RESOLUTION - ACTION REQUESTED 2018-311

MEETING: July 10, 2018

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Award a Contract to Yogg LLC to Conduct a Branding Project for Mariposa County

RECOMMENDATION AND JUSTIFICATION:
Award an Agreement for Services to Yogg LLC to Conduct a Branding Project; and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Mariposa County Economic Vitality Strategy includes the development of a brand identity as a priority action to attract new business and contribute to the year-round success of existing business. While the county seal will always be part of official documents, place branding is increasingly common among local governments as a way of communicating identity and values within the community and with external partners.

A Request for Proposals (RFP) to research and develop place branding for Mariposa County was issued by the County in April 2018. Solicitation for bids were distributed by email via CALED to 125 economic development consultants, as well as 6 consultants outside of the CALED distribution list. The bid period closed on May 21, 2018, and four proposals were received.

Nine staff representing seven departments were invited to participate on a selection committee for the branding project. After reading the proposals and interviewing top candidates, the committee selected yogg LLC based on their quality of past work, ability to understand our community, and expected value for their services. yogg LLC was the lowest responsible bid.

It is the appropriate time to award the contract and begin the branding process. The recommended contract period will be in effect from July 10, 2018 to February 28, 2019. Sufficient funding for the contract has been included in the 2018/19 Economic Development budget.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board of Supervisors approved the 2018/19 Economic Development budget,
which included adequate funds for the branding project.

The Board of Supervisors approved the Economic Vitality Strategy in July 2017, which references branding as a priority action item.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**
Do not award the bid. Staff could be directed to re-bid the project, consider other bidders or stop the branding process. These options could add cost and/or delay.

**FINANCIAL IMPACT:**
Sufficient funding has been included in the Recommended Budget for 206-17 in the Economic Development Budget.

**ATTACHMENTS:**
Mariposa yogg contract 6_22_18_final (DOCX)
yogg (PDF)

**RESULT:** ADOPTED BY CONSENT VOTE [UNANIMOUS]

**MOVER:** Merlin Jones, District II Supervisor
**SECONDER:** Kevin Cann, District IV Supervisor
**AYES:** Smallcombe, Jones, Long, Cann, Menetrey
CONTRACT BETWEEN YOGG LLC AND COUNTY OF MARIPOSA, CALIFORNIA

This Contract, made in Richmond, Virginia, is effective on June 22, 2018, regardless of the day on which it is executed, between yogg llc, a Virginia limited liability company, (referred to as the “Consultant”) whose address is 3122 West Marshall Street, Suite 101, Richmond, Virginia 23230 USA, and The County of Mariposa, California whose address is 5100 Bullion Street, Mariposa, CA 95338 (referred to as the “Client”). Client and Consultant also may be collectively referred to in this Contract as “Parties” or singularly as a “Party.”

1. Agreement // The Consultant agrees to perform business consulting work, generally marketing services, (referred to as the “Work”) for the Client in accordance with this Contract. The phrase Contract when used herein, shall by reference, automatically include any executed Amendment to the Contract.

2. No Guarantee of Results // The Consultant cannot in any way guarantee any particular results of the Work. The Client understands that results vary widely from situation to situation and that factual situations which appear to be similar can actually be very different upon investigation. The Client hereby agrees to hold the Consultant harmless from any and all losses, costs, expenses and damages the Client incurs due to any Work done on behalf of the Client by the Consultant pursuant to this Contract.

3. Work // A. The Scope-of-Work in this Contract outlines in detail the Work agreed upon to be performed by Consultant for the designated price. In summary, Consultant agrees to assist the Client with:

   a. Phase 1 Research – Brand Awareness and Perception
      i. Online panelist survey
      ii. Telephone Survey
      iii. 400 Residents of California
      iv. 400 Residents of San Francisco
   b. Phase 1 Brand Narrative To Define:
      i. Tone of the brand
      ii. Positioning
      iii. Greatest brand assets
      iv. Target audience
      v. Vision board
      vi. Recommendations for brand implementation and measurement
   c. Logo Development
      i. 3 initial options
      ii. 3 rounds of free revisions to select one final logo
      iii. Additional rounds of revisions or concepts will be quoted as additional cost and will require approval by Client
   d. Tagline Development
i. 5-7 initial ideas presented to Client
ii. 2 rounds of free revisions are available if necessary
iii. Client will select 1 final tagline to be used

B. Any additional Consultant modifications in the Scope-of-Work requested by the Client will be set forth in an Amendment. Some modifications of the Scope-of-Work set forth in the Contract are minor and may permit Amendment without additional charge. Other modifications are so significant that they change the entire concept of the Scope-of-Work and require additional charges. Whether the Amendment will require an additional charge is to be solely determined by the Consultant. All Amendments must be executed and returned by the Client within 5 calendar days of receipt of the Amendment. Failure of a Client to execute any Amendment and return it within 5 calendar days, whether an additional charge is involved or not, merely evidences that the Client wishes for the Consultant to continue the Work based on the original Scope-of-Work set forth in the Contract.

C. The Parties agree to cooperate with one another in performing under this Contract, including but not limited to, responses to: (i) inquiries, (ii) questions, or (iii) any other act requiring either Party to perform, in order to successfully complete the Work. The Parties agree that each will use its best efforts to respond to all inquiries, within 24 hours of receipt of the inquiry. If either Party cannot respond within 24 hours, they will notify the other Party acknowledging the inquiry and offer their estimated date for a response. Client’s failure to respond to Consultant, including delays in any stage of any approval will not relieve the Client of having to make agreed upon payments under the Contract.

D. Consultant will transfer to Client ownership over the final, approved PDF of layout design files, vector logo files and final research report accompanied by relevant raw data. Should Client request native design files of final approved files, additional charges for the time to organize, collect and output final files will be invoiced due upon receipt. Payment must be made in full before native files are released to Client. All other in-progress, variations and presentations not approved by the client remain property of Consultant.

4. Location // The Work will be done at such locations as the Consultant, in its sole professional judgment, deems appropriate and/or necessary to accomplish the Scope-of-Work.

5. Price // A. The Parties agree that the fee for Consultant’s services shall be a fixed fee for each project. As outlined in this Contract, the fixed fee for the projects are as follows: Phase 1 Research $26,000, Phase 1 Brand Narrative $17,500, Logo Development $6,000, Slogan/Tagline Development $2,000, Brand Standards Manual $550 to total $52,050.

B. Payment Terms // The Parties hereby agree that the total of $52,050 will be paid in 3 installments. First will be a 50% deposit of $26,025 which will be invoiced at the issuing of this Contract and due upon signing, 25% ($13,012.50) due upon delivery of the research portion of the project and the final 25% ($13,012.50) due upon delivery of final and approved files. Payments may be made by check or ACH draw, or by credit card with a 3% convenience fee.

C. Additional fees, costs or expenses may only be added by written Amendment to this Contract signed by the Parties. Client should keep in mind that there may be other charges assessed for the project that are unrelated to Consultant or Consultant’s work requiring Client to contract with third party vendors. This is more particularly set forth in paragraph 7 of this Contract.
D. The Parties agree that certain rights and obligations of each shall survive termination of the Contract, including but not limited to representations, warranties, licensing, intellectual property rights, indemnity obligations and confidentiality obligations.

6. Expenses of the Consultant // The Consultant will provide its own incidental equipment customary for professional services of this type and services and labor necessary for the performance of the Work. Where it is customary in the trade for the Consultant to purchase materials for the Client and invoice them at the standard mark-up, the Client will pay the full amount of the invoice within 5 calendar days of receipt.

7. Third Party Vendors // A. Consultant will use its best efforts to use third party vendors for the following types of items, which includes but is not limited to: licensing or royalties relating to Client use of photographs, fonts, or other intellectual property which are available to the public without further charges or the requirement of renewal licensing or royalty agreements. However, from time to time, Client may want special, additional work performed which necessitates Client having to: (i) pay additional licensing, royalty or other fees for the privilege of Client being able to use such photograph, font, or other intellectual property, etc. of a third party vendor, and (ii) enter into renewal agreements with third party vendors for ongoing use of such rights.

B. Consultant will arrange for Client to contract directly with such third party vendors, but Client will have to independently contract with such third party vendors for such services. Should Client not be able to reach agreement with such third party vendors, it must immediately notify Consultant but such failure does not alter Client's legal obligation to pay Consultant for its fees and expenses, incurred by Consultant on behalf of Client up to the date of Client notification. If the Parties cannot reach agreement on alternative photographs, fonts, intellectual property or, agreements renewal suitable to Client and this Contract is terminated, Client still owes Consultant for its fees and expenses incurred in performing under this Contract through the termination date.

8. No Oral Changes // This Contract can only be changed by a written Amendment signed by both Parties. The Amendment shall set forth any modifications to the original Contract's Scope-of-Work and it will also set forth any additional costs or expenses that Client must pay Consultant in addition to those originally set forth in the Contract. Amendments will be used for items, including but not limited to: extensions of time, changes to the Scope-of-Work or refinements of the project, approvals for copy, printing and the like, additional project costs and expenses.

9. Failure to Pay the Consultant // The Consultant may stop the Work and terminate this Contract if the Client fails to pay the Consultant any outstanding sums due within the date set forth in the Contract. The Client's failure to timely pay immediately accelerates all of the required Client payments causing the Client to be obligated to immediately pay for all work which has been performed under the Contract, whether or not the Client has been previously billed for such work which payments shall include all of the Consultant's out of pocket costs incurred in connection with the Scope-of-Work. In addition to the Contract payments, interest at 4.5% per month shall be due on the entire outstanding payment sum due the Consultant computed from the date the unpaid payment was first due. The Consultant reserves all other rights under Virginia law in connection with non-payment by the Client.

10. Notices of termination // All notices of termination under this Contract must be in writing or email and delivered personally, mailed by certified mail, return receipt requested, sent by reputable courier or overnight service to the other party, or emailed at the addresses written in this paragraph unless modified by written notice from the Party changing its address to the other Party. Notices shall be sent as follows: (i) if to Client then sent to: Tara Schiiff at tschiff@mariposasounty.org (ii) if to Consultant then to: Adam Mead, yogg llc, adam@landofyogg.com.

11. 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 certain obligations of Client arising from this Contract shall be immediately discharged. Should funding be eliminated, County is responsible for paying Contractor no less than services and time that have been rendered to date. 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.

12. Project Delay // If Client fails to provide feedback or approvals to continue progressing or finalizing projects for the space of 14 days, Client will lose priority of schedule and will be worked into the Consultants schedule as space permits. If Client fails to provide feedback or approvals to continue progressing or finalizing projects for the space of 90 days, Client may be subject to a reengagement fee of $600 and will be worked into the Consultants schedule as space permits. If Client fails to provide feedback or approvals to continue progressing or finalizing projects for the space of 180 days, Consultant has the right to close all Client’s projects and retain all money that has been paid by Client.

13. Attorney’s Fees // If the Client fails to pay pursuant to the schedule set forth herein or breaches any other term of this Contract, the Client shall pay all of the Consultant’s reasonable costs of collection, including its reasonable attorneys’ fees (a minimum of 25% of the total balance due and owing the Consultant in cases of non-payment) and court costs.

14. Governing Law and Assignment // This Contract is binding upon the Parties’ heirs, successors, administrators and assigns, and is governed by the law of the Commonwealth of Virginia without regard to any choice of law principles that could result in the application of any other jurisdiction.

15. Assignment // This Contract shall not be transferred, in whole or in part, without the written expressed consent of the other Party, which shall not be unreasonably withheld.

16. No Waiver // The waiver or failure to enforce any provision contained in this Contract by any Party shall not operate or be construed as consent to any breach by the other Party or as a modification of this Contract. Nor shall a waiver of, or failure to enforce, any provision of this Contract affect the ability of either Party to enforce each and every provision of this Contract at all times.

17. Construction // This Contract is the joint work product of both Parties. Accordingly, in the event of ambiguity, no presumption will be imposed against any Party by reason of document preparation.

18. Counterparts // This Contract may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

19. Authority // Each individual executing below on behalf of a Party hereby represents and warrants to the other Party that this individual is duly authorized to so execute, and to deliver, this Contract. By its signature below, each Party acknowledges and agrees that sufficient allowance has been made for review of this Contract by respective counsel and that each Party has been advised by its legal counsel as to its legal rights, duties and obligations under this Contract.

20. Signature // The Parties agree that this Contract may be signed electronically or manually with any electronic signature being deemed the same as a manual signature.
CLIENT SIGNATURE:

By: Rosemarie Smallcombe, Chairperson
Mariposa County Board of Supervisors

Date of signing: 7/18/18

APPROVED AS TO FORM

Steven W. Dahlem, County Counsel

CONSULTANT SIGNATURE:

yogg llc
EIN: 20-8778557

By: Adam Mead, President
3122 West Marshall Street, Suite 101
Richmond, Virginia 23230
804.888.6380
www.Landofyogg.com

Date of Signing: 7/13/18
Certificate of Insurance
Coverage provided by: Southern Insurance Company of Virginia

Name and Address of Additional Interest:
County of Mariposa
5100 Bullion St
Mariposa CA 95338

Named Insured:
Yogg LLC
3122 W Marshall St
Ste 101
Richmond VA 23230

Interest: Additional Insured - see reverse side for endorsement
Policy Period: From 05/19/2018 to 05/19/2019
This policy period begins and ends at 12:01 a.m. at the named insured’s address shown above.

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<tr>
<th>Building Limit</th>
<th>Contents Limit</th>
<th>Deductible</th>
<th>Liability Limits of Insurance</th>
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If you have any questions concerning this please contact the agent of record listed below:
4500547-00
WELLER AND ASSOCIATES LLC
11539 Nuckols Rd Ste B
Glen Allen VA 23059
(804)723-5768

IMPORTANT NOTICE: This certificate of insurance is issued as a matter of information only. It confers no rights upon the third party requesting the certificate beyond what the referenced policy of insurance expressly provides. This certificate of insurance does not extend, amend, or alter the coverage, terms, exclusions, or conditions afforded by the policy referenced in this certificate of insurance.

CANCELLATION: Should the above described policy be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Authorized Representative

ORIGINAL POLICY OR RENEWAL CERTIFICATE HELD BY NAMED INSURED

FORM CMOF-512(09-09) rev.2
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION
IN WRITTEN CONTRACT OR AGREEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

SCHEDULE*

Name Of Person Or Organization:

* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

I. The following provisions apply with respect to the insurance provided by the Businessowners Liability Coverage Form.

A. With respect to the insurance provided by this endorsement, the following is added to Paragraph C. Who Is An Insured:

4. Any person or organization shown in the Schedule above is also an insured if you agreed in a written contract or agreement with such person or organization to provide insurance such as is afforded under this policy. However, the insurance provided by this endorsement only applies with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by your ongoing operations performed in that part of the premises owned by, leased or rented to you. However:

a. The insurance afforded to such additional insured only applies to the extent permitted by law; and

b. The insurance afforded to such additional insured will not be broader than:

(1) The coverage you have agreed to provide in the written contract or agreement; or

(2) The coverage provided by this endorsement.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This person or organization is not an insured with respect to any “occurrence” which takes place prior to the date the written contract or agreement was executed and in effect.

C. With respect to the Insurance provided by this endorsement, the following is added to Paragraph D. Liability And Medical Expenses Limits Of Insurance:

5. The most we will pay under the insurance provided by this endorsement is:

a. The applicable limit of insurance to which you have agreed in the written contract or agreement to provide; or

b. The applicable Limit of Insurance shown in the Declarations, whichever is less.

II. The Businessowners Common Policy Conditions form is amended as follows.

With respect to the Insurance provided by this endorsement, Paragraph H. Other Insurance is replaced by the following:

H. Other Insurance

This insurance is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, unless you have agreed in a written contract or agreement for this insurance to apply on either a:
(1) Primary and non-contributory basis; or

(2) Contributory basis.

When this insurance is excess, we will have no duty under Business Liability Coverage to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Other Insurance provision and was not bought specifically to apply in excess of the Liability and Medical Expenses limit shown in the Declarations.