



AGENDA ITEM NO.

COUNCIL MEETING

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

December 5, 2006

FROM: ANDREW T. SOUZA, City Manager

BY: NICOLE R. ZIEBA, Deputy City Manager

SUBJECT: APPROVE AMENDMENTS TO THE AGREEMENTS BETWEEN THE CITY AND JAMES DONABED AND THE CITY AND ALAN YENGOYAN FOR HEARING OFFICER SERVICES

RECOMMENDATION

Staff recommends that the City Council approve the attached amendments to the contracts between the City and the City's two independent Hearing Officers, James Donabed and Alan Yengoyan.

EXECUTIVE SUMMARY

On September 26, 2006, Council unanimously approved contracts with both James Donabed and Alan Yengoyan to fill the critical vacancy for a City Hearing Officer. Both Hearing Officers began hearing cases in October. The existing Agreements call for a very specific schedule and payment; James Donabed provides six days of service per month at \$5,500 per month, and Alan Yengoyan provides eight days of service per month at \$6,500 per month. The two Hearing Officers would like to swap the number of days they hear cases, as well as the compensation rates, effective the month of December and thereafter. The Council is being asked to approve the attached two amendments which will allow the two men to swap schedules and be paid accordingly.

BACKGROUND

James Donabed provides the City with six days of hearing officer services each month at a rate of \$5,500 per month. Alan Yengoyan provides the City with eight days of hearing officer services at a rate of \$6,500 per month. Due to scheduling arrangements, Mr. Yengoyan has asked to decrease the number of days he provides to six, and Mr. Donabed has asked to increase the number of days he provides service to eight. Fee structures would also change accordingly. In order to make this administrative amendment to each of the two contracts, Council must first approve the amendments as each Agreement and supplemental amendment are above the \$50,000 authority threshold.

FISCAL IMPACT OF RECOMMENDATIONS

None

Attachments: First Amendment to Agreement between the City and James Donabed
First Amendment to Agreement between the City and Alan Yengoyan

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("Amendment") is made and entered into effective this 1st day of December, 2006, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and Alan Yengoyan, an individual and a resident of Fresno, California, hereinafter referred to as "PROVIDER".

RECITALS

WHEREAS, CITY and PROVIDER entered into an Agreement, dated October 1, 2006, for Administrative Hearing Officer services, hereinafter referred to as "Agreement;" and

WHEREAS, the parties now desire to modify the scope of work, therein, effective December 1, 2006, by reducing the aggregate number of service days per month and the total compensation under the Agreement.

AGREEMENT

NOW, THEREFORE, the parties agree that the aforesaid Agreement be amended as follows:

1. The first sentence of paragraph 2.1 of the Agreement is amended in its entirety to read as follows:

"PROVIDER shall provide in the aggregate six (6), eight (8) hour days of Services in each month hereunder."

2. Paragraph 3.3 is amended in its entirety to read as follows:

"3.3 PROVIDER agrees that PROVIDER'S total payments hereunder for the first year of this Agreement shall not in any event exceed the sum of Seventy Thousand and 00/100 dollars (\$70,000.00) and the annual total payments thereafter shall not in any event exceed the sum of Sixty Eight Thousand and 00/100 dollars (\$68,000.00)."

3. The first sentence in paragraph #1 in Exhibit "A" of the Agreement is amended in its entirety to read as follows:

"PROVIDER shall provide in the aggregate six (6), eight (8) hour days of Services in each month hereunder, prorated for portions of any month."

4. The rate in Exhibit "B" ("Fee Schedule") of the Agreement for "Administrative Hearing Officer Services" is amended in its entirety to read as follows:

"At the rate of Five Thousand, Five Hundred and 00/100 dollars (\$5,500) per month for the equivalent of six (6) eight (8) hour days of Services rendered."

5. The last sentence in Exhibit "B" ("Fee Schedule") of the Agreement is amended

in its entirety to read as follows:

“Total compensation payable to PROVIDER for the first year under this Agreement shall not in any event exceed Seventy Thousand Dollars (\$70,000). Total annual compensation payable to PROVIDER under this Agreement, thereafter, shall not in any event exceed Sixty Eight Thousand Dollars (\$68,000.00).”

6. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

7. Except as otherwise provided herein, the Agreement entered into by CITY and PROVIDER, dated October 1, 2006, remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

Alan Yengoyan,
an individual

By _____
Andrew T. Souza
City Manager

By _____
Alan Yengoyan

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Senior Deputy

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("Amendment") is made and entered into effective this 1st day of December, 2006, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and James Donabed, an individual and a resident of Fresno, California, hereinafter referred to as "PROVIDER".

RECITALS

WHEREAS, CITY and PROVIDER entered into an Agreement, dated October 1, 2006, for Administrative Hearing Officer services, hereinafter referred to as "Agreement;" and

WHEREAS, the parties now desire to modify the scope of work, therein, effective December 1, 2006, by increasing the aggregate number of service days per month and the total compensation under the Agreement.

AGREEMENT

NOW, THEREFORE, the parties agree that the aforesaid Agreement be amended as follows:

1. The first sentence of paragraph 2.1 of the Agreement is amended in its entirety to read as follows:

"PROVIDER shall provide in the aggregate eight (8), eight (8) hour days of Services in each month hereunder."

2. Paragraph 3.3 is amended in its entirety to read as follows:

"3.3 PROVIDER agrees that PROVIDER'S total payments hereunder for the first year of this Agreement shall not in any event exceed the sum of Seventy Eight Thousand and 00/100 dollars (\$78,000.00) and the annual total payments thereafter shall not in any event exceed the sum of Eighty Thousand and 00/100 dollars (\$80,000.00)."

3. The first sentence in Paragraph #1 in Exhibit "A" of the Agreement is amended in its entirety to read as follows:

"PROVIDER shall provide in the aggregate eight (8), eight (8) hour days of Services in each month hereunder, prorated for portions of any month."

4. The rate in Exhibit "B" ("Fee Schedule") of the Agreement for "Administrative Hearing Officer Services" is amended in its entirety to read as follows:

"At the rate of Six Thousand, Five Hundred and 00/100 dollars (\$6,500) per month for the equivalent of eight (8), eight (8) hour days of Services rendered."

5. The last sentence in Exhibit "B" ("Fee Schedule") of the Agreement is amended

in its entirety to read as follows:

“Total compensation payable to PROVIDER for the first year under this Agreement shall not in any event exceed Seventy Eight Thousand Dollars (\$78,000). Total annual compensation payable to PROVIDER under this Agreement, thereafter, shall not in any event exceed Eighty Thousand Dollars (\$80,000.00).”

6. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

7. Except as otherwise provided herein, the Agreement entered into by CITY and PROVIDER, dated October 1, 2006, remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

James Donabed,
an individual

By _____
Andrew T. Souza
City Manager

By _____
James Donabed

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Senior Deputy