

DEPARTMENT: Public Works

By: Thomas Starling

Phone: 966-5356

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes\_\_\_ No\_x)

Public Works recommends a resolution authorizing the Public Works Director to sign a Personal Service Agreement with Fred Youngren for loading tires at the Mariposa Landfill.

Mr. Youngren will charge \$75.00 per trailer.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board approved agreements with Mr. Youngren in August, 1992 and January, 1994 for his services for loading tires. His most recent agreement expired June 30, 1995.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

1. Work could be performed by Public Works employees at a greater expense.
2. Work could be performed by a fully-supervised community service individual; however, this has not been successful in the past.

COSTS:	( ) Not Applicable	
A.	Budgeted current FY	\$90,000
B.	Total anticipated costs	\$1,350*
C.	Required additional funding	\$
D.	Internal transfers	\$
SOURCE: ( ) 4/5th Vote Required		
A.	Unanticipated revenues	\$
B.	Reserve for contingencies	\$
C.	Source description: *Professional Services	
Balance in Reserve Contingencies, if approved: \$		

SPECIAL INSTRUCTIONS:  
List the attachments and number the pages consecutively:

Personal Service Agreement (7 - pages)

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CLERK'S USE ONLY

Res. No.: 95-537      Ord. No. \_\_\_\_\_

Vote - Ayes: 4      Noes: \_\_\_\_\_

Absent: 0      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

ADMINISTRATIVE OFFICER'S RECOMMENDATION:  
This item on agenda as:

Recommended


Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: \_\_\_\_\_

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 Fred Youngren, hereinafter referred to as "CONTRACTOR", for professional building cleaning 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 AGREEMENT**

Section 1.01. This AGREEMENT shall become effective on July 1, 1995, and shall terminate on December 31, 1996, unless terminated in accordance with the provisions of Article 7 of the 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 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 3.03.** 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 total sum of SEVENTY-FIVE DOLLARS (\$75.00) per trailer load, 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
- [X] Incremental payments based on the following  
schedule:

Monthly billings

## **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 attorneys' 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.

### **Workers' Compensation**

**Section 5.04.** CONTRACTOR shall provide Workers' 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 the CONTRACTOR without the prior written consent of COUNTY.

## 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 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 Public Works  
4639 Ben Hur Road  
Mariposa, CA 95338

CONTRACTOR: Fred Youngren  
Post Office Box 541  
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:**





Michael D. Edwards  
Director of Public Works

Fred Youngren

Date: 12/29/95

Date: 1/2/96

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

Social Security or Taxpayer  
Identification Number

  
JEFFREY G. GREEN  
County Counsel

541-58-7157

EXHIBIT A

SCOPE OF SERVICES BY FRED YOUNGREN  
TO LOAD USED TIRES IN TRAILER  
AT THE MARIPOSA LANDFILL

Contractor will load all tires which are brought to and accepted at the Mariposa Landfill for disposal in the van type trailer which is provided by Oxford Tire Company.

The trailer is to be loaded in the most effective manner to assure that it has been filled to its maximum capacity.

The total payment will be \$75.00 per load.