

DEPARTMENT: Public Works

BY: Dana Hertfelder

PHONE: 966-5356

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X)

Approve a Personal Services Agreement with Fred Solomon in the amount of \$3,250. Mr. Solomon will provide Public Works an analysis and recommendation on the compensation issue with Psomas Engineering.

Psomas Engineering is requesting compensation in the amount of \$157,279.00 for services associate with preparation of the final plans and specifications for the Yosemite West Wastewater Treatment Facility Improvements Project. Task G of the Psomas contract with the County required Psomas to prepare the plans and specifications for "the facility improvements necessary for the ultimate build-out." In their contract with the County, Psomas was to be compensated a lump sum amount of \$30,600 for preparation of the plans and specifications for the facility improvements necessary for ultimate build-out. In March 2001, as a result of "changes in original scope of work for the project," Psomas estimated that an additional \$30,510 would be required to complete the final plans and specifications necessary to complete the project. In December of 2001, Psomas stated that the additional design fees required to complete the plans and specifications for the project would be \$125,000. In January 2001, Psomas stated that the additional design fees required to complete the plans and specifications would be \$145,000. Psomas subsequently increased this amount to \$157,279 to complete the plans and specifications necessary to meet ultimate build-out. The Department of Public Works, after reviewing the information provided by Psomas, could not find reasonable justification for the \$157,279 increase in cost to complete the plans and specifications,

Public Works is requesting Mr. Solomon's assistance due to the high-level of workload on staff. In addition, Public Works believes that it would be in the County's best interest to hire an independent, third party, to reevaluate all of the pertinent information and report his findings to help resolve this issue.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On June 22, 1999, per Resolution No. 99-213, the Board approved the Agreement with Psomas Engineering for design services of the Yosemite West Wastewater Treatment Facility for the estimated cost to be \$176,218.

Psomas Engineering was selected as a result of a competitive process in which proposal were solicited from approximately 20 firms. Proposals were received from five firms. From that, two firms were selected in the final selection interview process.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve; resolution to this discrepancy will be prolonged.

COSTS: Not Applicable

- A. Budgeted current FY \$ _____
- B. Total anticipated costs \$ _____
- C. Required additional funding \$ _____
- D. Internal transfers \$ _____

SOURCE: 4/5ths Vote Required

- A. Unanticipated revenues \$ _____
 - B. Reserve for contingencies \$ _____
 - C. Source description: _____
- Balance in Reserve for Contingencies,
if approved: \$ _____

SPECIAL INSTANTIONS:

List the attachments and number the pages consecutively:

- 1. Draft Agreement with Fred Solomon
- _____
- _____
- _____

CLERK'S USE ONLY:

Res. No.: 02-142 Ord. No. _____
 Vote - Ayes: _____ Noes: _____
 Absent: _____ Abstained: _____
 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
 County of Mariposa, State of California
 By: _____
 Deputy

COUNTY ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

- _____ Recommended
- _____ Not Recommended
- _____ For Policy Determination
- _____ Submitted with Comment
- _____ Returned for Further Action

Comment: _____

C.A.O. Initials: 

AGREEMENT

**PERSONAL SERVICE AGREEMENT
PSOMAS COMPENSATION**

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 May 7, 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 prepare a proposal for an analysis of and recommendation on the compensation issue with Psomas Engineering as described in the attached proposal submitted by Mr. Solomon (Exhibit "A").

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 not-to-exceed the sum of THREE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$3,250) to review all file documents, interview Psomas and Kennedy Jenks and prepare a written report and basis for recommendations. If the conclusion is made that Psomas Engineering is not entitled to any compensation, CONTRACTOR's services will no longer be needed.

If the conclusion is made that Psomas Engineering is entitled to some or all of the compensation requested, CONTRACTOR will enter into negotiations with Psomas Engineering to arrive at a settlement for the claim. The basis for the settlement negotiations would be pre-approved by the COUNTY. CONTRACTOR will be compensated in the amount of 5% of savings against the claim by Psomas.

CONTRACTOR to be reimbursed for expenses incurred in the performance of work, including pre-approved travel, mileage at \$0.34 per mile, lodging and meals.

The total sum to be paid to CONTRACTOR includes all labor, materials, expenses other than those listed above 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
- Incremental payments based on the following schedule:

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**.

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.

Assignment

Section 5.04. **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 5.05. 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 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.

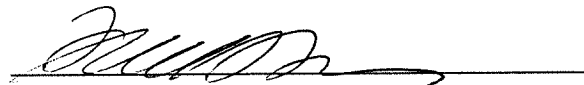
Governing Law

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:

CONTRACTOR:



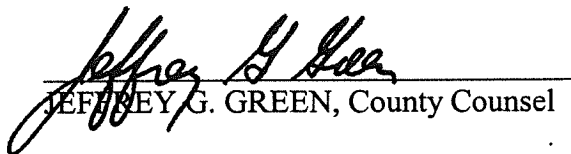
Robert C. Stewart, Chairman
Board of Supervisors

Date: 5-9-02

Date: 5/7/02

Social Security or Taxpayer Identification
Number 077-30-2267

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JEFFREY G. GREEN, County Counsel