



# MARIPOSA COUNTY

Public Works • (209) 966-5356



## **RESOLUTION - ACTION REQUESTED 2016-200**

MEETING: April 26, 2016

TO: The Board of Supervisors

FROM: Tony Stobbe, Public Works Director

**MINUTE ORDER ATTACHED**

RE: Authorize a Professional Services Agreement with Willdan Engineering

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### **RECOMMENDATION AND JUSTIFICATION:**

Approve a Three-Year Professional Services Agreement with Willdan Engineering for Construction Inspection/Project Management and Specific Engineering Services as Detailed in the Scope of Work for Various Public Works Projects; Authorize the Board of Supervisors Chair to Sign the Agreement; and Authorize the Director of Public Works to Issue Subsequent Task Orders Up to Specific Limits (Subject to Approval as to Form by County Counsel).

This is one of two agreements that will provide a contractual mechanism to access Professional Engineering, Project Management, and Construction Management services for a period of three years with a County option to extend for one additional year. Individual project task orders will be issued to accomplish specific tasks following successful negotiation of scope and fees. Authority is requested for the Public Works Director to issue task orders up to \$100,000 for reimbursable projects such as Federal and State funded projects, and \$50,000 for those funded through the County's General Fund or enterprise funds, with review by County Counsel.

This request for increased approval authority under this agreement will improve project schedules and greatly streamline modification of individual task orders in response to work progression, scope changes, cost changes, etc. Task orders that initially, or through modification, exceed these authorities will be brought to the Board for approval. For those task orders that fall under the above limits, the Department requests that authorization for up to \$150,000 in collective value of these smaller task orders under this agreement, in a fiscal year, be provided to the Director of Public Works. Should this limit be met, the Department will formally request that it be adjusted. In addition, the Department will provide regular updates to the Board on task orders issued under this authority.

As the Board is aware, the County is on the brink of a robust construction season with projects such as the Courthouse Renovation, West Whitlock and Triangle Road construction, two Safe Routes to Schools Projects and a major Stormwater Project in Coulterville. This Agreement will greatly augment the "in-house" staff and will contribute to professional project management and inspection, as well as providing access to a broad spectrum of engineering expertise to address other issues regularly encountered by the Department.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

On December 15, 2015, the Board of Supervisors approved Resolution # 2015-594 to advertise for Request for Qualifications to Professional Engineer/Construction Field Services for Construction Inspection and Project Management.

Four (4) firms submitted Qualification Proposals. A selection committee reviewed the proposals received and determined that the County would be best served by engaging with Willdan and one other responding firm both of which were found to be the most qualified firms to address the needs of the County.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose to not approve this agreement and require each individual task be advertised and awarded under current guidelines. The Board could also choose to provide alternative direction to the Department on this matter.

**FINANCIAL IMPACT:**

**Costs associated with the use of these services will be included in the project calculations and be included in the annual budget. Any changes to estimated project costs that will impact the budget will be brought to the Board for review and approval. Sufficient funding for these services have been and will be included in project estimates.**

**ATTACHMENTS:**

Willdan PSA 16-017 (PDF)

**CAO RECOMMENDATION**

Requested Action Recommended

  
\_\_\_\_\_  
Mary Hodson, CAO 4/21/2016

**RESULT: ADOPTED AS AMENDED [UNANIMOUS]**

**MOVER:** Kevin Cann, District IV Supervisor

**SECONDER:** Marshall Long, District III Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Carrier



# COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222



**JOHN CARRIER, CHAIR**  
**MARSHALL LONG, VICE-CHAIR**  
**ROSEMARIE SMALLCOMBE**  
**MARSHALL LONG**  
**KEVIN CANN**

**DISTRICT V**  
**DISTRICT III**  
**DISTRICT I**  
**DISTRICT III**  
**DISTRICT IV**

## MARIPOSA COUNTY BOARD OF SUPERVISORS MINUTE ORDER

TO: TONY STOBBE/Public Works Director

FROM: RENÉ LaROCHE, Clerk of the Board *RL*

SUBJECT: Approve a Three-Year Professional Services Agreement with Willdan Engineering for Construction Inspection/Project Management and Specific Engineering Services as Detailed in the Scope of Work for Various Public Works Projects; Authorize the Board of Supervisors Chair to Sign the Agreement; and Authorize the Director of Public Works to Issue Subsequent Task Orders Up to Specific Limits (Subject to Approval as to Form by County Counsel)

Resolution: 16-200

The following direction was given by the Mariposa County Board of Supervisors on **April 26, 2016:**

### **3. Public Works RES-2016-200**

**Approve a Three-Year Professional Services Agreement with Willdan Engineering for Construction Inspection/Project Management and Specific Engineering Services as Detailed in the Scope of Work for Various Public Works Projects; Authorize the Board of Supervisors Chair to Sign the Agreement; and Authorize the Director of Public Works to Issue Subsequent Task Orders Up to Specific Limits (Subject to Approval as to Form by County Counsel)**

Tony Stobbe/Public Works Director gave the staff report. No public input.

#### **AMENDMENT:**

**Include a sign off on the task authorizations by the County Administrative Officer for budget sufficiency, in addition to the authorization by the County Counsel for legal sufficiency, and require a minimum of semi-annual Board reviews.**

**RESULT:**     **ADOPTED AS AMENDED [UNANIMOUS]**  
**MOVER:**     Kevin Cann, District IV Supervisor  
**SECONDER:** Marshall Long, District III Supervisor  
**AYES:**       Smallcombe, Jones, Long, Cann, Carrier

cc: Mary Hodson/County Administrative Officer  
Steven W. Dahlem/County Counsel  
File

16-017

**PROFESSIONAL SERVICE AGREEMENT**

THIS AGREEMENT is made this 26<sup>th</sup> day of April, 2016 between:

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

and

CONTRACTOR: Willdan Engineering  
2014 Tulare St. Suite 515  
Fresno, CA. 93721

**ARTICLE 1. TERM OF AGREEMENT**

- 1.01 Agreement Term: This Agreement shall become effective on March 15, 2016, and shall terminate on June 1, 2019, unless terminated in accordance with the provisions of Article 7 of this Agreement.

**ARTICLE 2. INDEPENDENT CONTRACTOR STATUS**

- 2.01 Independent Contractor: 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.
- 2.02 Contractor Qualifications: Contractor represents that it has the necessary competence, experience and qualifications for the services to be performed.
- 2.03 Agreement Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Agreement.

**ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR**

- 3.01 Scope of Services: Contractor agrees to perform the services as described on Exhibit "A" attached hereto. Request for qualification was done in February 2016.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in Agreement time. All such services are to be coordinated with County and the results of the work shall be monitored by the Public Works Director or his/her

designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

- 3.02** Method of Performing Services: 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.
- 3.03** Employment of Assistants: 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 responsibility for assistants or 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 such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

#### ARTICLE 4. COMPENSATION

- 4.01** Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed in the not to exceed amount of \$ TBD 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 as follows:

- Total sum to be paid upon completion of services,  
or  
 Incremental payments based on the following schedule:  
Submittal of monthly invoices

**Funding Source: Project assignments and acceptance of proposal by County and issuance of notification to proceed.**

- 4.02** Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County. All invoices shall reference contract number.
- 4.03** Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.
- 4.04** Expenses: 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

- 5.01** Tools and Instrumentalities: 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. 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.

- 5.02** Indemnification: 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 One Million Dollars (\$1,000,000) or an amount as otherwise determined appropriate by the County Risk Manager to cover such claims. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.03** General Liability and Automobile Insurance: During the term of this Agreement Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least \$1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or the named insureds will be called on to cover a loss covered hereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.
- 5.04** Professional Liability Coverage: Contractor shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.
- 5.05** Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth in paragraphs 5.02, 5.03 and 5.04 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to County prior to the effective date of such cancellation.
- 5.06** Workers' Compensation: During the term of this Agreement Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.07** 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.

**5.08** 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.

**5.09** Records: It is understood and agreed that all plans, studies, specifications, and data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Contractor shall maintain such records for a minimum of three (3) years or as otherwise required by law.

**5.10** Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

**5.11** Assignability of Agreement: 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.

## ARTICLE 6. OBLIGATIONS OF COUNTY

**6.01** Cooperation of County: County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.

**6.02** Assignment: 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

- 7.01** Termination Occurrence of Stated Events: This Agreement shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Contractor;
  2. Death of Contractor.
- 7.02** Termination by County for Default of Contractor: 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.
- 7.03** Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.
- 7.04** Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

## ARTICLE 8. GENERAL PROVISIONS

- 8.01** Notices: 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 and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, 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.
- 8.02** Entire Agreement of the Parties: 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 is 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 and approved by the County as provided herein or as otherwise required by law.



**EXHIBIT "A"**

**CONSTRUCTION INSPECTION / PROJECT MANAGEMENT  
AND PROJECT SPECIFIC ON-CALL ENGINEERING SERVICES**

**SCOPE OF SERVICES**

COUNTY REQUEST FOR QUALIFICATIONS DATED FEBRUARY 2016

**SCOPE OF SERVICES:**

As detailed in Section III of the Request for Qualifications dated February 2016. Additional contracts will be issued reflecting detailed Scope of Services and Not To Exceed Costs for each Professional Service task that the County assigns to the vendor.

**SECTION III – BACKGROUND & SCOPE OF WORK**

**III-1. General Conditions**

The County of Mariposa shall not be liable for any pre-contractual expenses incurred by the any contractor, nor shall any firm include such expenses as part to the proposed cost. Pre-contractual expenses include any expense incurred by a proposal and negotiation any terms with the County.

The County reserves the right to withdraw this RFP at any time without prior notice and to reject any and all proposals submitted without indicating any reasons. Any award of contract for services shall be made to the firm best qualified and responsive in the opinion of the County.

Proposals may, at the County's option, be rejected if they contain any alterations, additions, conditional or alternatives, are incomplete, or contain erasures or irregularities of any kind. The County reserves the right to reject any and all proposals. The County expressly reserves the right to postpone submittal opening for its convenience and to reject any and all submittals responding to this RFP.

The selected firm must agree to indemnify, hold harmless and defend the county, its officers, agents and assigns from any liability or loss resulting from suits, claims, or actions brought against the County which result directly or indirectly from the wrongful or negligent actions of the consultant in the performance of the contract.

The County envisions this to be a two-year (2) Professional Services Agreement with the potential for an additional one (1) year extension.

The selected firm will be required to comply with all existing State and Federal labor laws including the applicable to equal opportunity employment provisions.

The County reserves the right to negotiate special requirements and proposed service levels using the selected proposal as a basis. Compensation for services will be negotiated with the selected firm.

All responses to this RFP shall become the property of the County of Mariposa and will be retained or disposed of accordingly.

No amendments, additions or alternates shall be accepted after the submission date and time.

All documents, records, designs and specifications developed by the selected firm in the course of providing services for the Mariposa County shall be the property of the County. Anything considered to be proprietary should be so designated by the firm.

Acceptance by the County of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into a contract for services.

The County reserves the right to issue a written notice to all participating firms of any change in the proposal submission schedule should the County determine, in its sole discretion, that such changes are necessary.

### **III-3. Scope of Services**

#### **A General and Project Management**

Assists the County Staff.

Capable of managing any aspect of civil engineering, construction inspection / management.

The selected firm should have experience performing Roadway, Bridges and Building Construction Management. The selected firm needs to demonstrate a level of experience in the Historical Facility Improvements and site management procedures should construction unearth Archeological Finds and or Discoveries.

Capable of reviewing matters as assigned pertaining to engineering to insure that undertakings proposed and implemented by the County and others are done in a manner that protects the County's interests, and are in keeping with project goals, specifications and practices as well as with local, state and federal laws.

Capable of providing engineering services on County projects and overseeing project management and as assigned on-site inspection for the construction of public works infrastructure projects.

Available to support presentations, if assigned to the public and County Board of Supervisors.

Maintain and deliver all engineering/construction records, studies and maps for all projects where employed by County (in PDF and source file formats – dwg, doc etc).

Prepare reports, investigations, studies and evaluations as, from time to time, may be required and directed by the County Engineer.

Perform other negotiated engineering related functions as directed by the County Engineer.

Potentially serve as Resident Engineer when required pursuant to Caltrans/Federal requirements.

Assist in the preparation or oversee preparation of capital improvement projects, improvement plans, specifications, bid documents and public improvement project management.

Provide construction inspection / observation and management during the course of County projects. May be assigned to act as Resident Engineer. Assist with inspection, review of payments, cost estimating, SWPPP preparation and documentation, filing of notices and other related tasks.

Coordinates activities with other departments and outside agencies to obtain various approvals and agreements such as environmental clearances, permits, land acquisitions and rights-of-way for assigned engineering projects.

Specific Construction Inspection duties may include:

- Attend pre-construction meetings.
- Review, approve, and modify construction schedule submitted by contractor, including coordination of said schedules with all affected parties including building occupants, residents in construction zones, etc.
- Review shop drawings and submittals from contractor.
- Provide field inspections of work in progress to ensure compliance with plans and specifications.
- Follow federal requirements and procedures and filing system for federally funded projects.
- Take digital photos of each construction phase throughout the duration of a project.
- Serve as inspector of record (create redline on as-built drawings) for work inspected.
- Prepare and distribute written daily inspection reports via e-mail and/or hardcopy.
- Coordinate inspections with utility companies as necessary.
- Coordinate special testing and inspection work as required.
- Report instances of apparent non-compliance with contract plans, specifications to Public Works staff for resolution.
- Verify prevailing wages and payroll information.
- Verify progress payments.

#### Materials Testing

The County may arrange with one testing company and/or a certified testing lab to ensure construction method and material compliance with the project documents or may assign. The project inspector will be responsible for overseeing the testing and reviewing the testing reports. Testing will include, but not be limited to:

1. Soil compaction testing
2. Asphalt concrete testing
3. Concrete slump and strength testing

### **B Federally Funded Capital Projects Engineering Services**

All services shall be in accordance with Caltrans standards, FHWA standards, and the County standards.

The selected firm must comply with California Government Code Section 8355 in matters relating to providing a drug-free work place.

The Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et. Seq., are the governing factors regarding allowable elements of cost.

The Agreement will include the administrative requirements set for in 49 CFR Part 18, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

Comply with CFR Title 49, Part 29, Debarment and Suspension Certificate, refer to Exhibit 12- E "Debarment and Suspension Certificate" in Chapter 12 of the Caltrans Local Assistance Manual.