RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___  No. X )

Approve the following action:

1. Contract for Purchase and Sale of Biowaste Composting Equipment between Herhof Umwelttechnick GmbH and Mariposa County in the amount of 1,978,693 Eurodollars ($1,969,436 USD as of 11/6/02) to provide biowaste composting facility equipment;

2. Contract for Compost Facility Design Services between Concept Design Company and Mariposa County in the amount of $189,500 to provide plans and specifications for facility construction; and

3. Authorize Board Chair to sign contracts.

The Solid Waste Committee recommends Board approval of this item. The following attachments are provided for your consideration:

A. Summary Report and Contract for Purchase and Sale of Biowaste Composting Equipment between Herhof Umwelttechnick GmbH and Mariposa County – Attachments #1 & #2

   The County Public Works Department and Herhof Umwelttechnick GmbH (Herhof) completed contract negotiations on September 19th for the purchase of composting equipment based on Herhof’s Rottebox composting system. Purchase will include the planning, supply of machinery, construction and assembly of the equipment. County Counsel reviewed and approved the Contract (Attachment #3).

B. Proposal from Concept Design Company – Attachment #4

   The County’s performance responsibilities contained in the Herhof contract include design and construction of the facility to accommodate Herhof composting boxes and related components. Concept Design Company performed preliminary work on the facility and has a thorough understanding of this project. Authorization of this contract will enable Concept Design Company to continue work on the design phase in coordination with the performance schedule, Exhibit E of the Herhof contract (circle page #24).

C. Summary Report and Revenue and Expense Worksheets – Attachments #5 & #6

   Total project expenses and revenue have been summarized and detailed expense worksheets included for both the Herhof contract and facility construction.

D. Financial Commitment Analysis and Project Expenditure Timeline – Attachment #7

   Since funding is still being secured and the EIR/EA process is not complete, the County would be committing to expenditures before the environmental work is done. This course of action is vital to keeping the project on-track with an optimal completion schedule. The attached financial commitment analysis discusses the County’s obligations and termination scenario. The project timeline illustrates financial commitments at risk if the project is terminated.
In the event that the USDA loan/grant program was unavailable, the County would need to consider other financing mechanisms including, but not limited to:

- General Obligation Bonds currently at 5%
- Revenue Bonds currently at 5.11%
- Bank Loan at 4.75%
- County General Fund Loan or Grant

Since the USDA Loan/Grant program has qualified the County at 4.5%, the County is currently pursuing the least-cost financing option available.

E. Project Timeline & Planning EIR Information – Attachment #8

The Public Works Department has been assured by the Planning Department that the County may proceed with design work during the CEQA process and that doing so is normal to numerous projects throughout the State. Should the environmental review not support the proposed site, the design work would still be necessary and applicable to the construction of the project at an alternate location.

F. USDA Loan Status Report – Attachment #9

Public Works Director Jim Petropulos reports the status of the USDA Loan to the Board of Supervisors. The County’s Compost Facility Project is eligible to receive loan/grant assistance through the USDA’s Rural Development program.

Subsequent Board actions will be required to authorize construction once the facility plans and specifications are complete. The subsequent actions requested will be to approve the completed design work and bid documents to authorize bidding. After bid contracts are awarded, facility construction will commence.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The mixed solid waste facility has been a long-term County project. This project was selected as the County’s optimal solution to achieve compliance with the California Integrated Waste Management Act requiring that all jurisdictions divert 50% of its wastestream by the year 2000. Additionally, a reduction in the wastestream as a result of this project will extend the life of the current landfill module.

The Board actions to date are:
- Contribution of funds in excess of $500,000 for pre-construction work.
- Approval of cooperative agreements with the National Park Service totaling $1.712 million.
- Authorize a contract with URS Corporation to prepare the composting facility EIR/EA in an amount not-to-exceed $180,000.
- Contingency funds in FY 2002-2003 have been set aside in the amount of $1,000,000 for project work.
LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board may choose to pursue an alternate course of action to resolve landfill space problems, such as hauling the waste to another disposal location at an estimated cost of more than $80 per ton, or construction of another module at an estimated cost of $8 - $10 million. The County would not be in compliance with the state mandated 50% diversion.

Mariposa County could apply for a permanent rural diversion reduction. This alternative would not extend the life of the current landfill module.

Not approving the recommended actions will result in the following:

- Cessation of this project.
- Termination of the cooperative agreement with the National Park Service to construct a mixed solid waste composting facility.
- Lack of good faith effort interpretation by the California Integrated Waste Management Board (CIWMB) relevant to the current application for an extended alternate diversion requirement (ADR) being reviewed. The ADR, if approved, will allow the County to divert less than 50% without penalty until December 2004. The CIWMB may choose to deny the County’s ADR request and issue a compliance order if the County does not demonstrate a good faith effort to divert 50%. Additionally, the County could be fined $10,000 for each day the 50% diversion requirement is not achieved.
COUNTY of MARIPOSA
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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: JIM PETROPULOS, Public Works Director
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: Contract with Herhof
Resolution No. 02-417

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on November 18, 2002

ACTION AND VOTE:
Public Presentations: for Non-Timed Agenda Items and for Items Not on the Agenda
- Ruth Sellers read her letter relative to the agenda item scheduled for later this date for the co-compost facility contracts. She expressed concern that if the contract for the project is signed that the County will not be in compliance with CEQA, and she cited a Los Angeles Superior Court case.

Jim Petropulos, Public Works Director;
(1) Authorize the Chair to Sign a Contract on Behalf of Mariposa County with Herhof Unwelttechnick GmbH in the Amount of $1,978,693 Eurodollars ($1,969,436 US Dollars as of 11/06/02) for the Purchase and Sale of Biowaste Composting Equipment; and (2) Authorize the Chair to Sign a Contract with Concept Design Company in the Amount of $189,500 for Compost Facility Design Services to Provide Plans and Specifications for Facility Construction

BOARD ACTION: Jeff Green, County Counsel, requested that the Planning Director be present for this matter given the input that was provided under Public Presentations this morning.

9:42 a.m. Recess

9:54 p.m. The letter that was presented by Ruth Sellers under Public Presentations was copied to the Board members and staff. Discussion was held with Jim Petropulos relative to the status of the environmental work. Jim introduced the following people who were present for the discussion: Fred Solomon/Project Construction Manager; George Eowan/consultant; Larry Crump/Concept Design; and Andreas Puchelt/Herhof. He also introduced his wife, Peggy Petropulos/Assistant Auditor-Controller for Inyo County. Discussion was continued for the following hearing to be opened.

10:04 a.m. Public hearing to approve the Agricultural Preserve Applications No. 2002-216 (Larry M. Fowler, Applicant), No. 2002-281 (Esther F. Moore, Applicant), No. 2002-339 (Billy D. Grissom,
Applicant). No. 2002-340 (Billy D. Grissom and Jerry & Judy Cook, Applicants) was opened and continued until the following matter.

Further discussion was held. Jeff Green responded to the input provided by Ruth Sellers. He advised that he would review the case that was cited, and he noted it was a Superior Court action versus an action by the Appellate Court. He stated there may have been a technical violation of CEQA in the Los Angeles case if an agreement was entered into for a specific site prior to the environmental review. Eric Toll, Planning Director, stated that, based on his quick review of the matter, he feels that as long as the Board is not making an irrevocable decision on a specific site and project, it would be okay to proceed with the recommended action. He stated it is his understanding that the action today deals with the design phase. Jeff Green advised of a correction to the contract with Herhof in Section A-5 to reflect that the “Seller” versus “Purchaser” shall carry course of construction insurance...” Supervisor Reilly noted that every consideration needs to be given to process, especially with the need for funding. She asked about options in the contract with Herhof to not carry out all elements of the contract and be obligated to the total costs; and she asked what steps are in place to keep the project from moving ahead of the environmental review process and the funding. Jeff Green stated the Board could direct that no further action under the contract be taken until approved by the CEQA process. Eric Toll stated the portion for the design of the facility will be necessary to respond to issues raised relative to noise, aesthetics, and odor, etc.

Chairman Stewart called for public comment. There was none.

Further discussion was held relative to the funding for the project and potential use of the funding set aside during the budget hearings from the General Fund General Reserve. Fred Solomon provided input relative to the addition of a water treatment facility versus the initial proposal to use one million gallons of well water. Supervisor Reilly asked about the phases of the contract and the ability to terminate the contract depending on the environmental review process. She suggested that direction be given that the matter needs to come back to the Board after the first item in the contract is completed; i.e., the execution of the contract for planning of the Herhof composting portion of the facility as shown in Exhibit “B” of the contract. Jim Petropulos stated he would bring the matter back to the Board before proceeding with the next phase of the contract, and that he will bring project status reports to the Board on a regular basis. Fred Solomon responded to questions relative to the interest rates for the financing. Staff clarified that the requested action does not commit the project to a particular site.

(M) Parker, (S) Pickard, Res. 02-417 was adopted authorizing the Chairman to sign the contract with Herhof and the contract with Concept Design Company (which will provide for the environmental work to be done); with direction for all of the timelines and guidelines as discussed and outlined in the contracts to be followed. The motion was amended, agreeable with the maker and second to include the correction requested by County Counsel earlier, and to clarify that the contract with Herhof is in Eurodollars.

Following discussion, the motion was further amended, agreeable with the maker and second, to include direction that no further action will be taken on the Herhof contract beyond preparation of the plans and specifications, without Board approval. Supervisor Reilly clarified that this motion allows the County to obtain the necessary information for the environmental review, and to proceed at the appropriate time.

Ayes: Unanimous.

It was noted that Umweltechnick means environmental technology.

Andreas Puchelt/Herhof, thanked the Board for the opportunity to speak relative to this project. He stated he feels a dream has become a reality for Herhof, and will become a reality for the consultants, the County, and the National Park Service. He referred to the use of their facilities throughout the world, and he noted that this is the first in the United States. He thanked the Board, staff and the consultants for their efforts in this project. He stated the system will achieve the recycling and diversion requirements, create compost, and reduce the amount of waste going into the landfill. He stated they hope to be able to build the project as soon as possible, and they are excited about the project.

cc: Jeff Green, County Counsel
    Ken Hawkins, Auditor
    Mary Hodson, Administrative Analyst
    File