



AGENDA ITEM NO.

COUNCIL MEETING

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

June 19, 2007

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

BY: ROBERT N. ANDERSEN P.E., Assistant Director
Department of Utilities

SUBJECT: AUTHORIZATION FOR PAYMENT TO THE LOCAL AREA FORMATION COMMISSION OF FRESNO COUNTY IN THE AMOUNT OF \$7,500 FOR THE REVIEW OF THE PROPOSED MUNICIPAL WATER DISTRICT PLAN OF SERVICE

KEY RESULT AREA

One Fresno

RECOMMENDATION

Staff recommends that the City Council authorize payment of \$7,500 to the Local Area Formation Commission of Fresno County (LAFCo) for the review of the proposed Municipal Water District (MWD) Plan of Service.

EXECUTIVE SUMMARY

On January 23, 2007, the City Council approved the Amendment to Agreement with Navigant Consulting to prepare the Plan of Service. This Plan of Service is necessary for application to LAFCo for change in governance structure of the Department of Public Utilities.

On May 16, 2007, the LAFCO Board approved a proposal by Braitman and Associates for \$7,500 for the review of the Plan of Service currently being prepared by Navigant Consulting.

Staff is recommending authorization of the payment of \$7,500 to LAFCo for the review of the Plan of Service.

KEY OBJECTIVE BALANCE

The project goal is to provide for the best possible type of governance for the Public Utilities Department which will benefit the ratepayers and the City of Fresno. By changing the governance structure of the Utility Department, staff will be able to show the most cost-effective model. This will lead to customer as well as employee satisfaction.

REPORT TO THE CITY COUNCIL

Payment to LAFCo

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BACKGROUND

On January 23, 2007, the City Council approved the Amendment to Agreement for Navigant Consulting to prepare the Plan of Service. This Plan of Service is necessary for application to LAFCo for change in governance structure of the Department of Public Utilities.

On May 16, 2007, the LAFCo Board approved a proposal by Braitman and Associates for \$7,500 for the review of the Plan of Service currently being prepared by Navigant Consulting. LAFCo is the responsible authority to consider changes or reorganizations of municipalities within Fresno County. Per the Fresno Local Area Formation Commission Policies, Standards and Procedures Manual adopted April 3, 1986, Section 350-04, it is appropriate for LAFCo to request payment for review of feasibility studies for reorganizations.

The agreement approved by the LAFCo Board dated May 22, 2007 has been approved as to form by Fresno LAFCo Legal Counsel.

Staff is recommending authorization of the payment of \$7,500 to LAFCo for the review of the Plan of Service.

FISCAL IMPACT

Funding for this review is in the Department's Operating Budget.

**FRESNO LOCAL AGENCY FORMATION COMMISSION
AGREEMENT FOR CONSULTANT SERVICES**

This AGREEMENT, made and entered into this ^{22ND} day of May, 2007 (the "Effective Date") by and between the FRESNO LOCAL AGENCY FORMATION COMMISSION, a governmental agency formed under the laws of the State of California ("LAFCo"), and BRAITMAN & ASSOCIATES, a California Sole Proprietorship ("Consultant"). LAFCo and Consultant are at times collectively referred to herein as the "Parties" and singularly as a "Party."

RECITALS

WHEREAS, LAFCo is created and authorized under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Section 56000 *et seq.* of the California Government Code (the "Act") and is required by the Act to conduct Municipal Service Reviews ("MSRs") and Sphere of Influence updates ("SOIs") for cities and special districts located within the County of Fresno; and

WHEREAS, LAFCo is also responsible, pursuant to the Act, for evaluating the provision of community services and must approve Changes of Organization affecting those services, which include the formation of new districts; and

WHEREAS, on January 19, 2007, LAFCo and Consultant entered into that certain consultant service agreement for the preparation of MSR and SOI updates; and

WHEREAS, the Parties desire to enter into this Agreement whereby Consultant will provide consulting services to the Commission regarding a proposal by the City of Fresno (the "City") to restructure certain utility services the City provides to some residents of Fresno City and County (the "Proposal"), which may result in an application to the Commission by the City to form a Municipal Water District (a "MWD"), as prescribed in the Act and the Municipal Water District Law (Water Code §71000 *et seq.*).

NOW, THEREFORE, in consideration of the recitals set forth above, which are herein incorporated by this reference, and the mutual covenants and undertakings set forth herein, the mutual receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. CONSULTANT'S OBLIGATIONS

A. The Consultant shall provide those consulting services requested by the LAFCo Executive Officer or other LAFCo staff members as designated by the LAFCo Executive Officer concerning the Proposal. Such services shall include, but not be limited to:

- I. Meeting and regularly communicating with City representatives regarding the Proposal;

2. Assist LAFCo staff in analyzing the Proposal and identifying alternatives to a MWD, including a complete review of whether or not utility services should be restructured and other governance entities that may be appropriate to provide such services;
3. Meeting with the LAFCo Commission and staff concerning the Proposal as necessary; and
4. Assist LAFCo staff in identifying and implementing valid procedures to form a special district under the Act or other favored alternative for restructuring the City utility services.

II. LAFCo's OBLIGATIONS

A. LAFCo shall compensate Consultant as provided in Section III of this Agreement.

B. LAFCo shall make reasonable efforts to make available to Consultant any document, studies, or other information in its possession related to the Proposal.

III. COMPENSATION

A. Total Compensation. Notwithstanding any other provision in this Agreement, the Contractor's compensation (the "Compensation") for the services required herein shall be computed at the hourly rate of \$200.00 per hour, and under no circumstances shall the Compensation during the term of this Agreement exceed the sum of seven thousand five hundred dollars and no/cents (\$7,500.00) without the prior written consent of LAFCo.

B. Monthly Invoices.

By the 15th day of each month, Consultant shall submit two copies of each invoice with adequate supporting documentation of work billed and costs charged to LAFCo, specifying those services completed by Consultant. The invoice shall specify: (1) hours worked multiplied by the billing rate; (2) an itemization of other direct costs; (3) the total amount of Compensation billed for the current period; and (4) the total amount billed to date.

C. Payment.

Within 30 days of receipt of a proper invoice, LAFCo shall determine whether Consultant has adequately performed to the sole satisfaction of LAFCo the item(s) for which Consultant seeks payment, and shall remit payment thereof to Consultant.

D. Disputes.

If LAFCo determines that Consultant has not adequately performed any such task or services, LAFCo shall timely inform Consultant of those acts in writing which are necessary for satisfactory completion of the item(s). Consultant shall undertake any and all work to satisfactorily complete the item(s) at no additional charge to LAFCo.

In the event there is a dispute over an alleged error or omission by Consultant, LAFCo shall have the right to withhold payment for the disputed amount of Consultant's Compensation.

IV. TERMINATION

A. Termination by LAFCo.

This Agreement may be terminated without cause at any time by LAFCo upon five (5) calendar days written notice. In the event that LAFCo terminates this Agreement, LAFCo shall compensate Consultant for services completed to LAFCo's satisfaction as of the date of termination based upon the Compensation rates and subject to the maximum amount payable as specified in Section III hereinabove.

In no event shall any payment of Compensation by LAFCo to Contractor constitute a waiver by LAFCo of any breach of this Agreement or any default by Consultant. Additionally, such payment shall not impair any remedy available to LAFCo with respect to the breach or default.

In the event of any termination of this Agreement, all finished and unfinished work materials, including, without limitation, notes, minutes, research, documents, maps, graphs, and studies, shall be LAFCo's property, and at LAFCo's sole option, shall be delivered by Consultant to LAFCo.

V. RIGHT TO PUBLISH/OWNERSHIP OF MATERIALS

LAFCo shall own all materials produced pursuant to this Agreement upon completion and full performance by Consultant and shall have the right to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared by Consultant under this Agreement. Consultant shall not be liable for misuse or modification beyond its control by LAFCo of materials produced pursuant to this Agreement.

VI. INDEPENDENT CONSULTANT

In performance of the services under this Agreement and all other related duties, and obligations assumed by Consultant, it is mutually expressly understood and agreed that Consultant, including any and all of Consultant's officers, agents, and employees will at all times be acting and performing as independent contractors, and shall act in an independent capacity and not as an

officer, agent, servant, employee, joint venture, partner, or associate of LAFCo. Furthermore, LAFCo shall have no right to control or supervise or direct the manner or method by which Consultant shall perform its work and functions related to this Agreement. However, LAFCo 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. Consultant and LAFCo shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contracting firm, Consultant shall have absolutely no right to employment rights and benefits available to LAFCo employees. Consultant shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Consultant shall be solely responsible and hold LAFCo harmless from any and all claims relating to the payment of Consultant's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. LAFCo acknowledges that during the term of this Agreement, Consultant may provide services to others unrelated to LAFCo or to this Agreement.

VII. ASSIGNMENT

Consultant shall not assign or subcontract its duties under this Agreement without the prior written consent of the LAFCo. Such consent shall not be construed as making LAFCo a party to such subcontract, or subjecting the LAFCo to liability of any kind to any sub-consultant.

No subcontract whether existing or later entered into as set forth herein, under any circumstances shall relieve the Consultant of his liability and obligation under this contract, and all transactions with the LAFCo must be through the Consultant. Sub-consultants may not be changed by Consultant without the prior express written approval of LAFCo.

VIII. BINDING NATURE OF AGREEMENT; MODIFICATION

The parties agree that all of the terms of this Agreement and its Exhibits shall be binding upon them and that together these terms constitute the entire Agreement of the parties with respect to the subject matter hereof. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties. This Agreement shall be binding upon LAFCo, the Consultant and their successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

IX. INDEMNITY

Consultant agrees to indemnify, defend, and hold LAFCo, its officers, agents, and employees, harmless from and against any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage) arising from or related to (i) any and all negligent or wrongful acts or omissions of or by Consultant, its

officers, agents, employees, or subconsultants, in its performance of this Agreement; (ii) any and all intentional acts or omissions of or by Consultant, its officers, agents, employees, or subconsultants, in its performance of this Agreement; or (iii) Consultant's failure to complete the services described herein or any term or condition of this Agreement and Exhibits by the Termination Date, including, but not limited to, lawsuits directly or indirectly related to this Agreement filed by a local, state, or federal governmental entity or private individual or business. LAFCo's receipt of any insurance certificate required hereinbelow does not in any way relieve Consultant from its obligations under this Section IX.

X. INSURANCE

Without limiting LAFCo's rights under this Agreement, or against any third parties, Consultant, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement:

A. Comprehensive general liability insurance with coverage of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage. Such comprehensive general liability insurance policies shall name the LAFCo, its officers, agents, and employees, individually and collectively, as additional insured. Additionally, such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by LAFCo, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the Consultant's policies herein.

B. Comprehensive automobile liability insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

C. Professional liability insurance in the minimum amount of at least One Million Dollars (\$1,000,000.00) coverage per occurrence made with an annual aggregate of Three Million Dollars (\$3,000,000.00).

D. Workers compensation insurance as required by law.

All insurance policies shall be issued by insurers who at least have an A.M. Best rating of B+FSC VIII. Such insurance shall not be canceled or changed without a minimum of thirty (30) days advance, written notice given to LAFCo.

Consultant shall provide certification of said insurance to LAFCo within twenty-one (21) days of the date of the execution of this Agreement.

Such certification shall show, to LAFCo's sole satisfaction, that such insurance coverages have been obtained and are in full force; that LAFCo, its officers, agents, and employees will not be responsible for any premiums on the policies; that as and if required such insurance names LAFCo, its officers, agents, and employees, individually and collectively, as additional insured (comprehensive general liability only), but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by LAFCo, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the Consultant's policies herein; and that this insurance shall not be canceled or changed without a minimum of thirty (30) days advance, written notice given to LAFCo.

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

XI. CONFLICT OF INTEREST

Consultant covenants that it has no interest, and will not have any interest, direct or indirect, which would conflict in any manner with the performances of the services required hereunder.

XII. EFFECTIVE DATE, TERM

This Agreement shall be valid as of the Effective Date and shall remain in full force and effect through December 31, 2007 unless sooner terminated as provided hereinabove or unless its term is extended with the mutual written consent of the Parties.

XIII. NOTICES

Any and all notices between LAFCo and the Consultant provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the Parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party, at such addresses set forth below:

FRESNO LAFCo
Rick Ballantyne, Executive Officer
2115 Kern Street, Suite 310
Fresno, CA 93721

BRAITMAN & ASSOCIATES
Bob Braitman
8277 Cheshire Street
Ventura, CA 93004

XIV. PROJECT MANAGER

The Consultant's project manager shall be Mr. Bob Braitman (the "Project Manager"). Consultant may not change its Project Manager without obtaining the prior written approval by LAFCo.

XV. VENUE; GOVERNING LAW

Venue for any claim or action arising under this Agreement shall only be in Fresno County, California. This Agreement shall be governed in all respects by the laws of the State of California.

XVI. AUDITS AND INSPECTIONS

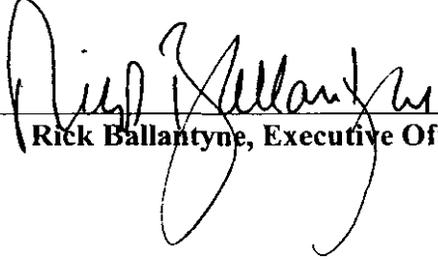
Consultant shall at any time during business hours, and as often as LAFCo may deem necessary, make available to LAFCo its records and data with respect to the matters covered by this Agreement. Consultant shall, upon request by LAFCo, permit LAFCo to audit and inspect all such records and data necessary to ensure Consultant's compliance with the terms of this Agreement.

Consultant shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract.

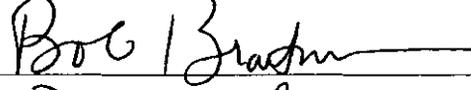
XVII. CONSULTANT'S LEGAL AUTHORITY

Each individual executing or attesting this Agreement on behalf of Consultant hereby covenants, warrants, and represents: (1) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's board of directors and in accordance with such corporation's article of incorporation or charter and bylaws; (2) that this Agreement is binding upon such corporation; and (3) that Consultant is a duly organized and legally existing corporation in good standing in the State of California.

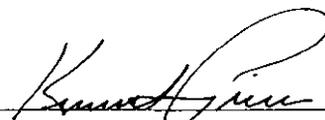
FRESNO LOCAL AGENCY FORMATION COMMISSION

By 
Rick Ballantyne, Executive Officer

BRAITMAN & ASSOCIATES

By 
Title Principal
TIN 77-0308225
Tax I.D. or Social Security Number

**Approved as to Legal Form:
Fresno LAFCo Legal Counsel**

By 
Kenneth Price
Baker, Manock, and Jensen

April 23, 2007

Rick Ballantyne
Executive Officer
Fresno LAFCO
2115 Kern Street, Suite 310
Fresno CA 93721



**Proposal to Assist the Fresno LAFCO in Evaluating and Processing
City of Fresno Application to Transfer its Water System**

Dear Rick:

This is a proposal to assist the Fresno LAFCO in processing and evaluating a proposal from the City of Fresno to divest itself of its water utility and transfer assets and services to a proposed water district.

We see our role as an extension of the LAFCO staff with duties to be determined by prospective application and events. These tasks can include the following and other assignments that might be identified as time goes on:

- Assist the LAFCO staff in interacting with the City staff and officials to ensure the City prepares a clear, comprehensive description of what it intends, including reasons for the change, components involved in implementing the change, and the relationship of the new water agency to the City and other public and private agencies.
- Assist the LAFCO staff in analyzing the proposal and identifying alternatives, including types of special districts and their governance.
- Assist the LAFCO staff in describing and implementing the specific steps involved in the City transferring its water service obligations to a as-yet-to-be-formed special district. A portion of this would be developing and managing a time schedule of expected steps.

My billing rate for consulting services is \$200 an hour based on the actual time spent, plus out-of-pocket expenses invoiced at cost plus 10%. Secretarial services are provided at \$30 hour. We maintain detailed records and provide monthly statements with payment due in 30 days.

We are willing to agree to a "not to exceed" amount of hours or expenses for this project, and will track and bill our time separately from the work we are doing on Municipal Service Reviews

Rick Ballantyne

April 23, 2007

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and Sphere of Influence Updates. At this time we would suggest a total of 30 hours, an amount not be exceeded without your subsequent authorization.

Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Bob Braitman". The signature is written in black ink and includes a long horizontal flourish extending to the right.

BOB BRAITMAN