

DEPARTMENT: Public Works

By: Jim Petropulos

01-290

Phone: 966-5356

RECOMMENDED ACTION AND JUSTIFICATION:

(Policy Item: Yes ___ No X)

Approve Personal Services Agreement with Fred Solomon in the amount of \$9,500. The services to be provided by Mr. Solomon will initiate the process to develop an RFP to be issued to seek a firm to complete a needs assessment for the proposed Human Services facility.

Mr. Solomon will complete the Request for Proposal (RFP), assist in the selection of the successful respondent and coordinate and oversee the space needs program and conceptual floor plan.

Funding for Mr. Solomon's service will be provided by the Human Services Department realignment monies. In the current budget, \$50,000 has been set aside for project development.

The proposed Personal Services Agreement is the first among several steps to provide a new consolidated facility for the Human Services Department. Following are the steps necessary required for the referenced project:

1. Develop an RFP for a needs assessment and conceptual floor plan
2. Complete the needs assessment and conceptual floor plan
3. Develop an RFP for potential developers to provide the facility on a long-term lease based on the needs assessment and conceptual floor plan.
4. Solicit proposals from prospective developers.

Mr. Solomon's services have been successfully utilized by the County for other Capital Improvement projects. He has a great deal of experience in project development and construction management which will prove to be invaluable for this project.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The space needs committee has discussed the proposed Human Services facility in the past and recommend that Public Works present the proposed project to the Board. Human Services has set aside \$50,000 for the project development in the current budget.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Negative action will delay the project development phase. Public Works could complete the work with current staff. However, due to the large number of projects and the small amount of staff, project delivery will be delayed.

COSTS: () Not Applicable	
A. Budgeted current FY>	\$ <u>50,000</u>
B. Total anticipated Costs>	\$ <u>9,500</u>
C. Required additional funding>	\$ _____
D. Internal transfers>	\$ _____

SOURCE: () 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. Draft proposal (6 pgs)

CLERK'S USE ONLY

Res. No.: 01-200 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: MTA

AGREEMENT

**PERSONAL SERVICE AGREEMENT
HUMAN SERVICES BUILDING**

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 develop a Request for Qualifications (RFQ) and assist in the preparation of the preliminary design for the new Human Services Building.

Elevations and development of the preliminary building design will involve meeting with the various Health and Social Services divisions to determine their specific space requirements, development of a preliminary floor plan and preparation of the RFP for design build services.

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 sum of NINE THOUSAND FIVE HUNDRED DOLLARS (\$9,500) 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:

- \$5,000 TO BE PAID UPON COMPLETION OF Request for Qualifications
- \$2,000 to be paid upon selection of successful architect
- \$2,500 to be paid upon completion of space needs program, floor plan and elevations
- Plus expenses based on the IRS rate for mileage, phone expense and 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 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:

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



COUNTY of MARIPOSA

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

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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: JIM PETROPULOS, Public Works Director

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: Personal Service Agreement with Fred Solomon Regarding Human Services Facility and Mariposa County Sports Complex
Resolution No. 01-290 and 01-291

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on October 16, 2001

ACTION AND VOTE:

10:31 a.m. Authorize the Public Works Director to Enter into a Personal Service Agreement with Fred Solomon for the Proposed Development of the Human Services Facility; and Authorize the Chairman to Sign the Personal Service Agreement (\$9,500) (Public Works); and Authorize the Public Works Director to Enter into a Personal Service Agreement with Fred Solomon for the Proposed Development of the Mariposa County Sports Complex; and Authorize the Chairman to Sign the Personal Service Agreement (\$15,000) (Public Works)

BOARD ACTION: (M)Parker, (S)Pickard, Res. 01-290 adopted/agreement for Human Services facility; and Res. 01-291 adopted/agreement for sports complex, as recommended. Following discussion, motion was amended, agreeable with maker and second, to title the sports complex project as the "recreational/sports complex." Supervisor Reilly requested that the County Administrative Officer assist Public Works with developing a project schedule for projects. Discussion was held relative to the scope of duties for the recreational/sports complex. Motion was further amended, agreeable with maker and second, to include the Parks and Recreation Commission, the general public, the consultant, and other committees to work on issues relative to developing the recreational/sports complex. Ayes: Unanimous.

Supervisor Stewart thanked Public Works and the road crews for brush clearing on Sullivan and Silver Bar Roads. He noted that the Department has an ambitious road program and capital improvement project list. Supervisor Parker thanked Fred Solomon for his assistance with the projects.

cc: Cheryle Rutherford-Kelly, Human Services Director
Ken Hawkins, Auditor

Jeff Green, County Counsel
Rich Begley, Deputy Director, Parks and Recreation
File