

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works *[Signature]*

BOARD AGENDA # *C-3

Urgent ☐ Routine ☒

AGENDA DATE September 21, 2010

CEO Concurs with Recommendation YES ☐ NO ☐
(Information Attached)

4/5 Vote Required YES ☐ NO ☒

SUBJECT:

Approval to Appoint Wayne G. Sutton as the Interim County Surveyor

STAFF RECOMMENDATIONS:

1. Appoint Wayne G. Sutton, Licensed Land Surveyor (LS 3863), as the Interim County Surveyor with full authority accorded by law to the County Surveyor in those duties related to land survey, until such time as a permanent County Surveyor is appointed.
2. Authorize the Director of Public Works to contract with Wayne G. Sutton to perform duties as outlined in the scope of work (Exhibit A) for a maximum of two years.

FISCAL IMPACT:

Funding for the Interim County Surveyor position will not exceed \$78,000 annually and is available in the Fiscal Year 2010-2011 Public Works Engineering budget. This position is funded for a maximum of 20 hours per week.

BOARD ACTION AS FOLLOWS:

No. 2010-590

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Appoint Wayne G. Sutton as the Interim County Surveyor

DISCUSSION:

The County Surveyor has statutory responsibility to provide professional land surveying expertise for the County in the review and disposition of all matters related to property boundary, right of ways and street locations, and other entitlements. This includes the preparation and review of legal descriptions for land grants, annexations, incorporations, special districts and other County purposes and the review of all maps and records of survey prior to recordation on behalf of the County. Many of these responsibilities are time sensitive. For example, the review of parcel maps must occur within 20 days of submittal per the Subdivision Map Act.

Professional Land Surveyor Curt Chappell had been acting as the Interim County Surveyor since March 2, 2010 and will complete his contract at the end of September 2010.

The Department of Public Works intends to again use a Personal Services Agreement with a licensed land surveyor to act as the Interim County Surveyor until the position can be permanently filled. It is the Department of Public Work's intent to enter into a Personal Services Agreement for a maximum of two years. The Department is looking at long-term solutions to filling the position permanently. Previous to the last incumbent performing the County Surveyor functions, the Director of Public Works has historically performed the function. A county engineer registered as a civil engineer prior to January 1, 1982 was authorized to perform the necessary survey functions per Government Code Section 66401 (b). After January 1, 1982, a valid California Professional Land Surveyor's License was required. The current Director of Public Works was not registered prior to that date, and does not have a Land Surveyor's License, therefore making him ineligible to act as the County Surveyor.

Currently, none of the existing management staff have a Land Surveyor License, or a Civil Engineering License predating January 1982. It is anticipated that a member of the existing management staff will qualify for the survey license within 12 to 18 months. The Department will return to the Board at that time for a permanent appointment.

The requested action will fill the immediate need for a County Surveyor and provide the Department sufficient time to develop a permanent solution. Licensure, as a Land Surveyor in the State of California, requires graduation from a four-year curriculum with an emphasis in land surveyings and two years of actual broad-based progressive experience in land surveying or applicable substitutions as defined by the Professional Land Surveyor's Act (Business and Professions Code 8700-8805).

The Chief Executive Office's Human Resources team is in the process of conducting two classification studies for the Public Work's Survey Division. These studies are analyzing the creation of an Associate Surveyor position and the development of a surveyor classification series similar to that that exists for the engineering series. It is anticipated that these studies should be completed by the first quarter or mid-year of the current fiscal year.

Approval to Appoint Wayne G. Sutton as the Interim County Surveyor

This plan and recommendation has been developed in cooperation with the local chapter of the California Land Surveyors Association.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Well Planned Infrastructure System and the Efficient Delivery of Public Services by ensuring the duties of the County Surveyor are adequately performed. Pursuant to County Code 2.16.010, the surveyor of the County shall be appointed by the Board of Supervisors.

STAFFING IMPACT:

The Interim County Surveyor duties will be performed by a personal services contractor for a maximum of two years. The Department of Public Works will provide the necessary oversight of the personal service agreement and performance of the scope of services contained.

CONTACT PERSON:

Matt Machado, Director of Public Works. Telephone: 209-525-4130.

H:\Matt Machado\BOS\County Surveyor 9.21.10

PERSONAL SERVICES AGREEMENT

This PERSONAL SERVICES AGREEMENT is made and entered into by and between the **COUNTY OF STANISLAUS ("County")** and **Wayne G. Sutton ("Contractor")** on September 21, 2010 (the "Agreement").

RECITALS

WHEREAS, the County has the need for services involving a County Surveyor in its Public Works Department;

WHEREAS, the Contractor is specially trained, experienced, licensed, and competent to perform such services and has agreed to provide those services; and,

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state, and county laws, ordinances, regulations, and resolutions.

2. CONSIDERATION

2.1 County shall pay Contractor as set forth in **Exhibit A**.

2.2 Except as expressly provided in **Exhibit A** of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

2.3 County shall withhold federal, state, and Medicare taxes appropriate for personal service contract employees. Pursuant to the Omnibus Budget Reconciliation Act of 1990, which mandates an alternate plan to Social Security for public employees, the Contractor shall be enrolled in the Public Agency Retirement System Alternate Retirement System ("PARS"). The County shall contribute to PARS for the Contractor an amount equal to 2.0 percent of the gross compensation earned by the Contractor under this Agreement. The County also shall withhold 5.5 percent of the gross compensation earned by the Contractor under this Agreement and contribute such withholdings to PARS for the Contractor. Except as stated above, the County has no responsibility or liability for payment of Contractor's taxes or assessments. The Contractor is solely responsible for the payment of all other taxes and other assessments.

3. CONDITION PRECEDENT

This Agreement is conditioned upon the prior successful completion by the Contractor of a pre-placement drug screening test in accordance with the County's Pre-Placement Drug Testing Policy (the "Test") which, by this reference, is made a part hereof. This Agreement shall not become effective unless and until the Contractor has successfully completed the Test. The initial Test shall be paid for by the County. The Test shall be scheduled by the County and must be taken by the Contractor within 48 hours of the execution of this Agreement.

4. TERM

4.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below, or unless some other method or time of termination is listed in **Exhibit A**.

4.2 Either party may terminate this Agreement for convenience and without cause upon providing fourteen (14) calendar days prior written notice.

4.3 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

4.4 This Agreement shall terminate automatically upon the occurrence of (a) death of the contractor, (b) bankruptcy or insolvency of either party; (c) sale of Contractor's business, or (d) Contractor's refusal to consent to a pre-placement drug screening Test, as set forth in Paragraph 3 herein, or Contractor's failure to successfully complete such Test in accordance with the County's Pre-Placement Drug Testing Policy.

4.5 Upon termination of this Agreement, the County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed.

4.6 This agreement may be renewed upon mutual agreement of all parties.

5. WORK SCHEDULE

Contractor's obligation is to perform in a timely manner those services and work identified in **Exhibit A**. It is understood by Contractor that the performance of these services and work may require a varied schedule with the hours and times for completion of said services to be set by County.

6. REQUIRED LICENSES, CERTIFICATES, AND PERMITS

Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for Contractor to provide the services and work described in **Exhibit A** must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include but are not limited to driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County.

7. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Unless otherwise stated in **Exhibit A**, County shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in **Exhibit A** to this Agreement.

8. INSURANCE

If Contractor utilizes a motor vehicle in performing any of the work or services identified in **Exhibit A**, Contractor shall procure and maintain in force throughout the duration of this Agreement a business auto liability insurance policy with minimum coverage levels of \$300,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. The coverage shall include all Contractor-owned vehicles and all hired and non-owned vehicles used in performing under this Agreement. A certificate of insurance shall be provided to the County at least ten (10) days prior to the start of services to be performed by the Contractor. The policy shall contain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to the County.

9. STATUS OF CONTRACTOR

9.1 It is understood by the parties that the Contractor is a contract employee and not an independent contractor. For purposes of performing those services listed in **Exhibit A**, the County shall have direct supervision over the Contractor and shall direct Contractor as to when and where Contractor's services shall be performed and shall treat Contractor as an employee except as to those items contained in Paragraph 2.2.

9.2 Contractor agrees to be bound and abide by all County policies, rules, and regulations.

10. RECORDS AND AUDITS

10.1 Contractor shall prepare and maintain all writings, documents, and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing, and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof.

10.2 Any authorized representative of County shall have access to any writings as defined for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable, times to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

11. NONDISCRIMINATION

During the performance of this Agreement, the parties shall not unlawfully discriminate in violation of any federal, state, or local law, rule, or regulation against any employee, applicant for employment, or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, age, political affiliation, or sex. The parties shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said Act. Contractor further agrees to abide by County's nondiscrimination policy.

12. ASSIGNMENT

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor, the Contractor's firm, associates, and employees of said Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent to County.

13. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. CONFLICTS

Contractor agrees that he/she has no interest and shall not acquire any interest direct or indirect, which would conflict, in any manner or degree with the performance of the work and services under this Agreement.

15. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

16. NOTICE

Any notice, communication, amendments, additions, or deletions to this Agreement including change of address of either party during the term of this Agreement which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Department of Public Works
Attn: Matt Machado
1716 Morgan Road
Modesto CA 95358

To Contractor: Wayne G. Sutton


17. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein by reference shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated unless the same be in writing executed by the parties hereto.

COPY

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first herein above written.

COUNTY OF STANISLAUS

CONTRACTOR

By: _____
Raul Mendez
Senior Management Consultant
Chief Executive Office

By: Wayne G. Sutton
Wayne G. Sutton

Contractor's Taxpayer Identification Number:

**APPROVED AS TO CONTENT:
DEPARTMENT OF PUBLIC WORKS**

By: _____
Matt Machado, Director

**APPROVED AS TO FORM:
COUNTY COUNSEL
JOHN P. DOERING**

By: Thomas E. Boze
Thomas E. Boze
Deputy County Counsel

EXHIBIT A**Scope of Work
County Surveyor****A. TERM**

The term of this Agreement shall be from September 21, 2010 through September 21, 2012 or until completion of the agreed upon services unless sooner terminated as provided in Section 4 of this Agreement.

B. COMPENSATION

In order to process payments for federal and state withholding, etc., and in order to ensure that all appropriate County costs are charged to the correct department, all personal service contractors must be paid through the County biweekly payroll system. This also means that personal service contractors must be compensated on an hourly basis and that negotiated contract amounts must be converted from an annual amount to an hourly amount. All contracts must stipulate an hourly rate of pay.

The Contractor shall be compensated for the services provided under this Agreement at an hourly rate of \$75.00 per hour, not to exceed a total amount of \$78,000 annually. This rate is not adjustable for the performance period as set forth in this Agreement.

The Contractor shall periodically submit a written document to the department identifying the name of the individual performing services, the date the services were performed, a description of the services, and the total cost of the services. The responsible department head shall review and certify that such services have been received and that the amounts paid to the Contractor have not exceeded the amount that was budgeted for the services. The department head must keep this certified document on file in the Contractor's official personnel file, which the department must maintain for audit purposes.

The County shall reimburse the Contractor for travel costs, meals, and lodging at the same rate paid to County employees if required for the performance of services requested by the County. Receipts of all expenses shall be provided to the County prior to payment of any reimbursable expenses.

C. CONTRACTOR'S QUALIFICATIONS

See attached **Exhibit B**.

D. JOB SUMMARY

Under managerial direction, provides professional land surveying expertise for the County in the review and disposition of all matters related to property boundary, right of ways and street locations, and other entitlements; reviews legal descriptions for land grants, annexations, incorporations, special districts and other County purposes; reviews

all maps and records of survey prior to recordation; performs related work as assigned. An incumbent in this classification must file statements of economic interest with the Stanislaus County Clerk/Recorder.

The incumbent must demonstrate an ability to avoid a conflict of interest and, should the need arise, warranty against same. The incumbent must not have any existing interest and shall not during the term of the agreement acquire any interest direct or indirect which conflicts, or has the appearance of conflicting, in any manner or degree with the performance of the work and services required under the agreement. For example, such a conflict may include previous work on a tentative subdivision map that will be presented to the County for certification by the County Surveyor during the term of the agreement. Please note that the County will not waive conflicts under the California Code of Regulations, Title 16, Division 5, Article 4, Section 476 Code of Professional Conduct - Professional Land Surveying, subsection (b)(4). If appointed, incumbent will be required to submit a Fair Political Practices Commission Form 700 "Statement of Economic Interests" disclosing all incumbent's reportable interests in accordance with the County's Conflict of Interest Code section XI.

It is anticipated that the position will last 24 months at 8 to 20 hours per week.

E. JOB CHARACTERISTICS

This position will report to the Director of the Public Works Department or his designee. The incumbent will perform the duties of County Surveyor as prescribed by State law and County ordinances; may serve as an expert witness in cases dealing with boundary lines, easement disputes and right of ways and may provide technical expertise to the Board of Supervisors, County Departments, and special districts within the County in areas of authority. Pursuant to §27550 of the Government Code, the Office of Surveyor is declared an appointive position. Appointment to this position is approved by a majority vote of the Board of Supervisors with recommendation from the Public Works Director.

Examples of Duties:

- Reviews and/or directs the review of records of survey maps; executes the County Surveyor's Certificate for parcel maps, tract maps, records of survey and legal descriptions for recordation purposes and assumes statutory responsibility for the preparation and maintenance of such records.
- Supervises the review and preparation of reports regarding tentative parcel maps, tract maps, lot line adjustments, conditional use permit applications, environmental impact reports, certificates of compliance and similar documents for compliance with laws, ordinances and regulations prior to acceptance and/or recordation.
- Researches records within the County Assessor's office, the County Recorder's office, the Clerk of the Board of Supervisor's office and the Surveyor's office to determine chain of title, verify legal ownership and the County's Rights of Way.
- Provides professional surveying knowledge and serves as subject matter expert for the County on matters relating to surveying, mapping, property use, easement and ownership issues.

- Provides information to the public regarding surveying and land development and public rights of way.
- Monitors and interprets changes in laws and regulations related to surveying activities and functions; evaluates their impact upon County activities, and develops and implements policy and procedural changes as required.

Knowledge of:

- Principles and practices of professional land surveying.
- Applicable laws, codes and regulations, including those concerning land development, easements, boundaries, and land use planning.
- Engineering mathematics through trigonometry.
- Specialized equipment and technology used in surveying such as surveying instruments, scanner, plotter, and associated software and/or database programs
- Knowledge of design techniques, tools, and principles involved in production of precision technical plans, blueprints, drawings, and models.
- Concepts and survey implications and applications of a geographic information system.

Skills in:

- Reviewing and approving a variety of survey and mapping documents.
- Interpreting, applying and explaining complex federal, state and local laws and regulations related to the areas of responsibility and the land development process.
- Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions.
- Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.

Ability to:

- Use initiative and independent judgment within laws and general policy guidelines.

Licenses and Certification:

- Must possess a valid California Class C driver's license
- Must possess registration as a Professional Land Surveyor in the State of California or a Registered Civil Engineer with registration prior to January 1, 1982.

Experience:

- Ten years of professional land surveying experience. Experience in both private and public sector employment is preferred.

Exhibit B

WAYNE G. SUTTON
**SUMMARY OF QUALIFICATIONS**

40 plus years experience in surveying in the public and private sector with expertise in property boundaries, retracement surveys as well as land development.

CERTIFICATIONS

Licensed Land Surveyor - California - LS3863 (current)
United States Mineral Surveyor - Current Appointment
Licensed Land Surveyor - Nevada - LS4859 (retired 2007)
State Water Rights Surveyor - Nevada - No. 776 (retired 2007)
Licensed Land Surveyor - Arizona - LS 19358 (retired 2007)
Lifetime Teaching Credential - Land Surveying and Prospecting and Mineral Deposits
California Drivers License - Class B with current medical
Private Pilot License - Single Engine Land

EXPERIENCE

1986 to Present:

Private practice with emphasis on consulting and support to engineers and surveyors particularly in land development and boundary determinations. As a U.S. Mineral Surveyor performed mineral surveys for the Bureau of Land Management in the development of mining claims.

1963 to 1986:

Stanislaus County Department of Public Works. Started on survey crew and worked inspections, design, materials, control surveys, aerial surveys, plan lines, right-of way, and all phases of public works projects. Started as an Engineering Aide I and left as Deputy County Surveyor.

COMMUNITY SUPPORT

Little League Baseball Coach - 5 years
Housing Authority Girls Softball Coach - 2 years
Boy Scout Master - 5 years
SAAG Member (representing Ceres) 1 year
S.T.A.R.S. (Sheriff's Team Active Retired Seniors) 1st Academy - 5000 plus hours
Sheriffs Aero Squadron (sworn officer) - pilot, co-pilot, observer - 1000 plus hours