ALTERNATE (1) TOTAL IN FIGURES: $7500.00

Amount of ADDITIVE ALTERNATE (1), written out:

SEVEN THOUSAND FIVE HUNDRED EVEN DOLLARS
<table>
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<th>Quantity</th>
<th>Unit</th>
<th>Price</th>
<th>Extension</th>
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<tbody>
<tr>
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<td>3/4&quot; CI II AB (as directed): @ 95% R.C. O/ 90% compaction Native Soil</td>
<td>20</td>
<td>TN</td>
<td>134.50</td>
<td>2690.00</td>
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<td>2</td>
<td>Asphalt Concrete Paving: 2.4&quot; of 1/2&quot; Max Med Class II</td>
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<td>TN</td>
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<td>3</td>
<td>Striping (2 Coats)</td>
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ADDITIVE ALTERNATE (2) TOTAL IN FIGURES: $61260.00

Amount of ADDITIVE ALTERNATE (2), written out:

Sixty one thousand two hundred eighty dollars even

Signature of Bidder: [Signature]

[Signature]

[Name]