

AGENDA ITEM NO.	IC
COUNCIL MEETING	03/20/14
APPROVED BY _____	

DEPARTMENT DIRECTOR _____

CITY MANAGER 

March 20, 2014

FROM: Department of Public Utilities

BY: JERRY L. SCHUBER, Sr., Assistant Director
Department of Public Utilities

SUBJECT: Actions pertaining to facilitation and negotiation of successor agreement

1. Authorize the City Manager or designee to enter into an agreement with the County of Fresno to subsidize expenses related to the facilitation and negotiation of successor agreement to American Avenue Landfill

RECOMMENDATIONS

Staff recommends that City Council:

Authorize the City Manager or designee to enter into an agreement with the County of Fresno to cover costs associated with a consulting services contract with HF&H Consultants LLC (HF&H) associated with the City/County American Landfill Agreement.

EXECUTIVE SUMMARY

The Department of Public Utilities and the City Manager's Office have conducted preliminary discussions with the County of Fresno concerning the City/County American Avenue Landfill contract, which is scheduled to expire on June 30, 2014. As part of these discussions the parties have agreed to retain an outside third party consultant who is familiar with the City/County Landfill agreement to help in facilitating discussions around a new agreement. It was agreed that HF&H is best suited for this work due to their previous work with the City involving commercial and residential solid waste operations and the fact they had previously conducted a cost analysis of American Avenue Landfill's operating costs and reserves for the County.

The overall cost of this agreement is \$192,000, of which the City's allocation being \$73,100. Funding is being provided by the City's Residential Solid Waste Reserve Funds.

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BACKGROUND

In 1992, the City of Fresno, having closed its own sanitary landfill, negotiated a contract with the County of Fresno to bring all municipal solid waste to the American Avenue Landfill for disposal. The agreement was reached in an effort to help the County identify a sustainable funding source so that bonds could be obtained and expansion of the location could be made. The Landfill was subsequently expanded and all bonds have since been paid in full. However, there are other costs associated with operating a landfill, such as the ongoing costs associated with a closure, that need to be evaluated to ensure that funding levels are appropriate.

On June 30, 2014, the landfill agreement between the City and the County is scheduled to expire, which provides an opportunity for the City of Fresno to evaluate all options, including the possibility of shifting the City's municipal solid waste stream to another location.

It should be noted that the American Avenue Landfill agreement is one of three agreements that will either expire and/or change over the next year that will directly affect the cost of providing residential solid waste services. Any changes to these agreements could potentially help to mitigate the projected increases in solid waste rates that will occur over the next five years. While staff is hopeful that discussions with the County and other contractors will be fruitful it does not appear that these negotiations will be completed before the initiation of the required rate increase process that is required by Proposition 218. It is anticipated that staff will be initiating the process to increase residential solid waste rates in August of this year.

Over the last several months the Department of Public Utilities and the City Manager's Office have been in discussion with the County of Fresno concerning the American Avenue Landfill contract, which is scheduled to expire on June 30, 2014. The parties have agreed to retain an outside third party consultant who is familiar with the City operations as to the financial impacts of the City/County Landfill Agreement. HF&H has been selected because of their unique knowledge of City solid waste operations as well as the fact that they had previously conducted a cost analysis of American Avenue Landfill's reserves, operating costs and related tipping fees.

HF&H will work with County staff to update this analysis, which will become the basis of negotiations with the County on a possible new Landfill Agreement. This analysis will include potential changes to tipping fees as well as the disposition of reserve funds currently within the American Avenue fund balances. During these discussions the City of Fresno will also be issuing a Request for Proposal (RFP) for landfill services should a successor agreement with the County not be reached.

ENVIRONMENTAL FINDINGS

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, the award of this contract does not qualify as a "project" and is therefore exempt from the CEQA requirements.

REPORT TO THE CITY COUNCIL

American Landfill Agreement with the County of Fresno

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FISCAL IMPACT

The City's portion of the agreement with the County for consulting fees for the American Avenue Landfill is not to exceed a total of \$73,100. Funding is initially being provided by Fresno County and will be reimbursed through the City's Residential Solid Waste Reserve Funds.

Attachments:

County and HF&H Consultant Agreement

Agreement between the County of Fresno and City of Fresno

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AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____
2014 between the County of Fresno, a political subdivision of the State of California
(hereinafter "COUNTY"), and HF&H CONSULTANTS, LLC, located at 201N. Civic
Drive, Suite 230, Walnut Creek, California 94596 (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, the COUNTY requires specialized services to facilitate the
negotiations of a Landfill Use Agreement (hereinafter "Disposal Agreement") between
the COUNTY and City of Fresno; and

WHEREAS, although the COUNTY shall be responsible, under the terms of this
Agreement, for making payment to CONTRACTOR in accordance with the provisions of
Article V below, the source of funding for CONTRACTOR's compensation hereunder is
being provided by both the COUNTY and the City of Fresno, pursuant to separate
agreement between those two governmental agencies; and

WHEREAS, it is the intent of the parties hereto that, in the negotiations between
the COUNTY and the City of Fresno, CONTRACTOR shall serve as a neutral facilitator,
and in that role CONTRACTOR shall owe the same duties of performance to both the
COUNTY and the City of Fresno equally; and

WHEREAS, the CONTRACTOR is qualified and willing to provide the COUNTY
the professional services required for this project;

WHEREAS, the CONTRACTOR has previously conducted an extensive review
of the COUNTY'S financial books and records regarding COUNTY'S operations at the
American Avenue Disposal Site.

NOW, THEREFORE, the parties hereto have and by these presents do agree as
follows:

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1 I. GENERAL PROVISIONS:

2 A. The COUNTY hereby contracts with the CONTRACTOR as an
3 independent contractor to provide all the services required for the project. Said services
4 are described under Article III herein.

5 B. The CONTRACTOR's services shall be performed as expeditiously as is
6 consistent with professional skill and the orderly progress of the work.

7 C. The contact person for the CONTRACTOR shall be:
8 Robert D. Hilton, President (telephone: (925) 977-6950, Fax: (925) 977-6955).

9 II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

10 A. The work covered by this Agreement is for the CONTRACTOR services
11 described in Article III.

12 III. CONTRACTOR'S SERVICES:

13 The CONTRACTOR agrees to provide professional services as described below
14 and more specifically described in Exhibit A, attached hereto and incorporated by this
15 reference as though fully set forth herein.

16 TASK 1 – NEGOTIATIONS BETWEEN COUNTY AND CITY OF FRESNO

17 A. The scope of work for the negotiations is built around a series of meetings
18 with staff from both the COUNTY and the City of Fresno, to facilitate the negotiation of a
19 new Disposal Agreement between the COUNTY and City of Fresno.

20 B. It is understood and specifically agreed between the parties hereto that, in
21 the performance by CONTRACTOR of its duties under Task 1, relating to negotiations
22 between the COUNTY and the City of Fresno, CONTRACTOR's role shall be to serve
23 as a neutral facilitator; and that CONTRACTOR accordingly shall owe the same duties
24 of performance, in its role as neutral facilitator, to both the COUNTY and the City of
25 Fresno equally.

26 C. In connection with the performance of CONTRACTOR's duties relating to
27 Task 1, it is understood and specifically agreed between the parties that the City of
28 Fresno is an intended third party beneficiary of this Agreement.

1 TASK 2 –MEETINGS WITH OTHER CITIES AND FRANCHISED HAULERS

2 The scope of work for the meetings encompassed by Task 2 is built around an initial
3 meeting with COUNTY staff, followed by a series of meetings with representatives of
4 the other cities (i.e., other than the City of Fresno) and the COUNTY's franchised waste
5 haulers, the purpose of which is: to describe the key terms of the proposed
6 Memorandum of Understanding and Disposal Agreement between the COUNTY and
7 City of Fresno; to present key issues of importance to the COUNTY; and to receive and
8 respond to comments from those other cities and the waste haulers .

9 IV. COUNTY'S OBLIGATIONS:

10 The COUNTY will:

11 A. Be responsible to compensate CONTRACTOR in accordance with the
12 provisions of this Agreement.

13 B. Provide a "COUNTY Representative" who will represent the COUNTY and
14 who will coordinate with the CONTRACTOR as appropriate to facilitate
15 CONTRACTOR's performance under the provisions of this Agreement. The COUNTY
16 Representative will be the COUNTY Director of Department of Public Works and
17 Planning or his/her designee. The CONTRACTOR shall communicate and coordinate
18 with the COUNTY Representative, who will consider and respond with reasonable
19 promptness as to all matters submitted by the CONTRACTOR for approval, so as to
20 avoid any substantial delays in the CONTRACTOR's performance of the work. An
21 approval, authorization or request to the CONTRACTOR given by the COUNTY will only
22 be binding upon the COUNTY under the terms of this Agreement if in writing and signed
23 on behalf of the COUNTY by the COUNTY Representative or a designee, except under
24 those limited circumstances expressly specified herein.

25 V. COMPENSATION:

26 A. Total Fee:

27 1. Notwithstanding any other provision in this Agreement, the Total
28 Fee for the services required under Article III shall be limited to a maximum of

1 \$191,194, comprised of a Basic Fee of \$161,649 and an Extra Services Allocation of
2 \$29,545.

3 B. Basic Fee:

4 1. Notwithstanding any other provision in this Agreement, the Basic
5 Fee for the Services required under Article III, Tasks 1 and 2 shall be computed at the
6 cost rates shown in Exhibit A, which is incorporated herein, and shall be limited to a
7 maximum of \$161,649. These rates as listed herein are to remain in effect for the entire
8 duration of this Agreement. Within the Total Fee limitation described in V.A.1. above,
9 the Basic Fee shall be divided as follows:

10 Task 1 Negotiations	\$127,125.00
11 Task 2 Cities and Franchisees Meetings	\$ 34,524.00
12 Total Basic Fee	<u>\$161,649.00</u>

13 2. The rates listed herein are to remain in effect for the duration of this
14 Agreement. The Total Basic Fee may not be increased except upon written
15 Amendment to this Agreement authorized by the Board of Supervisors.

16 C. Extra Services:

17 1. A maximum allocation of \$19,069 for Task 1 and \$10,476 for Task
18 2 totaling \$29,545 to pay for authorized Extra Services is provided herein by this
19 Agreement. Payment of Extra Services in excess of \$29,545 is prohibited except upon
20 a written Amendment to this Agreement pursuant to the provisions of Article XV hereof.

21 2. The CONTRACTOR shall not undertake any Extra Services related
22 to Task 1 without the advance written authorization of the COUNTY and CITY
23 Representatives. The CONTRACTOR, COUNTY and CITY shall expressly confirm in
24 writing the authorization and maximum cost for any such services before the
25 CONTRACTOR initiates any work thereon.

26 3. The CONTRACTOR shall not undertake any Extra Services related
27 to Task 2 without the advance written authorization of the COUNTY Representative.
28 The CONTRACTOR and the COUNTY shall expressly confirm in writing the

1 authorization and maximum cost for any such services before the CONTRACTOR
2 initiates any work thereon.

3 4. The following are CONTRACTOR services which are considered as
4 not included in Article III herein, but may be required and thus considered Extra
5 Services.

6 a. Providing unforeseen, extraordinary, or unique services,
7 additional meetings or items not covered or normally included in the Basic Fee, but
8 authorized by the appropriate representative(s) in accordance with the provisions of
9 either Paragraph V.C.2 or Paragraph V.C.3 above.

10 5. Fees for authorized Extra Services shall be computed at the hourly
11 cost rates and material costs shown in Exhibit A hereto, previously incorporated herein
12 under Article III above. Fees for any Extra Services required to be provided by
13 CONTRACTOR shall be authorized as maximum ("not to exceed") amounts for
14 specifically defined services.

15 6. In the event Extra Services are authorized, CONTRACTOR shall
16 keep complete records showing the hours and description of activities worked by each
17 person who works on the project and all costs and charges applicable to the Extra
18 Services work authorized. Should there be a claim for Extra Services, the
19 CONTRACTOR agrees and acknowledges that the claimant shall specifically identify
20 the activity, performer of the activity, reason for the activity, and COUNTY official
21 requesting the activity for Task 2 or COUNTY and CITY official requesting the activity
22 for Task 1, and that failure to do will result in denial of the claim. The CONTRACTOR
23 shall not stop the work, including the work in other areas unrelated to the Extra Services
24 request or claim, unless it can be shown the project work cannot proceed while a claim
25 or request for Extra Services is being evaluated.

26 D. Payments:

27 1. Progress payments will be made by the COUNTY upon receipt and
28 approval of the CONTRACTOR's monthly invoices based on the COUNTY's evaluation

1 of the completion of the respective components of the projects(s). Invoices shall clearly
2 identify each task to which the work pertains, clearly identify charges for tasks
3 authorized as Extra Services, and shall be submitted with the documentation identified
4 in Article V.D.4. Invoices shall be submitted to:

5 Resources Division
6 Attn: Herb Cantu, Principal Engineer
7 County of Fresno Department of Public
8 Works and Planning
9 2220 Tulare Street, Sixth Floor
10 Fresno, CA 93721-2106

11 2. Upon receipt of a proper invoice, the COUNTY's Department of
12 Public Works and Planning will take a maximum of ten (10) working days to review,
13 approve, and submit it to the COUNTY's Auditor-Controller/Treasurer-Tax Collector.
14 Unsatisfactory or inaccurate invoices may be returned to the CONTRACTOR for
15 correction and resubmittal. Payment will be issued to CONTRACTOR within forty (45)
16 calendar days of the date the Auditor-Controller/Treasurer-Tax Collector receives the
17 approved invoice.

18 3. An unresolved dispute over a possible error or omission may cause
19 payment of CONTRACTOR fees in the disputed amount to be withheld by the
20 COUNTY.

21 4. Concurrently with the invoices, the CONTRACTOR shall provide its
22 certification acceptable to the COUNTY, and shall provide, on COUNTY request, copies
23 of issued checks, receipts, or other COUNTY pre-approved documentation, that
24 complete payment has been made to all subcontractors as provided herein for all
25 previous invoices paid by the COUNTY.

26 5. Final invoice shall be submitted to COUNTY no later than sixty (60)
27 days after project is completed. Payment shall not be made until all post-project
28 services are completed, including but not limited to furnishing of required reports.

6. In the event the COUNTY reduces the scope of the project, the
CONTRACTOR will be compensated on a pro rata basis for actual work completed and

1 accepted by the COUNTY in accordance with the terms of this Agreement.

2 VI. COMPENSATION RECORDS:

3 The CONTRACTOR shall keep complete records showing the hours and
4 description of activities performed by each person who works on the project and all
5 associated costs or charges applicable to work covered by the Basic Fee and approved
6 Extra Services.

7 VII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

8 A. The CONTRACTOR shall at any time during regular business hours, and
9 as often as the COUNTY may deem necessary, make available to the COUNTY's
10 Auditor-Controller/Treasurer-Tax Collector, or their authorized representatives for
11 examination all of its records and data with respect to matters covered by this
12 Agreement. The CONTRACTOR shall permit the COUNTY to audit and inspect all
13 invoices, materials, payrolls, records of personnel, conditions of employment, and other
14 data relating to matters covered by this Agreement.

15 B. The CONTRACTOR shall be subject to the examination and audit of the
16 Auditor General for a period of three (3) years after final payment under this Agreement
17 (Government Code Section 8546.7).

18 VIII. INDEPENDENT CONTRACTOR:

19 A. In performance of the work, duties, and obligations assumed by
20 CONTRACTOR under this Agreement, it is mutually understood and agreed that
21 CONTRACTOR, including any and all of CONTRACTOR's officers, agents and
22 employees, will at all times be acting and performing as an independent contractor, and
23 shall act in an independent capacity and not as an officer, agent, servant, employee,
24 joint venturer, partner or associate of either the COUNTY or the City of Fresno.
25 Furthermore, neither the COUNTY nor the City of Fresno shall have the right to control
26 or supervise or direct the manner or method by which CONTRACTOR shall perform its
27 work and function. However, COUNTY shall retain the right to administer this
28 Agreement so as to verify that CONTRACTOR is performing its obligations in

1 accordance with the terms and conditions thereof. CONTRACTOR and COUNTY shall
2 comply with all applicable provisions of law and the rules and regulations, if any, of
3 governmental authorities having jurisdiction over matters the subject thereof.

4 B. Because of its status as an independent contractor, CONTRACTOR shall
5 have absolutely no right to employment rights and benefits available to COUNTY
6 employees. CONTRACTOR shall be solely liable and responsible for providing to, or on
7 behalf of its employees all legally-required employee benefits. In addition,
8 CONTRACTOR shall be solely responsible and save COUNTY and the City of Fresno
9 harmless from all matters relating to payment of CONTRACTOR's employees, including
10 compliance with Social Security, withholding, and all other regulations governing such
11 matters. It is acknowledged that during the term of this Agreement CONTRACTOR may
12 be providing services to others unrelated to the COUNTY or to this Agreement.

13 IX. PARTIES BOUND BY AGREEMENT:

14 This Agreement shall be binding upon the COUNTY, the CONTRACTOR, and
15 their respective successors in interest, legal representatives, executors, administrators,
16 and assigns with respect to all covenants as set forth herein.

17 X. REQUIRED APPROVALS:

18 It is understood that the CONTRACTOR shall not assign, sublet, subcontract, or
19 transfer any of CONTRACTOR's rights or obligations in connection with this Agreement
20 without the prior express written consent of the COUNTY. With respect to
21 CONTRACTOR's obligations under Task 1, the prior express written consent of both the
22 COUNTY and the City of Fresno shall be required. Such approval shall only be given
23 on behalf of the COUNTY by its Board of Supervisors.

24 XI. COMPLIANCE WITH LAWS:

25 CONTRACTOR shall comply with Federal, State, and local laws, ordinances,
26 regulations, and Fresno County Charter provisions applicable and in effect when
27 professional services are performed.

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1 XII. GOVERNING LAW:

2 A. Any controversy or claim arising out of or relating to this Agreement which
3 cannot be amicably settled without court action shall be litigated either in a state court
4 for Fresno County, California, or in the U.S. District Court for the Eastern District of
5 California, located in Fresno County.

6 B. The rights and obligations of the parties and all interpretations and
7 performance of this Agreement shall be governed in all respects by the laws of the State
8 of California.

9 XIII. AMENDMENTS:

10 Any changes to this Agreement requested either by the COUNTY or
11 CONTRACTOR may be effected only if mutually agreed upon in writing by each of the
12 parties hereto. This Agreement shall not be modified or amended, nor shall any rights
13 of a party hereto be waived, except by such a writing.

14 XIV. CONTRACTOR'S LEGAL AUTHORITY:

15 Each individual executing this Agreement on behalf of CONTRACTOR hereby
16 covenants, warrants, and represents that he or she is duly authorized to execute and
17 deliver this Agreement on behalf of such California limited liability company, and that
18 this Agreement is binding upon such company.

19 XV. HOLD HARMLESS:

20 CONTRACTOR shall hold harmless and indemnify COUNTY and the City of
21 Fresno, and their respective officers, agents, and employees, against the payment of
22 any and all costs and expenses (including reasonable attorney fees and court costs),
23 damages, claims, suits, losses, and liability for bodily and personal injury to or death of
24 any person or for loss of any property resulting from or arising out of any wrongful acts,
25 errors or omissions of CONTRACTOR, its officers, agents, and employees, in
26 performing or failing to perform any work, services, or functions under this Agreement.

27 XVI. LIABILITY INSURANCE:

28 A. Prior to commencing the duties under the Agreement with the COUNTY,

1 the CONTRACTOR shall furnish the COUNTY, at no additional cost to the COUNTY,
2 certificates for the following insurance policies which shall be kept in force during the
3 term of the Agreement (i.e., until the Agreement is terminated or it expires), and for such
4 additional time as may be specified with respect to a particular type of policy.

5 1. Commercial General Liability Insurance or Comprehensive General
6 Liability Insurance, naming both the COUNTY and the City of Fresno as an additional
7 insured, with limits of not less than \$1,000,000 per occurrence.

8 2. Comprehensive Automobile Liability Insurance with limits for bodily
9 injury of not less than \$250,000 per person, \$250,000 per accident and for property
10 damage of not less than \$50,000, or such coverage with a combined single limit of
11 \$500,000.

12 3. Worker's Compensation insurance policy as required by the
13 California Labor Code.

14 4. Professional Liability Insurance:

15 a. In the minimum amount of at least \$250,000 coverage per
16 claim, with an annual aggregate of at least \$500,000, and with a deductible not to
17 exceed \$50,000. A deductible greater than \$50,000 will be accepted upon the
18 COUNTY receiving satisfactory, certified information of the CONTRACTOR's ability to
19 support such a deductible. The financial ability to support the difference between the
20 \$50,000 and greater deductible amount requested by CONTRACTOR shall be
21 guaranteed by any of the following:

22 1. Cash deposit with a trustee bank.

23 2. Irrevocable letter of credit issued by a bank for a
24 period sufficient for the COUNTY to determine if there is a claim to
25 be made against the CONTRACTOR, e.g. six months after
26 termination of Agreement.

27 b. CONTRACTOR shall make full disclosure, in writing to the
28 COUNTY, of all pending and open claims and disputes during the course of this

1 agreement that affect the specified aggregate limits of the Professional Liability
2 Insurance policy.

3 c. Professional Liability Insurance shall extend for a minimum
4 of two (2) years past the date of final payment to CONTRACTOR, including the
5 resolution of all claims, disputes, and matters in question regarding the project.

6 d. In the event that CONTRACTOR voluntarily changes or
7 involuntarily changes, due to circumstances beyond its control, Professional Liability
8 Insurance policy carrier during the course of this Agreement, such new policy shall
9 include prior acts coverage retroactive, at least, to the date of execution of this
10 Agreement. CONTRACTOR may, at its option and expense, purchase supplemental or
11 "tail" coverage from the former policy carrier, negotiate a retroactive reporting date with
12 the new policy carrier for claims incurred but not reported as of the date of change in
13 policy carrier, and shall in any event maintain Professional Liability Insurance in a
14 manner that provides continuous coverage to the COUNTY throughout the term of this
15 Agreement, and for a period of two (2) years past the issuance of final payment to the
16 CONTRACTOR.

17 B. All policies shall be issued by insurers licensed to do business in the State
18 of California. CONTRACTOR shall give COUNTY at least thirty (30) days written
19 advance notice of any expiration, cancellation or reduction in the coverage of any of the
20 aforesaid policies.

21 C. CONTRACTOR shall obtain endorsements to the Commercial General
22 Liability Insurance or Comprehensive General Liability Insurance, naming the COUNTY
23 and the City of Fresno, and their respective officers, agents and employees, individually
24 and collectively, as additional insured, but only insofar as the operations under this
25 contract are concerned. Such coverage of the COUNTY and the City of Fresno as
26 additional insured shall apply as primary insurance and any other insurance, or
27 self-insurance, maintained by the COUNTY or the City of Fresno, or their respective
28 officers, agents, and employees, shall be excess only and not contributing with

1 insurance provided under the CONTRACTOR's policies herein.

2 D. In the event CONTRACTOR fails to keep in effect at all times insurance
3 coverage as herein provided, the COUNTY may, in addition to other remedies it may
4 have, suspend or terminate this Agreement upon the occurrence of such event.

5 XVII. TIME OF COMPLETION:

6 A. CONTRACTOR shall diligently proceed with the agreed scope of services
7 and shall provide such services in a timely manner. Failure of the CONTRACTOR to
8 provide such services on a timely basis, is sufficient cause to terminate this Agreement
9 immediately, at the option of the COUNTY, in accordance with Article XVIII B, unless the
10 delay is attributable to the COUNTY or City of Fresno.

11 B. This Agreement shall become effective on the date of execution, and shall
12 remain in effect for a term of one (1) year.

13 XVIII. TERMINATION OF AGREEMENT:

14 A. This Agreement may be terminated without cause at any time by the
15 COUNTY upon thirty (30) calendar days written notice. If the COUNTY terminates this
16 Agreement, the CONTRACTOR shall be compensated for services satisfactorily
17 completed to the date of termination based upon the compensation rates and subject to
18 the maximum amounts payable hereunder as agreed to in Article V, together with such
19 additional services satisfactorily performed after termination which are expressly
20 authorized by the County Representative to conclude the work performed to date of
21 termination.

22 B. The COUNTY may immediately suspend or terminate this Agreement in
23 whole or in part, where in the determination of the COUNTY there is:

- 24 1. An illegal or improper use of funds;
- 25 2. A failure to comply with any term of this Agreement;
- 26 3. A substantially incorrect or incomplete report submitted to the
27 COUNTY;
- 28 4. Improperly performed service.

1 C. In no event shall any payment by the COUNTY constitute a waiver by the
2 COUNTY of any breach of this Agreement or any default which may then exist on the
3 part of the CONTRACTOR, nor shall such payment be deemed in any way to impair or
4 prejudice any remedy available to the COUNTY, or to the City of Fresno as a third party
5 beneficiary of this Agreement, with respect to the CONTRACTOR's breach or default
6 hereunder. The COUNTY shall have the right to demand of the CONTRACTOR the
7 repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this
8 Agreement, which, in the judgment of the COUNTY were not expended in accordance
9 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such
10 funds upon demand.

11 D. The terms of this Agreement, and the services to be provided thereunder,
12 are contingent on the approval of funds by the appropriating government agency.
13 Should sufficient funds not be allocated, the services provided may be modified, or this
14 Agreement terminated at any time by giving the CONTRACTOR thirty (30) days
15 advance written notice.

16 XIX. ENTIRE AGREEMENT:

17 This Agreement constitutes the entire agreement between the COUNTY and the
18 CONTRACTOR with respect to the subject matter hereof and supersedes all previous
19 negotiations, proposals, commitments, writings, advertisements, publications, and
20 understandings of any nature whatsoever unless expressly included in this Agreement.

21 XX. SEVERABILITY:

22 Should any provision herein be found or deemed to be invalid, this Agreement
23 shall be construed as not containing such provision, and all other provisions which are
24 otherwise lawful shall remain in full force and effect, and to this end the provisions of
25 this Agreement are hereby declared to be severable.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CONTRACTOR

COUNTY OF FRESNO

(Authorized Signature)

Andreas Borgeas, Chairman
Board of Supervisors

Print Name & Title

201 N. CIVIC DRIVE, SUITE 230
WALNUT CREEK, CA 94596

Mailing Address

DATE: _____

DATE: _____

REVIEWED & RECOMMENDED
FOR APPROVAL

Alan Weaver, Director
Department of Public Works and
Planning

APPROVED AS TO LEGAL FORM
Kevin Briggs, County Counsel

APPROVED AS TO ACCOUNTING
FORM

By: Deputy

Vicki Crow, C.P.A., Auditor-
Controller/Treasurer-Tax Collector

FOR ACCOUNTING USE ONLY:

ORG No.: 9026
Account No.: 7295

R:\Disposal Sites\American Avenue\Long Range Planning\Customers\HFH Agreement 02-19-14.docx

1 NOW, THEREFORE, it is mutually agreed as follows:

2 1. COUNTY ADMINISTRATION OF CONSULTANT AGREEMENT

3 A. The parties hereto agree that CONSULTANT's work, as described in
4 Exhibit A attached hereto and by this reference incorporated herein, shall be
5 performed as a separate contract between CONSULTANT and COUNTY which shall
6 be administered by COUNTY throughout the entire term thereof (completion of which
7 during FY 2014-15 currently is contemplated by the parties hereto).

8 B. COUNTY has prepared the scope of work, specifications, and other
9 contract requirements necessary for the award of the contract to CONSULTANT,
10 and COUNTY represents that it will comply with any and all federal, state and local
11 laws as are applicable respecting COUNTY'S award of the contract to
12 CONSULTANT. COUNTY will execute an "Agreement for Consulting Services" with
13 CONSULTANT, a draft of which has been submitted to CITY for review, which
14 indicates that CITY is an intended third party beneficiary to such agreement.

15 2. CONSULTANT'S SCOPE OF WORK

16 The total cost of CONSULTANT's work, including but not limited to
17 facilitation of disposal agreement negotiations and stakeholders meetings and such
18 other services as are described in Exhibit A hereto, is \$191,194, the cost of which
19 shall be divided between CITY and COUNTY, as more thoroughly provided in the
20 immediately following Paragraph 3.

21 3. DIVISION OF RESPONSIBILITY FOR COST OF CONSULTANT'S
22 SERVICES

23 Each party hereto shall pay its share of the project costs in accordance with
24 the provisions of this Agreement. COUNTY and CITY each hereby agree to pay
25 one-half of the cost incurred for CONSULTANT's services in facilitating the
26 negotiations between the respective parties and the total of which shall not exceed
27 \$127,125. The COUNTY hereby agrees to pay an additional \$34,524 for the defined
28 stakeholder meetings. Accordingly, the estimated cost to each jurisdiction for its

1 respective budgetary purposes is as follows:

2 //

	<u>CITY Funds</u>	<u>COUNTY Funds</u>	<u>TOTAL</u>
4 Contract Cost	\$63,562.50	\$98,086.50	\$161,649
5 Extra Services	\$ 9,534.50	\$20,010.50	\$ 29,545

7 4. REQUISITE APPROVALS FOR ADDITIONAL WORK BY
8 CONSULTANT

9 No "extra services" or other additional (or alternative) items of work, other
10 than those listed in Exhibit A hereto, shall be commenced by CONSULTANT without
11 advance written approval by both CITY and COUNTY; and it is expressly agreed and
12 acknowledged by the parties hereto that CITY shall not be responsible under the
13 provisions of this Agreement to reimburse COUNTY for any work performed by
14 CONSULTANT that has not been properly authorized in advance, in accordance
15 with the provisions of this Paragraph 4.

16 5. DEPOSIT/PAYMENT OF BALANCE OF CITY'S REIMBURSABLE
17 COSTS

18 Upon execution of this Agreement, the CITY will promptly deposit with the
19 COUNTY an amount equal to fifty percent (50%) of the CITY's share of the
20 CONSULTANT's Contract Cost, in accordance with the immediately preceding
21 Section 4 of this Agreement. Within sixty (60) days after completion by
22 CONSULTANT of its services and delivery to COUNTY's staff of an appropriate
23 invoice and sufficient supporting documentation, CITY will pay to COUNTY the
24 remaining balance of its share of the CITY's reimbursable costs hereunder.

25 6. NO ASSIGNMENT

26 Neither party shall assign, transfer or sub-contract, in whole or in part, any of
27 its respective rights or duties under this Agreement without the written consent of the
28 other party.

1 7. SEVERABILITY

2 The provisions of this Agreement are severable. The invalidity or
3 unenforceability of any one provision in this Agreement shall not affect the other
4 provisions.

5 8. INTEGRATION / MODIFICATION

6 Each party acknowledges that it has read and fully understands the contents
7 of this Agreement. This Agreement represents the entire and integrated agreement
8 between the parties with respect to the subject matter hereof and supersedes all
9 prior negotiations, representations or agreements, either written or oral. This
10 Agreement may be modified only by written instrument executed by the duly
11 authorized representatives of both CITY and COUNTY.

12 9. NO THIRD-PARTY BENEFICIARIES

13 This Agreement is entered into solely and exclusively for the benefit of the
14 parties hereto. Nothing in this Agreement is intended to benefit or confer any rights
15 or remedies in favor of any other person or entity.

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3 IN WITNESS WHEREOF, the parties hereto have executed this Agreement
4 as of the day and year first herein above written.

5
6 CITY OF FRESNO

7 COUNTY OF FRESNO

8 BY: _____
9 Title: _____

10 BY: _____
11 CHAIRMAN
12 BOARD OF SUPERVISORS

13 REVIEWED AND RECOMMENDED
14 FOR APPROVAL

15 REVIEWED AND RECOMMENDED
16 FOR APPROVAL

17 BY: _____
18 BRUCE RUDD, CITY MANAGER
19 CITY OF FRESNO

20 BY: _____
21 ALAN WEAVER, DIRECTOR,
22 DEPARTMENT OF PUBLIC
23 WORKS AND PLANNING,
24 COUNTY OF FRESNO

25 APPROVED AS TO FORM:

26 DOUGLAS T. SLOAN
27 CITY ATTORNEY

28 APPROVED AS TO LEGAL FORM

29 By: *Mary Anne B. Tooke* *March 2, 2014*
30 Deputy
31 *Mary Anne B. Tooke*

32 KEVIN BRIGGS,
33 COUNTY COUNSEL

34 ATTEST:

35 BY: _____
36 DEPUTY

37 YVONNE SPENCE
38 City Clerk

39 By: _____
40 Deputy

41 APPROVED AS TO ACCOUNTING
42 FORM

43 BY _____
44 VICKI CROW, AUDITOR-
45 CONTROLLER/
46 TREASURER-TAX COLLECTOR

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