

DEPARTMENT: Public Works

By: Michael Edwards

Phone: 966-5356

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

Adopt resolution authorizing the Public Works Director to execute an agreement for Biological Studies at Mariposa Yosemite Airport for the 1997 projects: PW 96-11 construction of apron and grading and PW 96-12 runway protection zone acquisition.

The Airport Master Plan EIR requires a biological study be completed at the airport prior to construction. The FAA has allocated \$894,200 for projects at the airport per ATTACHMENT 1. Michael Skenfeld is a qualified consultant who has performed other natural environment studies for County road bridge projects. He has provided a proposal to complete biological surveys and reports. This proposal is included as Exhibit A of the contract: ATTACHMENT 2

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board approved a pre-application for Federal funds for the apron (and other projects which were subsequently funded by the State), on April 15, 1994. Staff updated the pre-app to include runway protection zone acquisition in February of 1995. The Board considered proceeding with acquisition of two west end RPZ parcels on February 3, 1996 but deferred action until word on the FAA grant was received. The Board approved a contract with the State for funding of the airport runway and taxiway slurry seal on September 24, 1996. In October, Public Works received word that the FAA grant would be funded, and a letter confirming the allocation on January 8th, 1997.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the biological surveys are not completed this spring, construction can not proceed this year.

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COSTS: () Not Applicable	
A. Budgeted current FY>	\$ 30,000 *
B. Total anticipated Costs>	\$ _____
C. Required additional funding>	\$ _____
D. Internal transfers>	\$ _____

COSTS: () 4/5th Vote Required	
A. Unanticipated revenues>	\$ _____
B. Reserve for contingencies>	\$ _____
C. Source description: >	_____

Balance in Reserve Contingencies, If Approved:
\$ _____

SPECIAL INSTRUCTIONS:

List the attachments and number the pages consecutively:

- 1. Letter from FAA re: funding _____
- 2. Agreement for biological study _____

* CIP budget for 96-97. Additional match will be required from the 97-98 budget & the state for the two projects, as previously discussed

CLERK'S USE ONLY

Res. No.: 97-48 Ord. No.: _____

Vote - Ayes: 5 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

By: _____

Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

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

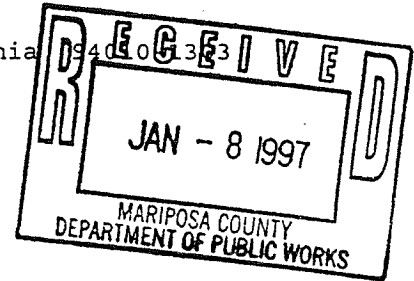
Comment: _____

A.O. Initials: ME



U.S. Department
of Transportation
**Federal Aviation
Administration**

San Francisco Airports District Office
831 Mitten Road
Burlingame, California 94010-1333



January 3, 1997

Mr. Michael D. Edwards
Director, Department of Public Works
County of Mariposa
4639 Ben Hur Road
Mariposa, California 95338

Dear Mr. Edwards:

In response to the request by the County of Mariposa, it is a pleasure to advise you that the Federal Aviation Administration has allocated \$894,200.00 under the Fiscal Year 1997 Airport Improvement Program (AIP), for further development of Mariposa-Yosemite Airport, Mariposa, California. This project, designated 3-06-0147-03, is programmed only for the following specific development:

Construct apron and transient tiedown area (120,000SF) including grading, marking, drainage and removal of underground tank (10,000 gal.); construct hangar taxiway (138,000SF) including grading and drainage; land acquisition for approach protection and perimeter road.

Approval of your (updated) DBE Program by our Civil Rights Office is required 45 days prior to bid solicitation or grant offer, whichever occurs first.

This allocation of federal funds is the first step leading to the issuance of a Grant Offer. The issuance of a Grant Offer is contingent upon the fact that all applicable federal requirements have been met.

Your project manager, William T. Gin at (415) 876-2822, will contact your airport representative in a few days to arrange a meeting for the purpose of assuring a clear understanding of all requirements, to establish a realistic work schedule for the project, and to fix a firm date for the acceptance of the grant offer.

Failure of the County of Mariposa to conform to the schedule and Grant Offer date, as established, may result in the withdrawal of this allocation.

Sincerely,

John L. Pfeifer

John L. Pfeifer
Manager, Airports District Office

**AGREEMENT FOR
BIOLOGICAL STUDY FOR**

**PW 96-11: Mariposa/Yosemite Airport Apron
PW 96-12: Mariposa/Yosemite Airport Runway Protection Zone**

The following is an Agreement between the County of Mariposa, hereinafter referred to as "COUNTY" and Michael W. Skenfield, Biological Consultant, hereinafter referred to a "CONSULTANT".

WHEREAS, CONSULTANT is a dully qualified professional experienced in biological studies, who was selected as the result of a competitive selection process involving a response to "Requests for Proposals" from the COUNTY; and

WHEREAS, in the judgment of the Board of Supervisors of COUNTY, it is necessary and desirable to employ the services of CONSULTANT for biological studies in anticipation of construction projects at the Mariposa/Yosemite Airport

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

PART I - SCOPE OF WORK

This agreement is consummated for the purpose of providing a Biological Study as detailed in Part II below.

PART II - SPECIFIC PROVISIONS

A. SERVICES TO BE PROVIDED BY CONSULTANT

1. Perform Natural Diversity Data Base search of special-status plants and animals expected to utilize the sites of the projects.
2. Perform field surveys and gather necessary data for each site, including construction areas, borrow areas, and areas to be cleared of obstacles.
3. Visit sites with County representatives.
4. Conduct botanical survey for rare plants and wildlife surveys.
5. Produce final Reports.

B. MATERIAL TO BE FURNISHED TO COUNTY BY CONSULTANT

1. Provide 5 copies of the final report (bound, 8 1/2 x 11),
2. Provide one unbound original reproducible copy for each project.

C. SERVICES TO BE PROVIDED BY COUNTY

1. County will provide maps showing the physical extent of each project, including approaches, borrow, fill and possible material disposal areas.
2. County will arrange for Consultant access to areas within the Runway Protection Zone, currently on private properties.

D. PAYMENT

1. CONSULTANT shall receive monthly progress payments in accordance with the fees identified in Part II D-2 below, within 35 days after submission of a verified claim and invoice, in triplicate. The payments for satisfactory performance include salary, fringe benefits, overhead, profit and all other expenses except as otherwise provided in this contract. Progress payments will be made for costs incurred to date, as agreed to by the COUNTY'S project manager and the CONSULTANT.
2. CONSULTANT shall be paid for services subject to the following distribution and limits:
 - a. For all tasks described in Part II A above, the estimated sum of \$ 5995 based on the rates and estimates contained in the Proposal submitted by Michael W. Skenfield on January 22, 1997, a copy of which is attached hereto as Exhibit A.
 - b. In no event, shall the total amount of reimbursement for providing a "Biological Field Survey and Biological Assessment Report" for the projects exceed \$6,000.

E. TIME OF COMPLETION

1. The required time of completion for all tasks described above except A.6. is July 31, 1997.
2. The CONTRACTOR shall forfeit the sum of \$10 per day for every calendar day beyond July 31, 1997 that items A.1. through A.5. of the contract are incomplete, excepting for time delays caused by the COUNTY, or for delays beyond the control of the CONSULTANT.

Part III. - GENERAL PROVISIONS.

A. ASSIGNMENT

Except as otherwise provided in this Agreement, neither party hereto shall assign, sublet or transfer any interest in this Agreement or duty hereunder without the prior written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

B. COST DISCLOSURE

In accordance with Government Code ~7550, CONSULTANT agrees to state the numbers and amounts of all contracts and subcontracts relating to this Agreement.

C. INDEMNIFICATION

- a. CONSULTANT agrees to defend, indemnify, hold harmless and release COUNTY and employees, from and against any and all actions, claims, damages, disabilities or expenses including attorney's fees and witness costs that may be asserted by any person or entity, to the extent caused by the negligent performance of CONSULTANT hereunder. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONSULTANT or its agents under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

- b. CONSULTANT shall be liable to COUNTY for any loss of or damage to COUNTY property arising from or in connection with CONSULTANT'S negligent performance hereunder.
- c. The COUNTY shall indemnify, defend and hold the CONSULTANT harmless from and against claims, liabilities, suits, loss, cost, expense and damages arising from or in connection with performance of work and service provided by COUNTY and COUNTY'S other subcontractors.

D. INSURANCE

With respect to performance of work under this Agreement, CONSULTANT shall maintain and shall require all its SUB-CONSULTANTS to maintain insurance as described below, unless CONSULTANT'S insurance covers its SUB-CONSULTANTS.

1. Workers' Compensation Insurance

Insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

This policy shall not be canceled without first giving thirty (30) days prior written notice to the County of Mariposa.

2. General Liability Insurance

Commercial or Comprehensive General Liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$250,000 combined single limit for each occurrence, \$500,000 in the aggregate. Said insurance shall include, but not be limited to: premises and operations liability, independent contractor's liability, products and completed operations liability, contractual liability, and personal injury liability.

In the event CONSULTANT cannot provide an occurrence policy, CONSULTANT shall provide insurance covering claims made as a result of performance of this Agreement and shall maintain such insurance in effect for not less than one (1) year following completion of performance of this Agreement.

3. Automobile Liability Insurance

Insurance covering bodily injury and property damage in an amount no less than \$300,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

4. Endorsements

Each said comprehensive or commercial general liability and automobile liability insurance policy shall be endorsed with the following specific language:

- a. The County of Mariposa, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

- b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
- c. The insurance provided herein is primary coverage to the County of Mariposa with respect to any insurance or self-insurance programs maintained by COUNTY, and no insurance held or owned by COUNTY shall be called upon to contribute to a loss.
- d. This policy shall not be canceled without first giving thirty (30) days prior written notice to the County of Mariposa.

5. Professional Liability Insurance

Professional Liability Insurance shall not be required for this contract.

6. Documentation

The following documentation shall be submitted to the County of Mariposa:

- a. Properly executed Certificates of Insurance clearly evidencing all coverages, limits and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement.
- b. Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within ten (10) days of execution of Agreement.

7. Policy Obligations

CONSULTANT's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

8. Material Breach

If CONSULTANT, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. COUNTY, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CONSULTANT, COUNTY may deduct from sums due to CONSULTANT any premium costs advanced by COUNTY for such insurance. These remedies shall be in addition to any other remedies available to the COUNTY.

E. MERGER

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to CCP ~1856. No modification of this Agreement

shall be effective unless and until such modification is evidenced by a writing signed by both parties.

F. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

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

Consultant: Michael W. Skenfield
Biological Consultant
P.O. Box 747
Murphys, CA 95247

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be made by giving notice pursuant to this paragraph.

G. NON-DISCRIMINATION

CONSULTANT shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state, and local laws, rules, and regulations in regard to non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability or national origin.

H. CONFLICT OF INTEREST

CONSULTANT promises that it presently has no interest which would conflict in any manner or degree with the performance of services hereunder. CONSULTANT further promises that in the performance of this Agreement, no person having such interest will be employed.

If requested to do so by COUNTY, CONSULTANT shall complete and file a "Statement of Economic Interest" with the Mariposa County Clerk disclosing CONSULTANT's financial interests.

I. OWNERSHIP OF WORK PRODUCT

CONSULTANT shall be the owner of all original drawings. COUNTY shall be entitled to immediate possession of accurate reproducible copies of any computations, plans, correspondence, or other pertinent data and information gathered or computed by CONSULTANT prior to termination of this Agreement by COUNTY or upon completion of the work pursuant to this Agreement and upon payment for the services rendered.

J. PERFORMANCE

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until he receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to other agreements with parties to this Agreement or others. After receipt of justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case in a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

K. PROSECUTION OF WORK

CONSULTANT is authorized to proceed with the performance of this Agreement upon date of issuance, by the Director of Public Works, of written notice to proceed with the work, and shall complete said performance in accordance with the time specified in Part II, under Time of Completion, provided, however, that if the scheduled performance is delayed by earthquake, flood, high water or other Act of God or by strike, lockout or similar labor disturbances, the time for CONSULTANT's scheduled performance of this contract shall be extended by a number of days equal to the number of days the schedule has been delayed.

L. STATUS OF CONSULTANT

The parties intend that CONSULTANT in performing the services hereinafter specified, shall act as an independent CONSULTANT and shall have control of the work and the manner in which it is performed. CONSULTANT is not to be considered an agent or employee of COUNTY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits COUNTY provides its employees.

M. TERMINATION

At any time and without cause, COUNTY shall have the right in its sole discretion, to terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, COUNTY shall pay CONSULTANT for services rendered to such date based upon submittal and approval of a time and expenses invoice.

If CONSULTANT should fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, COUNTY may terminate this Agreement by giving CONSULTANT written notice of such termination, stating the reason for such termination. In such event, CONSULTANT shall be entitled to receive payment for all services satisfactorily rendered, provided, however, that there shall be deducted from such amount the amount of damage, if any, sustained by COUNTY by virtue of the breach of the Agreement by CONSULTANT.

Upon termination, CONSULTANT shall be relieved of all professional responsibility for that portion of the work completed by others.

N. CONSULTANT'S REPRESENTATIONS

COUNTY has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. CONSULTANT hereby represents that all its work will be performed in accordance with generally accepted professional practices and standards, and agrees to exercise usual and customary professional care in its efforts to comply with the requirements of applicable federal, state, and local laws, it being understood that acceptance of CONSULTANT's work by COUNTY shall not operate as a waiver or release.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

BY COUNTY this _____ day of _____, 19 ____.

BY CONSULTANT this _____ day of _____, 19 ____.

CONSULTANT

COUNTY OF MARIPOSA

By: _____
Michael W. Skenfield
Biological Consultant

By: _____
Michael D Edwards
Public Works Director

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

CERTIFICATES OF INSURANCE
ON FILE WITH THE DEPARTMENT

Jeffrey G. Green
County Counsel
Date: _____

EXHIBIT A

Michael W. Skenfield
Biological Consultant
P. O. Box 747 Murphys CA 95247
RPF No. 1597 REA No. 00057
(209)728-3101

January 22, 1997

County of Mariposa
Department of Public Works
4639 Ben Hur Road
Mariposa CA 95338

Attn: Gwendolyn Foster

Re: Proposal for Mariposa/Yosemite Airport Biological Study

Introduction

This proposal is for a Biological Field Survey and Biological Assessment Report for approximately 70 acres of proposed airport land.

There appear to be no vernal pools, no streams, no ponds and no serpentine soil. Furthermore, there are no caves where bats could roost.

The survey will need to look for rare plants and will need to make a negative finding for special-status mammals and amphibians. The survey will also need to make a negative report on vernal pools.

Scope of Work and Fees

1. Order a Natural Diversity Data Base report.
2. Initial site visit, meet with County, conduct botanical and wildlife survey.
3. Second visit. Conduct botanical survey for rare plants. Repeat wildlife survey.
4. Final follow-up survey, early summer.
5. Complete report and map.

I can complete the above scope of work and provide five report copies for a total of \$5,995.00 (five thousand nine hundred ninety five dollars), to be paid in the following way:

\$3,957.00 due upon completion of field work;
\$2,038.00 due upon completion and acceptance of final report.

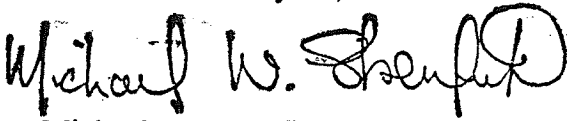
If any special-status wildlife species is determined to have habitat on the site, and if a special protocol survey is required, the additional work will be estimated and presented as a supplemental proposal to the County. If a wetland delineation is necessary, that also will be estimated and proposed.

Schedule of Work

I would plan to begin preparation and the initial field survey in February or March (depending on the weather). I would follow with a second visit in April or May, and make my final follow-up survey in June or July. A report can follow within 30 days after final survey.

If the schedule needs to be accelerated, this can be negotiated.

Submitted January 22, 1997

A handwritten signature in black ink that reads "Michael W. Skenfield". The signature is written in a cursive style with a large, stylized initial "M".

Michael W. Skenfield, Biological Consultant