DEPARTMENT: Public Works       BY: Jim Petropulos       PHONE: 966-5356

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes__ No_X__)

Authorize an increase of $1,400 to the current Personal Services Agreement with Fred Solomon for the remainder of the fiscal year; authorize a new Personal Services Agreement with Fred Solomon to commence on July 1, 2002 for additional pre-construction services for the Compost Facility project, at a monthly rate of $1,200 subject to review and approval by County Counsel.

The present Personal Services Agreement with Fred Solomon is for pre-construction services for the Compost Facility project. This Agreement was based on an hourly rate of $75 and was entered into in April 2001. Between April 2001 and December 2001, Fred Solomon billed an average of 16.2 hours per month ($1,215). From January 2002 to present, he has billed an average of 18.5 hours per month ($1,388), which is more hours than what was originally anticipated in the Agreement. An additional $1,400 should suffice for the remainder of this fiscal year. There is sufficient funding in the appropriate line item in Fund 604-Soild Waste Special Project for this request.

Staff is requesting a new Personal Services Agreement with Fred Solomon at a monthly rate of $1,200, which is slightly less than the current monthly charges that are being billed hourly. It is estimated that Fred Solomon will continue to work approximately 16 to 18 hours per month on the Compost Facility project and is agreeable to this arrangement. Services provided include completion of the USDA grant/loan package, assistance with design issues, various design and supply contracts, and in obtaining water service and utility location at the landfill. Funding for the new Personal Services Agreement is included in the Fiscal Year 2002-03 Requested Budget in Fund 604.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board approved a Personal Services Agreement with Mr. Solomon to provide pre-construction services in April 2001. The purpose of the Agreement was to provide pre-construction services that included reviewing preliminary design options and various technological options for the composting facility project.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Public Works has a tremendous workload and negative action may delay implementation of the composting facility project as well as other projects.
<table>
<thead>
<tr>
<th>COSTS: (X) Not Applicable</th>
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<tbody>
<tr>
<td>A. Budgeted current FY</td>
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<tr>
<td>B. Total anticipated costs $</td>
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<td>C. Required additional funding $</td>
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<tr>
<td>D. Internal transfers $</td>
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<th>SOURCE: ( ) 4/5ths Vote Required</th>
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<tbody>
<tr>
<td>A. Unanticipated revenues $</td>
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<tr>
<td>B. Reserve for contingencies $</td>
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<tr>
<td>C. Source description: Balance in Reserve for Contingencies, if approved: $</td>
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<table>
<thead>
<tr>
<th>SPECIAL INSTRUCTIONS: List the attachments and number the pages consecutively:</th>
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<tbody>
<tr>
<td>1. Personal Services Agreement</td>
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<tr>
<th>CLERK'S USE ONLY: RECOMMENDATION:</th>
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<tr>
<td>Res. No.: 03-2258</td>
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<tr>
<td>Vote - Ayes:</td>
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<td>Absent:</td>
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( ) Approved ( ) Denied ( ) Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: ATTEST: MARGIE WILLIAMS, Clerk of the Board
By: County of Mariposa, State of California
Deputy

<table>
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<tr>
<th>COUNTY ADMINISTRATIVE OFFICER'S</th>
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<tr>
<td>This item on agenda as:</td>
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<tr>
<td>Recommended</td>
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<tr>
<td>For Policy Determination</td>
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<tr>
<td>Returned for Further Action</td>
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</table>

Comment: __________________________

C.A.O. initials: __________________

Action Form Revised 5/92
AGREEMENT

PERSONAL SERVICE AGREEMENT

COUNTY COMPOSTING FACILITY

THIS AGREEMENT is entered into on the most recent date of execution below by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Fred Solomon, hereinafter referred to as "CONTRACTOR", for services to be provided to COUNTY.

WITNESSETH:

WHEREAS, COUNTY is in need of specialized services to be provided to the County Public Works Department, and

WHEREAS, CONTRACTOR is qualified and desires to provide specialized services to the County Public Works, Department;

NOW THEREFORE, in consideration of the sums to be paid hereunder and the mutual covenants and conditions hereinafter contained, the PARTIES hereto agree as follows:

ARTICLE 1. TERM OF CONTRACT

Section 1.01. This AGREEMENT shall become effective on July 1, 2002, and shall terminate on June 30, 2003, unless terminated in accordance with the provisions of Article 7 of this AGREEMENT.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

Section 2.01. 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.
ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

Section 3.01. CONTRACTOR agrees to perform the services as described on Exhibit "A" attached hereto.

Method of Performing Services

Section 3.02. 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.

Employment of Assistants

Section 3.03. 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 assistant 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 these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

Section 4.01. In consideration for the services to be performed by CONTRACTOR, COUNTY agrees to pay CONTRACTOR:

The total sum of FOURTEEN THOUSAND FOUR HUNDRED DOLLARS ($14,400) for services as described above. 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 Department described in the Preamble of this AGREEMENT, as follows:

[ ] Total sum to be paid upon completion of services, or

[ X ] Incremental payments based on the following schedule:

Flat rate of $1,200 per month
Invoices

Section 4.02. CONTRACTOR shall submit invoices for all services being rendered from the CONTRACTOR to the COUNTY.

Date for Payment of Compensation

Section 4.03. Payment shall be made within 45 days of invoices being submitted from the CONTRACTOR to the COUNTY.

Expenses

Section 4.04. 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.

Section 4.05 CONTRACTOR shall be reimbursed for vehicle mileage at the United States Internal Revenue rate. CONTRACTOR shall also be reimbursed for any pre-approved travel expenses. Phone expenses for project related costs and meals related to project services shall be reimbursed by the COUNTY upon receipt of an itemized statement.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

Tools and Instrumentalities

Section 5.01. 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.

Section 5.02. 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.

Indemnification of Liability

Section 5.03. CONTRACTOR shall indemnify and hold COUNTY harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure 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
Workers' Compensation

Section 5.04. CONTRACTOR shall provide Workers' Compensation insurance as required by the State of California for all services provided hereunder.

Assignment

Section 5.05. CONTRACTOR understands that COUNTY retained the services of CONTRACTOR because of CONTRACTOR'S reputation and expertise in his or her field and, therefore, neither this AGREEMENT nor any duties or obligations under this AGREEMENT may be assigned by CONTRACTOR without the prior written consent of COUNTY.

State and Federal Taxes

Section 5.06. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular:
- COUNTY will not withhold FICA (Social Security) from CONTRACTOR'S payments;
- COUNTY will not make state or federal unemployment insurance contributions on behalf of CONTRACTOR;
- COUNTY will not withhold state or federal income tax from payment to CONTRACTOR;
- COUNTY will not make disability insurance contributions on behalf of CONTRACTOR;
- COUNTY will not obtain workers' compensation insurance on behalf of CONTRACTOR.

ARTICLE 6. OBLIGATIONS OF COUNTY

Cooperation of County

Section 6.01. COUNTY agrees to comply will all reasonable requests of CONTRACTOR (and provide access to all documents reasonably) necessary to the performance of CONTRACTOR'S duties under this AGREEMENT.

ARTICLE 7. TERMINATION OF AGREEMENT

Termination on Occurrence of Stated Events

Section 7.01. This AGREEMENT shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of CONTRACTOR;
2. Death of CONTRACTOR.

Termination by County for Default of Contractor

Section 7.02. 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.

Termination for Failure to Make Agreed Upon Payments

Section 7.03. Should COUNTY fail to pay CONTRACTOR all or any part of the compensation set forth in Article 4 of this AGREEMENT on the date due, CONTRACTOR, at the CONTRACTOR'S option, may terminate this AGREEMENT if the failure is not remedied by COUNTY within thirty (30) days from the date payment is due.

ARTICLE 8. GENERAL PROVISIONS

Notices

Section 8.01. 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 with return receipt requested. Mailed notices shall be addressed to the PARTIES at the addresses appearing below, 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.

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

CONTRACTOR: Fred Solomon
4561 Bridgeport Drive
Mariposa, CA 95338

Entire Agreement of the Parties

Section 8.02. 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 are 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.

Partial Invalidity

Section 8.03. If any provision in this AGREEMENT 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.

Attorneys' Fees

Section 8.04. 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.

Governing Law

Section 8.05. This AGREEMENT will be governed by and construed in accordance with the laws of the State of California.

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

COUNTY:  

Robert C. Stewart, Chairman  
Board of Supervisors  
Date: June 20, 2002

CONTRACTOR:  

Fred Solomon  
Date: 6-14-02

Social Security or Taxpayer Identification Number 077-30-2267

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:  

JEFFREY G. GREEN, County Counsel

6  

Revised 3/94
EXHIBIT “A”

PRECONSTRUCTION SERVICES TO BE PROVIDED BY CONSULTANT

The Consultant shall perform services as delineated below:

1. Consultant will familiarize himself with composting technology.

2. Provide plan and specification review of draft project plans and advise County of any needed changes or improvements prior to final design and bid documents.

3. Review cost estimates submitted by others and provide County with an evaluation of the completeness and accuracy of the estimates.

4. Recommend to County the best methods to manage project during bid, construction and postconstruction phases.

5. Provide advice for coordination of construction services to be provided by European and domestic sources.

6. Completion of the USDA grant/loan package.

7. Assistant with design issues.

8. Assistance with various design and supply contracts during the preconstruction phase.

9. Assistance in obtaining water services and utility location at the Landfill.