

DEPARTMENT: Fire Protection BY: Blaine Shultz PHONE: 966-4330

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: YES ( ) NO (X))

Resolution authorizing the Chairman to sign a personal service agreement with Thomas Brusoe. He will coordinate closing of the El Portal Shelter feeding facility, inventory all foodstuffs, arrange for transport and storage of feeding supplies to a Mariposa facility and return the kitchen and conference area of Cedar Lodge to it's pre-shelter condition.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Board has approved similar agreements in the past.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

1 Not approve agreement, course will not be offered.

COSTS: ( ) Not Applicable

A. Budget current FY \$ 1050.00  
B. Total anticipated costs \$ ~~675.00~~ 637.00  
C. Required Additional funding \$ \_\_\_\_\_  
D. Internal transfers \$ \_\_\_\_\_

SPECIAL INSTRUCTIONS:  
List the attachments and number the pages consecutively

SOURCE: ( ) 4/5ths Vote Required

A. Unanticipated revenues \$ \_\_\_\_\_  
B. Reserve for contingencies \$ \_\_\_\_\_  
C. Source Description:  
D. Balance in reserve for contingencies if approved: \$ \_\_\_\_\_

CLERK'S USE ONLY:

Resolution No: 92-62 Order No: \_\_\_\_\_  
Vote - Ayes 5 Noes \_\_\_\_\_  
Absent \_\_\_\_\_ Abstained \_\_\_\_\_

ADMINISTRATIVE OFFICERS RECOMMENDATIONS

This item on agenda as:

- \_\_\_\_\_ Recommended
- \_\_\_\_\_ For policy determination
- \_\_\_\_\_ Submitted with comment
- \_\_\_\_\_ Return for further action

Approved ( ) Denied  
( ) Minute Order Attached ( ) No action necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date:

Comments:

ATTEST: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California

By: \_\_\_\_\_  
Deputy

A.O. Initials: \_\_\_\_\_

**AGREEMENT**

**PERSONAL SERVICE AGREEMENT**

**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 Thomas E Brusoe, 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 Fire Department, and

**WHEREAS, CONTRACTOR** is qualified and desires to provide specialized services to the County Fire, Department;

**NOW THEREFORE**, in consideration of the sums to be paid hereunder and the mutual covenants and conditions hereinafter contained, the **PARTIES** hereto after as follows:

**ARTICLE 1. TERM OF CONTRACT**

**Section 1.01.** This **AGREEMENT** shall become effective on January 2, 199 7 and shall terminate on January 30, 199 7, 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** and not an employee, agent, joint venture 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 perform the services as described on Exhibit "A" attached hereto.

**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 Assistance**

**Section 3.02.** 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 withholding.

**ARTICLE 4. COMPENSATION**

**Section 4.01.** In consideration for the services to be performed by CONTRACTOR, COUNTY agrees to pay CONTRACTOR:

The total sum of Six hundred and thirty seven DOLLARS (\$ 637.00 ) for services as described above. The total sum to be paid to CONTRACTOR includes all labor, materials, travel and other expenses 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. CONTRACTOR agrees to maintain a policy of liability insurance in the minimum amount of N/A (\$ N/A) to cover any such claims.

### **Worker's Compensation**

**Section 5.04.** CONTRACTOR shall provide Worker's Compensation insurance as required by the State of California for all services provided hereunder.

### **Assignment**

**Section 5.05.** 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 5.06.** 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 with all reasonable requests of **CONTRACTOR** (and provide access to all documents reasonably) necessary to the performance of **CONTRACTOR'S** duties under this **AGREEMENT**.

### **Assignment**

**Section 6.02.** Neither this **AGREEMENT** nor any duties or obligations under this **AGREEMENT** may be assigned by **COUNTY** without the prior written consent of **CONTRACTOR**.

## **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 given 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 prepared 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:** Mariposa County Fire Department  
P.O. Box 162  
Mariposa, CA 95338

**CONTRACTOR:** Thomas E Brusoe  
3881 Ben Hur Rd  
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 only 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 STEWART, Chairman  
Board of Supervisors

  
\_\_\_\_\_  
THOMAS E BRUSOE

Date: 3-4-97

Date: 2-11-97

Social Security or Taxpayer  
Identification Number 348-40-4923

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
JEFFREY G. GREEN  
County Counsel

**AGREEMENT**

**PERSONAL SERVICE AGREEMENT**

**EXHIBIT A**

**DESCRIPTION OF SERVICES TO BE PERFORMED:**

The **CONTRACTOR** shall close out feeding operations at the Cedar Lodge, inventory all materials, arrange for and deliver those items to a secured storage facility in Mariposa. Further, the **CONTRACTOR** shall return the kitchen and conference area at the Cedar Lodge to its original condition.