

AGENDA ITEM NO. 1 G
COUNCIL MEETING 1/14/2010
APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

January 14, 2010

FROM: RENE A. RAMIREZ, Director 
Department of Public Utilities

BY: STEPHEN A. HOGG, Assistant Director 
Department of Public Utilities

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH BKS ENERGY, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, IN THE AMOUNT OF \$80,000 FOR PROFESSIONAL CONSULTANT SERVICES FOR THE DEVELOPMENT OF A FEASIBILITY STUDY REGARDING THE CONSTRUCTION AND OPERATION OF A LIQUID NATURAL GAS (LNG) GENERATION AND DISTRIBUTION FUEL FACILITY TO BE LOCATED AT THE FRESNO/CLOVIS REGIONAL WASTEWATER RECLAMATION FACILITY (RWRf)

RECOMMENDATION

Staff recommends Council approve a professional services agreement with BKS Energy, LLC, a California Limited Liability Company, in the amount of \$80,000 for professional consultant services for the development of a feasibility study regarding the construction and operation of a liquid natural gas (LNG) generation and distribution fuel facility to be located at the RWRf, and authorize the Director of Public Utilities, or his designee, to sign the Agreement on behalf of the City.

EXECUTIVE SUMMARY

The recommended agreement with BKS Energy, LLC is for the development of a feasibility study regarding the construction and operation of an LNG fuel generation and distribution facility to be located at the RWRf. The purpose of this study is to determine the feasibility of constructing and operating an LNG generation fuel facility to provide this fuel for the City's growing LNG refuse truck fleet and for other LNG customers within the region. In accordance with Fresno Municipal Code Chapter 4 Article 1 and Administrative Order 6-19, the Department of Public Utilities notified seventy-two consulting firms requesting a statement of qualifications. In addition, the Purchasing Division posted the request on the City's "Bids On-Line" website. The Department received five responses. Staff interviewed the top four firms and BKS Energy, LLC, was selected as the best firm to perform the necessary study. A consultant services agreement has been negotiated in the amount of \$80,000.

BACKGROUND

Currently the City consumes approximately 3,000 gallons of LNG each day to fuel its refuse truck fleet. The City currently operates 125 refuse collection vehicles using LNG. The air pollution emissions from these trucks are substantially reduced from the older diesel models. The LNG is currently purchased from a third party and delivered to the City's Municipal Service Center from suppliers distant from Fresno. Currently, LNG deliveries are received every other day from an LNG fuel supplier located in the town of Boron, California which is approximately 250 miles from Fresno. LNG fuel shipments are also ordered from suppliers located as far away as Wyoming. These LNG fuel shipments are susceptible to disruption due to unfavorable weather and travel

delays through the mountain passes. If the supply line of LNG is jeopardized the City's refuse collection may experience disruption. Currently an LNG fuel generation facility is not located within the Fresno area or the San Joaquin Valley. This study would determine the economic, logistical, and technical feasibility of the construction and operation of an LNG fuel generation facility at the RWRF. Because the RWRF operates a natural gas fired power generation facility it has direct access to large volumes of natural gas.

The anticipated benefits of the City owning and operating an LNG fuel generation facility are numerous. It is anticipated the City could generate LNG at a lower cost than currently paid to suppliers. The shipments of natural gas would be received via an underground pipeline which eliminates the current exposure of delays caused by unfavorable weather in the mountains. The City would be able to use the LNG fuel generation facility to promote the use of this cleaner burning fuel by other entities in the local area through the local reliable source of LNG fueling.

Following Fresno Municipal Code Chapter 4 Article 1 and Administrative Order 6-19, the Department of Public Utilities notified 139 consulting firms requesting a statement of qualifications. In addition, the Purchasing Division posted the request on the City's "Bids On-Line" website. The Department received responses from five proposers and conducted interviews with four firms. The interview panel consisted of members of the Department of Public Utilities and the General Services Department. All five members of the interview panel selected BKS Energy, LLC as the best firm to perform the necessary consultant services. A consultant services agreement has been negotiated in the amount of \$80,000.

The Council may award a contract in the amount of \$80,000 to BKS Energy, LLC. If the contract is not awarded, the project will advertise again as directed by the City Council, resulting in approximately a 90-day delay in the project.

FISCAL IMPACT

See attached.

FISCAL IMPACT STATEMENT

PROGRAM: TC00074 AIR EMISSIONS ENHANCEMENTS

<u>RECOMMENDATION</u>	<u>TOTAL OR CURRENT</u>	<u>ANNUALIZED COST</u>
Direct Cost	<u>\$80,000.00</u>	<u> </u>
Indirect Cost	<u>\$ 0.00</u>	<u> </u>
TOTAL COST	<u>\$80,000.00</u>	<u> </u>
Additional Revenue or Savings Generated	<u>\$ 0.00</u>	<u> </u>
Net City Cost	<u>\$80,000.00</u>	<u> </u>
Amount Budgeted (If none budgeted, identify source)	<u>\$80,000.00*</u>	<u> </u>

*The funds for this contract exist in the current Sewer Enterprise Fund budget.

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the ___ day of January, 2010, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and BKS Energy, LLC, a California Limited Liability Company (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Consultant services for a feasibility study for the viability of locating a Liquid Natural Gas generation and distribution station at the Fresno/Clovis Regional Wastewater Reclamation Facility, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a Consultant and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Director of Public Utilities (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement, Time for Performance and Liquidated Damages. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through June 15, 2010, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**. It is agreed by CONSULTANT and CITY that in the event that services called for under this Agreement are not completed before or upon expiration of the limit as set forth herein, damage shall be sustained by CITY. Since it is and shall be impractical to determine the actual damage which CITY shall sustain in the event of and by reason of such delay, it is therefore agreed that CONSULTANT shall pay to CITY the amount of 0.25% of \$100 per calendar day's delay in completing the services within the limit set forth herein. It is further agreed that CITY may deduct the amount thereof from any money due or that may become due CONSULTANT under this Agreement.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$80,000.00, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure including, but not limited to, any liquidated damages. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any termination or expiration of the Agreement, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct,



indirect, consequential, liquidated, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Director's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Director. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at



any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CONSULTANT shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor.



9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.



10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin,



ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition,



EXHIBIT A

SCOPE OF SERVICES

This scope statement describes the services BKS Energy, LLC (BKS) will provide for the Fresno/Clovis Regional Wastewater Reclamation Facility (RWRF) Liquefied Natural Gas (LNG) Feasibility Study (Study) to determine the economic, commercial, and engineering parameters that may define a successful project to build, own, and operate a methane liquefaction plant. Based on our conversations subsequent to selection, we understand that Fresno is identifying under a separate scope, engineering and economics to clean-up digester gas to pipeline quality specifications for power generation uses at the WWTP.

Study Scope for Completion:

Based on our conversations during the pre-selection interview, the City of Fresno is a user of LNG and pipeline natural gas and a producer of electricity. The scope of work below assumes the use of pipeline natural gas to make LNG as a basis for analysis. The results of a technical and economic feasibility study will be presented to the City of Fresno as a final report, which in incorporate stepwise feedback from the City of Fresno. We expect the final report to be concise – containing 25-40 pages of information and analysis derived from the following tasks:

Task 1: Define Project Scenarios and Information Needs

Undertake a scope review meeting with the City of Fresno Team to define and prioritize goals with respect to utilization of pipeline gas for refuse fleet LNG requirements present and future. Additionally, the data needed for the study and data sources will be identified including key City of Fresno Staff.

Task 2: Examine Methane Liquefaction Technologies

Assuming pipeline quality natural gas as feed stock, define Methane Liquefaction Technologies including pre-treatment and liquefaction technology descriptions, and costs for energy, operations and capital.

Task 3: Determine California LNG Markets and Pricing

Develop a study of California LNG markets to form the economic basis for producing LNG for City of Fresno use and for uses which are in excess of City of Fresno needs. The study will include especially regional LNG users and pricing including transportation costs.

Task 4: Regulatory Analysis

Several types of federal (e.g., National Fire Protection Act), state (e.g., California Environmental Quality Act, California Low Carbon Fuel Standard, gas utility tariffs) and local (e.g., San Joaquin Valley Air Pollution Control District) regulatory requirements will need to be met to move forward with a project. A high-level regulatory analysis will be performed to identify probable issues that will affect schedule, cost, risks and benefits.

Task 5: Perform Economic Analysis for Suite of Scenarios

BKS will perform a discounted cash flow analysis of those scenarios before the City. Specifically BKS will evaluate the scenarios on a "pure project return" basis, taking into account only equity capital and without regard to debt financing alternatives available to the City. In this respect BKS will provide a detailed summary of capital costs (e.g., equipment, permitting, construction) and operating inputs (e.g., electricity, equipment maintenance, distribution of LNG, gas cost) that impact the financial model and cash flow analysis. Cash flows will be modeled at the level of earnings before interest, tax, depreciation and amortization (EBITDA) consistent with a pure project return analysis. BKS also will differentiate the project economics (e.g., return on investment, net present value) on a cost basis for those LNG flows that will be consumed by the City (baseline) and incremental additional production and sales on a for-profit basis assuming unrelated 3rd-party sales. In each case, analysis will be made of the profit per LNG gallon that the City can expect given the price of feedstock gas, as well as the capital cost of the facility. A net present value analysis will be undertaken as well commensurate with the City's own defined discount rate of risk. An analysis of the capital and operating costs for in-house transportation, distribution and sales will be weighed against outsourcing these functions for production volumes above the baseline.

Task 6: Develop Preliminary Site Layout

BKS will develop a preliminary site layout (plan view) which minimizes permitting risks (including setbacks and containment), infrastructure costs (e.g., local pipeline, access roads) and includes typical footprints of major capital improvements including LNG load out. BKS does not anticipate that the choice of liquefaction technology or production capacity will significantly alter the site layout. That said, the case for production in excess of City of Fresno use may require additional storage and that may affect the recommended site footprint. Two site layouts will be prepared: one for production at City of Fresno use and one for production in excess of City of Fresno use. BKS assumes that a current site layout will be available from the City of Fresno showing existing and anticipated structures.

Task 7: Prepare Draft Report

A draft report will be prepared using results from Tasks 1-6. The draft report is anticipated to have the following sections and will be reviewed in a presentation with City of Fresno Staff. At this time we anticipate the following general outline:

- 1.0 Project Description
- 2.0 Existing Facility Description
- 3.0 Feed Composition and Flows
- 4.0 Available Pre-treatment technologies (CO₂, water, etc.)
 - 4.1 Technology Descriptions
 - 4.2 Energy and Operating Costs
 - 4.3 Capital Costs
 - 4.4 Summary
- 5.0 Methane Liquefaction Technologies
 - 5.1 Technology Descriptions
 - 5.2 Energy and Operating Costs
 - 5.3 Capital Costs
 - 5.4 Summary
- 6.0 Ranking of Project Options
 - 6.1 Definition of Scenarios
 - 6.2 Capital Costs
 - 6.3 Energy Costs
 - 6.4 Technology Risks
 - 6.5 Economic Returns
 - 6.6 Summary
- 7.0 California LNG Markets and Pricing
- 8.0 Financial Modeling for Top Ranked Technology
- 9.0 Permitting and Regulatory Analysis
- 10.0 Site Layout
- 11.0 Implementation Schedules and Budgets
- 12.0 Recommendations

Task 8: Prepare Final Report

Comments received on the draft report will be addressed and a Final Report will be issued.

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno
and BKS ENERGY
LNG GENERATION AND DISTRIBUTION FACILITY FEASIBILITY STUDY
PROJECT TITLE

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

CONSULTANT shall maintain limits of liability of not less than:

1. General Liability:
\$1,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate applying separately to the work performed under the Agreement
2. Automobile Liability:
\$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
\$1,000,000 each accident for bodily injury
\$1,000,000 disease each employee
\$1,000,000 disease policy limit



STATE
 COMPENSATION
 INSURANCE
FUND

P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

DECEMBER 17, 2009

POLICY NUMBER: 1939712 - 09
 CERTIFICATE EXPIRES: 12-1-10

CITY OF FRESNO
 DEPARTMENT OF PUBLIC WORK
 5607 WEST JENSEN AVE
 FRESNO CA 93706

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon ten days' advance written notice to the employer.

We will also give you TEN days' advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy.

James Neary

AUTHORIZED REPRESENTATIVE

Janet Frank

PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

EMPLOYER

BKS ENERGY LLC
 BKS ENERGY LLC
 1962 HILLCREST ROAD
 LOS ANGELES CA 90068

PRODUCER 805.483.2217 FAX 805.487.0699
 Austin, Reilley & Doud Insurance Services, Inc.
 200 W. Seventh Street
 P.O. Box 632
 Oxnard, CA 93032

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Bernd Schaefers
 DBA: BKS Energy LLC
 1962 Hillcrest Road
 Los Angeles, Ca 90068

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Endurance American Specialty
 INSURER B:
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	ECC101009477-00	12/08/2009	12/08/2010	EACH OCCURRENCE \$ 2,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
					MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	ECC101009477-00	12/08/2009	12/08/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN EA ACC AGG \$
	EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER Professional Liability	ECC101009477-00	12/08/2009	12/08/2010	\$1000000/\$2000000.Aggreate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

"The City of Fresno, its officers, officials, employees, agents and volunteers are additional insured as respects to general and auto liability insurance. This insurance is primary, and our obligations are not affected by any other insurance carried by such additional insured, whether primary, excess contingent, or any other basis. Certificate holder named as additional insured.

CERTIFICATE HOLDER

City of Fresno
 C/O Waste management Division
 Kevin Norgaard
 5607 W. Jensen Avenue
 Fresno, CA 93706

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

James M. Kelly 12-8-09