

CLERK'S USE ONLY

Res. No.: 91-289 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 with Comment
- _____ Returned for Further Action

Comment: _____

C.A.O. Initials: AW

AGREEMENT

**PERSONAL SERVICE AGREEMENT
HISTORY CENTER VAULT**

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 October 4, 2001, and shall terminate on June 30, 2002, 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 assist in the preparation of, plans and specifications and assist in the construction of the History Center Vault. CONTRACTOR will coordinate with the architect to develop a set of plans and specifications and bid documents for public bidding, assist COUNTY in the bid process and provide construction management for the project.

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 TEN THOUSAND DOLLARS (\$10,000) 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:
 - \$2,000 to be paid upon completion of plans and specifications
 - \$500 to be paid upon award of a contract for construction

- \$7,500 to be paid monthly with the same percentage as the percentage of construction completed
- Plus expenses based on the, IRS rate for mileage, phone expense and a pre-approved travel expense

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 on 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:

Doug Balmain
Doug Balmain, Chairman
Board of Supervisors

[Signature]

Date: 10/28/01

Date: 10/23/01

Social Security or Taxpayer Identification
Number 077-30-2267

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Jeffrey G. Green
JEFFREY G. GREEN, County Counsel