RESOLUTION - ACTION REQUESTED 2018-328

MEETING: July 10, 2018

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Approve an Agreement with Fujii Civil Engineering

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Fujii Civil Engineering in the not-to-exceed amount of $90,000 to assist with Solid Waste and Household Hazardous Waste engineering; and Authorize the Board of Supervisors Chair to Sign the Agreement.

Fujii Civil Engineering will provide services necessary to continue to comply with various permitting, grants and regulatory requirements, including work towards developing landfill expansion and/or closure plans as they have annually for several year at this facility.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Public Works has entered into agreements with Fujii Civil Engineering for the past several years and has been very well served by the professional services that this firm has performed.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
None approval would result in the Public Works Department not being able to meet permitting, grant, and regulatory compliance requirements.

FINANCIAL IMPACT:
Funding for this agreement is included in the FY18-19 requested budget in the Solid Waste Budget.

ATTACHMENTS:
Fujii Eng 18-060 (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
AGREEMENT FOR WASTE MANAGEMENT SERVICES FOR THE COUNTY LANDFILL

THIS AGREEMENT ("Agreement") is made and entered into this 16th day of July, 2018, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Fujii Engineering a ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on July 1, 2018 and terminate on June 30, 2019 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform Waste Management Services for the County Landfill as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $90,000. The Contractor's hourly rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations,
property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

Note: Not required if Contractor provides written verification it has no employees.

(4) Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor’s profession, with limit no less than $2,000,000 per occurrence or claim, $2,000,000 aggregate.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.
(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the County.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify County and its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions Contractor or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from sole negligence or willful acts.

6. 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 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.

7. **PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)**

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement 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.

8. **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.

9. **ASSIGNMENT**

It is understood and agreed that this Agreement 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 Agreement will be permitted only with the express written consent of the County.

10. **NOTICE**

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**
Fujii Engineering
4495 Big Pine Lane
Concord, CA. 94521
925-686-2776

**COUNTY:**
Mariposa County Public Works
4639 Ben Hur Rd.
Mariposa, CA. 95338
209-966-5356
11.  COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12.  PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13.  ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the Director of Public Works & Transportation. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14.  ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15.  TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon Thirty (30) calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving
written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

16. **NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. **DISPUTES**

Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney’s fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. **CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. **NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

20. **MANDATORY AND PERMISSIVE**

“Shall” is mandatory. “May” is permissive.

21. **SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. **COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
23. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. AUTHORITY

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. WARRANTY

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

29. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this
Agreement, this Agreement shall terminate and be of no further force and effect upon the day notice is provided by County to Contractor of such event. Upon termination of this Agreement, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement except for services rendered prior to such termination and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

**Funding Source: 601-0404-651-0418**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

**COUNTY OF MARIPOSA**

Rosemarie Smallcombe, Chair
Board of Supervisors

**CONTRACTOR**

Curt Fujii

**ATTEST:**

Rene LaRoche
Clerk of the Board

**APPROVED AS TO FORM:**

Steven W. Dahlem
County Counsel
May 10, 2018

Mr. Todd Storti
Solid Waste and Recycling Manager
Department of Public Works
County of Mariposa
4639 Ben Hur Road

Re: 2018-2019 Fiscal Year Recycling, Solid Waste, and Household Hazardous Waste Consulting Services, Mariposa County, California

Dear Mr. Storti:

Fujii Civil Engineering (FCE) is pleased to submit this proposal to provide engineering consulting services to Mariposa County (the County) related to recycling, solid waste management, and household hazardous waste management during the County’s 2018-2019 Fiscal Year. The proposed scope of work continues the existing services provided currently by FCE. These services consist mainly of assisting the County in planning for long-range recycling and solid waste management and assistance complying with a wide variety of regulatory requirements related to the County’s recycling, solid waste, and household hazardous waste management activities. FCE is uniquely qualified to provide these services for the following reasons:

- Familiarity with County recycling programs, solid waste facilities, and activities.
- Familiarity with County household hazardous waste facilities and activities.
- Extensive overall recycling, solid waste, and household hazardous waste management experience in California (and other states).

I have summarized the proposed scope of work below.

**Scope of Work**

My proposed scope of work for standard annual services consists of the following activities:

- **Routine Consulting Services** – These services consist of regular recurring activities.
  - Prepare and submit annual UWED/CRT (Universal Waste Electronic Devices/Cathode Ray Tubes) report to the Department of Toxic Substances Control.
  - Prepare and submit annual SB 20/50 Net Cost Report to CalRecycle.
  - Prepare and submit annual Methods Reports for transfer stations and the Mariposa County Landfill to CalRecycle.
  - Prepare and submit Annual Storm Water Report to the Regional Water Quality Control Board. (Note: County personnel collect samples and conduct quarterly
and monthly observations. FCE conducts the Annual Comprehensive Site Compliance Evaluation.)

- Prepare Annual Inflation Factor Report (for Financial Assurances) for submittal to CalRecycle and the Regional Water Quality Control Board.
- Prepare and submit Electronic Annual Report (EAR) to CalRecycle.
- Prepare and submit quarterly Disposal Reporting System (DRS) Reports to CalRecycle.
- Provide assistance for AB 939 Task Force meetings.
- Prepare Annual Landfill Capacity Report, using an aerial topographic map prepared by others and provided to FCE in an appropriate digital (CAD) format.
- Prepare and submit annual CARB Landfill Emissions Tool and accompanying report.

- Non-Routine Consulting Services – These services will comprise the bulk of services provided during the upcoming year. I should note that the scope of these services has increased significantly during the past two years due to the County’s efforts to revise solid waste management practices in the County to comply more completely with current State requirements related to diversion of materials from landfill disposal and to respond to such recent events as the “Tree Mortality” issues in the County. In addition, I will continue providing assistance to the County regarding pending new regulations, such as the SB 1383 regulations and the AB 901 regulations. This increased level of service will be necessary to complete these activities. These services include also assisting the County in activities that are not planned or anticipated (such as responding to communications/questions from regulatory agencies, and responding to events like the recent observation of a sheen on spring S-1). Anticipated activities during the upcoming fiscal year include, but are not limited to, the following items:
  - Work with County personnel and Blue Ridge Services to provide engineering assistance to landfill operations, such as engineering guidance regarding compliance items, fill sequencing, and operational efficiencies.
  - Continue to assist the County in developing recycling programs to respond to changing/increasing State requirements.
  - Continue to assist the County in developing plans for long-term solid waste management.
  - As needed, prepare RFI (Report of Facility Information) amendments to respond to changes in operations and procedures at the landfill and composting facility.
  - Continue to assist the County in developing wood waste activities to respond to the tree mortality issue.
Provide continued assistance complying with the new Industrial General Permit for storm water discharges, including the revisions to the permit that the State Water Resources Control Board is currently developing.

- Respond to questions regarding the Electronic Annual Report.
- Respond to inquiries from County staff regarding potential operational changes.
- Provide assistance in responding to Regional Water Quality Control Board letters or comments regarding Annual Storm Water Reports.
- Provide assistance in responding to communications or questions from regulatory agencies such as CalRecycle, the Regional Water Quality Control Board, the California Air Resources Board, and the Department of Toxic Substances Control.
- Provide assistance in other matters, as requested by the County.

**Estimated Price**

The total proposed not-to-exceed budget for the services described above is $90,000. This is slightly less than the approved final budget for the 2017-2018 fiscal year.

I wish to note the following regarding this proposed budget:

- FCE will invoice the County monthly on a time and materials basis not to exceed the proposed budget shown above.
- FCE will invoice the County only for staff hours. I will not invoice the County for such typical consulting expenses as mileage, copying, or postage/shipping. I do reserve the right to request payment for any unusual expenses, or third-party (sub-consultant) expenses (none currently proposed, or anticipated), but I will obtain County authorization prior to invoicing for any expenses.

**Summary**

I look forward to continuing to assist Mariposa County in their solid waste and household hazardous waste management activities, and I appreciate the opportunity to present this proposal to Mariposa County. Please contact me if you have any questions or comments.

Very truly yours,

[Signature]

Curtis G. Fujii, P.E.
Fujii Civil Engineering
EXHIBIT B

COST PROPOSAL

Contractor shall perform the services described in Exhibit A at the Hourly Labor Rate shown below:

<table>
<thead>
<tr>
<th>Principal</th>
<th>$120.00/hour</th>
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<tbody>
<tr>
<td>Hourly Labor Rate</td>
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