

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

DEPT: Environmental Resources

BOARD AGENDA # \*B-13

Urgent

Routine

CEO Concurs with Recommendation YES  NO

(Information Attached)

AGENDA DATE April 22, 2008

4/5 Vote Required YES  NO

SUBJECT:

Approval of an Agreement with Hilton, Farnkopf & Hobson, LLC, to Develop a Refuse Collection Service Agreement and Manage the Contractor Selection Process for Stanislaus County Refuse Collection Area #3

STAFF RECOMMENDATIONS:

1. Authorize the Director of Environmental Resources, or her designee, to sign a contract with Hilton, Farnkopf & Hobson, LLC, to develop a refuse collection service agreement and manage the contractor selection process for Stanislaus County Refuse Collection Area #3 in the amount of \$101,675.
2. Authorize the Director of Environmental Resources, or her designee, to sign amendments to the contract for an overall total not to exceed \$116,926.
3. Direct the Auditor-Controller to increase appropriations in the amount of \$116,926 as detailed in the attached Budget Journal.

FISCAL IMPACT:

If this contract is awarded, the maximum amount to be paid for services provided by Hilton, Farnkopf & Hobson, LLC, under this agreement will not exceed \$116,926. This includes contingency funding of up to \$15,251, which is equal to a maximum of 15% of the total contract amount. Funds for this purpose were not included in the Department's 2007-2008 Final Budget. The attached Budget Journal would provide for a \$116,926 increase in appropriations in the Department of Environmental Resources Budget Unit.  
(continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2008-298

**THIS ITEM WAS REMOVED FROM THE AGENDA.**  
**NO ACTION WAS TAKEN.**

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**Fiscal Impact: (Continued)**

There are adequate funds in the Department's fund balance to cover the cost of this contract service, however, County Counsel will be funding up to \$22,000 for associated legal services contained within the agreement with Hilton, Farnkopf & Hobson, LLC.

**Discussion:**

Stanislaus County Refuse Collection Area #3 has been served for the past 10 years by USA Waste of California, Inc., doing business as Modesto Disposal Service (USA Waste). Their service agreement with Stanislaus County will expire on November 5, 2008. Rather than negotiating a new service agreement with USA Waste, the Department of Environmental Resources (Department) is recommending a competitive procurement for residential, commercial, and debris box services for Area #3.

While the County has been satisfied with the services provided by USA Waste, their contract has been in place for over 10 years and the current contract expiration provides an opportunity for the County to evaluate service delivery through a competitive procurement process.

A competitive procurement process is recommended because it will: a) allow for the development of a state-of-the art franchise agreement; b) ensure the most competitive refuse collection rates possible for Stanislaus County residents; and c) provide the Department with the most up-to-date service and performance guarantees to ensure the efficient delivery of this public service.

Integral with the competitive procurement process is the development of a new Service Agreement for Area #3 that addresses the needs of the consumer, the Department and the Board of Supervisors. The Service Agreement (Agreement) will spell out the term of the agreement, the services to be provided, the required reporting and the performance standards with specific consequences for failures to comply with the terms of the Agreement.

The development of a new refuse collection Service Agreement will require staffing resources and expertise that the Department does not currently possess in-house. For certain types of professional services, where specialized expertise and unique skills are required such as in this case, the law does not require the County to engage in a competitive bid process.

Given this, the Department asked Hilton, Farnkopf & Hobson, LLC (HF&H), a firm with considerable experience in competitive procurements and a history of providing solid waste consulting services to the County, to prepare a proposal for developing a new refuse collection Service Agreement and managing the contractor selection process for Stanislaus County Refuse Collection Area #3.

In response, HF&H has proposed to perform the requested tasks for an amount not to exceed \$101,675. Their proposal and the contract are included as Attachment "A." This project will be a very large

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undertaking under a tight timeframe and because of the County's working relationship with HF&H, the "learning curve" in this project would be minimal, if any.

Given that the USA Waste Agreement expires November 5, 2008, the contractor selection process must proceed as quickly as possible to provide the future contractor sufficient time to order vehicles and collection containers, and plan the commencement of services. Given this, HF&H proposes to engage Mr. Kent Alm of the law firm of Meyers Nave to lead the preparation and negotiation of the future Service Agreement, while HF&H staff will focus on the preparation of the Request For Proposals (RFP) and the development of the service-related and compensation-related sections of the Service Agreement, the evaluation of the proposals themselves, and will assist with contract negotiations.

If the Board of Supervisors approves staff's recommendations, the Department plans to return to the Board in late May 2008, for approval of the proposed Service Agreement in order to proceed with an RFP, returning again to the Board in about August 2008, for consideration of the selected contractor.

**Policy Issue:**

The Board of Supervisors should determine if the development of a new service agreement and conducting a competitive procurement for a contractor to provide refuse collection services to Stanislaus County Refuse Collection Area #3 is consistent with the Board's priorities of a well-planned infrastructure system and the efficient delivery of public services.

**Staffing Impact:**

There are no staffing impacts associated with this item.

**AUDITOR-CONTROLLER  
BUDGET JOURNAL**



Balance Type	Budget
Category	Budget - Upload
Source	
Currency	USD
Budget Name	LEGAL BUDGET
Batch Name	
Journal Name	
Journal description	Increase appropriations for the Hilton Contract
Period	
Organization	Stanislaus Budget Org

Line	Coding Structure							Debit	Credit	Description
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6				
1	1001	34110	63280				.0	116,926.00		Increase contracts
2							.0			
3							.0			
4							.0			
5							.0			
6							.0			
7							.0			
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20							.0			
21							.0			
22							.0			
23							.0			
24							.0			
25							.0			
<b>Totals</b>								<b>116,926.00</b>		

Increase appropriations in Environmental Resources Budget for Hilton Contract

<b>Requesting Department</b>	<b>CEO</b>	<b>Auditors Office Only</b>	
<i>Merry Roabaugh</i>	<i>[Signature]</i>	<i>B. Jint</i>	
Prepared by	Supervisor's Approval	Prepared By	Admin Approval (\$75K+)
4-15-08	4/17/08		4/17/08
Date	Date	Date	Date

Contact Person & Phone Number



DEPARTMENT OF ENVIRONMENTAL RESOURCES  
3800 Cornucopia Way, Suite C, Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement For Professional Services is made and entered into by and between the County of Stanislaus ("County") and HF&H Consultants, LLC ("Consultant"), on \_\_\_\_\_, 2008 (the "Agreement").

### Introduction

WHEREAS, the County has a need for services involving Managing the Collection Contractor Selection Process; and

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

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

### Terms and Conditions

#### 1. Scope of Work

- 1.1 The Consultant shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, which is attached hereto and, by this reference, made a part hereof.
- 1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. The County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the County's reuse of the documents and drawings prepared by the Consultant under this Agreement.
- 1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in **Exhibit C** attached hereto. If there is no schedule, the hours and times for completion of said services and work are to be set by the Consultant; provided, however, that such schedule is subject to review by and concurrence of the County.
- 1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.
- 1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant not the County.

2. Consideration

2.1 The Consultant shall be compensated on either a time and materials basis or a lump sum basis, as provided in **Exhibit A** and **Exhibit B** attached hereto.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 The Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein or as identified in Exhibit A.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

3. Term

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

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

3.3 The County may terminate this agreement upon 30 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant as provided in Paragraph 2 herein, subject to any applicable setoffs.

3.4 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

4. Required Licenses, Certificates and Permits

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

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

6. Insurance

- 6.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:
- 6.1.1 General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- 6.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.
- 6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.
- 6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Consultant will comply with such provisions before commencing the performance of the work of this Agreement.
- 6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.
- 6.3 The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.
- 6.4 The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance.
- 6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees.
- 6.6 The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
- 6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-:VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.
- 6.9 Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.
- 6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.
- 6.11 The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

- 7.1 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Consultant's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.
- 7.2 Consultant's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.
- 7.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Consultant and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.
- 7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:
- (a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;
  - (b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and
  - (c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated



soils or other regulated substances pass to Consultant.

8. Status of Consultant

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Consultant. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any Scope of Services made a part hereof, do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.7 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

8.8 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

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

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

10. Confidentiality

The Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

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

13. Waiver of Default

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

14. Notice

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

To County: County of Stanislaus  
Department of Environmental Resources  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Attn: Susan M. Garcia, C.P.M., A.P.P.

To Consultant: HF&H Consultants, LLC  
2175 N. California Boulevard  
Suite 990  
Walnut Creek, CA 94596  
Attn: Robert D. Hilton, CMC

15. Conflicts

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

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated

thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

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

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

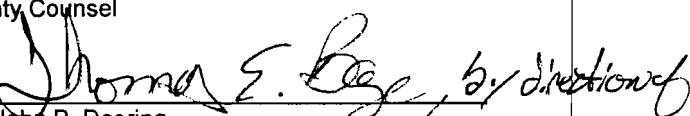
20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

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

<p>COUNTY OF STANISLAUS</p> <p>By: _____                  Sonya K. Harrigfeld                  Director</p> <p style="text-align: center;">"County"</p>	<p>HF&amp;H CONSULTANTS, LLC</p> <p>By: _____                  Name                  Title</p> <p style="text-align: center;">"Consultant"</p>
<p>APPROVED AS TO FORM:                  John P. Doering                  County Counsel</p> <p>By:                   John P. Doering                  County Counsel</p>	

**EXHIBIT A**

**A. OVERVIEW**

The County's existing disposal franchise agreement, which provides collection services to area #3, is due to expire November 5, 2008. The County is interested in conducting a competitive contract selection process to identify a contractor to provide collection services area #3 after the expiration of the existing disposal franchise agreement. The County plans to invite local and out-of-area companies to participate in the proposal process. The contractor selection process shall involve preparation and issuance of a Request for Proposal (RFP) and franchise agreement, the evaluation of collection company proposals, the selection of the future contractor, and contract negotiations. The RFP shall solicit proposals that offer collection, processing, and disposal services for solid waste, recyclables, and organic materials generated by residential and commercial customers.

As the existing disposal franchise agreement expires November 5, 2008, the contractor selection process shall proceed immediately to provide adequate time to conduct the competitive selection process and to allow the future contractor sufficient lead time to order vehicles and collection containers and plan the commencement of services. Consultant's lead negotiator, Mr. Kent Alm of Meyers Nave ("Expert") shall be assigned by Consultant to lead the preparation of and negotiation of the future franchise agreement. Consultant shall focus on preparation of the RFP, development of service-related and compensation-related sections of the franchise agreement, evaluation of proposals, and assistance with contract negotiations.

Benefits of Competitive Contractor Selection Process

Benefits to be achieved by a competitive procurement process are:

1. Implementation of changes to enhance programs, improve customer convenience, and increase customer satisfaction;
2. Establishment of new performance standards;
3. Improved business terms and arrangements;
4. Reduced costs, if savings can be realized through:
  - a. Increased collection efficiencies
  - b. Reduced processing costs
  - c. Reduced disposal costs
  - d. Competitive process

**B. SCOPE OF WORK**

The Consultant shall provide services to manage the RFP process and assist/participate in contract negotiations. The Consultant's management of the RFP process shall create a competitive environment in order to receive multiple proposals for services that include:

1. Solid waste collection and disposal services;
2. Recyclable materials collection and processing services; and,
3. Curbside Bulky-Item removal for residential addresses, twice per year.

Because of the short-time available to complete this process the Consultant shall work closely with County staff in the first five weeks of the project to define the contractor's scope of services, agree on terms and conditions of the franchise agreement contract, and address County RFP policy issues. During this planning phase of the project, the Consultant shall focus on what (if any) changes to the existing scope of services the County wants to implement.

After the planning phase is complete, the Consultant shall draft the RFP, service-related and compensation-related sections of the franchise agreement and Expert shall draft the remainder of the Agreement for County review. These documents shall be revised to reflect the County's comments. After Board approval, the RFP shall be issued to prospective proposers in accordance with County policy. Consultant shall facilitate a pre-proposal meeting and respond to questions raised by prospective proposers.

The following describes the tasks Consultant shall perform under this Agreement:

Task 1: Planning Future Services and Contract Terms

Consultant shall hold two planning sessions with County staff (including County Counsel) to discuss all service and contract issues, and efficiently define and agree on the scope of the future collection services and future contract terms. During these meetings, the Consultant and County shall also discuss who shall participate in the procurement management and evaluation process and their roles, the advantages and disadvantages of weighted criteria, the role of price in the decision process, etc. Decisions made by the Consultant and County shall be documented by the Consultant using a matrix that presents current arrangements and future arrangements on a side-by-side basis for an extensive list of service and contract issues. Consultant shall discuss the County's goals and objective for the collection procurement and review current conditions. Consultant shall discuss interest in any service changes and/or the types of optional proposals that County may be interested in considering. Consultant shall also review the County's purchasing procedures and protocols for managing competitive procurement process, and agree on the schedule for the project. Subsequent changes to the decisions made during this Task are not anticipated and shall affect Consultant's ability to conform to the project schedule and budget. If changes occur, Consultant shall immediately inform the County staff in writing of the schedule and budget impact and seek the County's direction. County shall review the changes and authorize approved modifications to the schedule and budget through a written amendment to this Agreement.

Task 2: Prepare RFP and Sections of the Franchise Agreement

Based on the results of Task 1, Consultant shall draft the RFP and Expert shall draft the franchise agreement with Consultant's assistance.

The draft RFP prepared by the Consultant shall include:

1. An overview of the RFP;
2. Goals and objectives of the RFP;
3. Rights reserved by the County;
4. An overview of the process and the schedule;
5. A description of the current services and conditions;
6. A description of the requested services (including optional services);
7. A description of proposal requirements including an outline for the proposal and required forms and information;
8. A description of the proposal submittal process; and
9. A description of the evaluation criteria.

The draft franchise agreement prepared by Expert shall be included in the RFP as an attachment. Consultant shall prepare service-related and compensation-related sections of the franchise agreement for Expert's inclusion in the franchise agreement. The RFP package prepared by the Consultant shall request proposers to identify any specific changes to the agreement they believe are necessary so that the County can evaluate these changes prior to selecting a contractor and so that the negotiation process is more efficient.

Consultant shall submit the draft RFP and franchise agreement to County staff and County Counsel for review. After the County has reviewed the documents and provided the Consultant with written comments, the Consultant shall confer with the County staff and make one round of appropriate revisions to these documents.

The County shall obtain Board of Supervisors (Board) approval of the RFP package prior to issuance. The Consultant and Expert shall attend one County Board workshop and one meeting (occurring on the same night) where the County Board will review and consider approval of the RFP package. Consultant shall make a presentation and answer questions.

Once the County Board approves the RFP and draft agreement, the documents shall be duplicated and distributed by the County to potential proposers. Consultant shall electronically distribute these documents to the County. Consultant shall provide the County with a written contact list of prospective proposers.

Task 3: Manage the Pre-proposal Process

Consultant shall actively manage the pre-proposal process. Consultant shall schedule along with County staff, a proposers' conference to be conducted shortly after the release of the RFP. Consultant shall describe the RFP, the compensation methodology, key terms of the franchise agreement, and the proposal evaluation process at the proposers conference. Potential proposers shall have the opportunity to receive responses to questions at the pre-proposers' conference. Written requests for clarification shall be accepted until a set deadline.

Consultant with the assistance of Expert and the County staff (as appropriate) shall prepare written responses to questions posed at the proposer's conference, or submitted in writing, and prepare any necessary addenda arising from issues posed at the proposers' conference. Consultant anticipates the issuance of two addenda to conform to the limitation of the available time. All questions and responses shall be reviewed by County staff prior to distribution and made available to all proposers in attendance at the conference or who have requested the information.

Task 4: Review and Evaluate Proposals

*Review Proposals for Completeness:* Consultant shall perform an initial review of each proposal submitted for compliance with the County's RFP requirements and disregard incomplete proposals. Consultant's price in Exhibit B includes review of up to four proposals. If additional proposals are received and are in compliance with the RFP, Consultant shall seek direction from County staff whether to evaluate additional proposals and shall prepare a proposal for this additional service and submit to the County for review. The proposal shall include the additional fees to perform this service. The County shall review the Consultant's proposal for additional fees and if approved by the County, issue an amendment to the Agreement to include the agreed upon additional amount.

*Evaluate Proposals Based Upon Established Criteria:* The specific criteria (and, if appropriate, weighting) with which the Consultant (or an evaluation committee) shall evaluate the complete proposals, shall be developed using input received from County staff during Task 1.

Proposals shall be reviewed for completeness and substantial compliance with the RFP. The specific criteria for this review shall be established with County staff during the development of the RFP. Should proposals be incomplete or not in compliance, the County may determine whether to proceed with or disqualify the proposal from further review.

The following is additional criteria to further evaluate the proposals:

- Exceptions taken to the terms and conditions of the draft agreement;
- Proposed compensation and/or rates;
- Experience of the proposers in providing the requested services in other jurisdictions, based on information contained in their proposals;
- Financial resources of the proposers, based on information in their proposals; and,
- Unique proposal features that exceed the RFP's minimum requirements.

*Prepare Follow-Up Questions for Proposers:* After Consultant performs their initial review and evaluation of the proposals, Consultant shall provide each proposer with a summary evaluation of the company's individual proposal in order to confirm their understanding of the information presented in the proposal. Consultant shall seek clarification on items, which are vague, incomplete, or inconsistent in the proposals. Consultant shall review the responses received from proposers and resolve any open issues to help ensure that proposers are reasonably satisfied with the representation of their proposals. During this activity, Consultant shall be highly reliant on timely and accurate cooperation from the proposers.

*Prepare Draft Evaluation Report:* Upon completion of the evaluation, the Consultant shall provide the County a summary report describing the evaluation results. The report shall compare and contrast the proposals' relative strengths and weaknesses. Consultant's report shall be prepared in a format (such as PowerPoint) that can be used to present the information to County Board.

*Interview Proposers:* Consultant and County or a selection committee, shall interview up to four proposers on one day. Based upon the evaluation, draft report, and interviews, the County or a selection committee, shall select the one or two proposer(s) with which to negotiate a final agreement. Following the interviews, the Consultant shall revise the draft evaluation report to reflect any new information or clarification obtained from proposers during the interviews.

*Finalize Evaluation Report and Prepare Recommendation:* Consultant shall meet with County or selection committee, to present the draft evaluation report, solicit comments on the draft report, and work with the County or selection committee to prepare a recommendation for Board consideration. The recommendation may be to select a specific company, request the Board to select a company, or negotiate with two or more companies, etc.

Task 5: Present Recommendations to Board

Consultant shall review and comment on the County's agenda report or draft the report for the County to review. Consultant shall attend a Board meeting to present the evaluation of proposals and the evaluation teams'

recommendation. Consultant shall respond to questions at the meeting.

Task 6: Negotiate Final Agreements

Fees for Consultant and Expert to assist the County in negotiating with one company and to attend two, three-hour negotiating meetings are included in Exhibit B. Should the County choose to negotiate with more than one company, the Consultant shall provide the County with a proposal, prior to the proceeding, to assist the County's evaluation team with negotiations and in its determination of a final selection. The proposal shall include the additional fees to perform this service. The County shall review the Consultant's proposal for additional fees and if approved by the County, issue an amendment to the Agreement to include the agreed upon additional amount.

In either event Expert, with Consultant's assistance shall revise portions of the franchise agreement to reflect the negotiations.

Task 7: Present Final Agreement to Board for Approval

Consultant shall review and comment on the County's agenda report or draft the report for County's review. Consultant shall attend one Board meeting to present the final franchise agreement and respond to any questions.

Task 8: Engagement Management

Throughout the performance of this Agreement, Consultant shall prepare detailed work plans, monitor the performance of the subtasks, anticipate and respond to currently anticipated issues, and report Consultant's progress of work being performed to the County.

**C. COMPENSATION**

The Consultant shall be compensated for the services provided under this Agreement as follows:

1. Consultant shall be compensated for services rendered and accepted under this Agreement, not work in process and shall be paid monthly, in arrears, on a time and material basis, not to exceed the amounts for each task, and based upon the rates set forth in Exhibit B attached hereto and made a part of this Agreement. In addition to the aforementioned fees, Consultant shall be reimbursed for the following items, that are reasonable, necessary and actually incurred by the Consultant in connection with the services. Consultant shall not charge additional fees to the actual cost:
  - (a) Expenses, fees or charges for printing, reproduction or binding of documents at actual costs.
  - (b) Travel expenses shall be reimbursed in accordance with the County's travel policy, which is incorporated herein by reference.
  - (c) Any filing fees, permit fees, or other fees paid or advanced by the Consultant.

Fees plus reimbursable expenses shall not exceed the amounts set forth in Exhibit B. Payments shall be based upon work documents submitted by the Consultant to the County and accepted by the County as being satisfactory to County's need, not work in process.

Reimbursable expenses shall be at actual cost. No administration fees or mark-up is allowed. Copies of the original invoices identifying the actual expenses must accompany the Consultant's invoice to the County.

2. Consultant shall submit a detailed invoice upon completion of each task. The invoice is to include but not be limited to the following information: hours worked by Consultant's Staff, the title of the Staff, billable rate, item rental equipment, number of days rented and rate of rental, task, staff and reimbursable items.

**D. LIMIT OF EXPENDITURE**

The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall **not exceed \$101,675.00**, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.

**E. PAYMENT AND INVOICING**

1. The terms of payment are Net 30 days after approval of the invoice.
2. Consultant shall submit a detailed invoice in duplicate for work actually completed. The invoice is to include but not be limited to the following information: hours worked by Consultant's Staff, the title of the Staff, billable rate and reimbursable items that are reasonable, necessary and actually incurred by the Consultant in connection with the services.

The remit to address is:

Stanislaus County  
Department of Environmental Resources  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Attention: Accounts Payables

**F. CONTRACT PERIOD**

The period of this Agreement is from April 22, 2008 through December 30, 2008.

**G. TERMINATION FOR CONVENIENCE**

The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Consultant. Consultant agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Consultant the amount due for work properly performed as of the date of termination, less any sums previously paid.

**H. SAFETY REQUIREMENTS**

All services and merchandise must comply with current California State Division of Industrial Safety Orders and OSHA.

**I. REPRESENTATIVES**

Start-up service shall be coordinated with the County's representative Ron DeLong (209) 525-6781 representative. The Consultant's representative is Robert Hilton (925) 977-6952.

**J. WORK SCHEDULE**

Consultant is obligated to perform, in a timely manner, the services and work provided for under this Agreement. It is understood by Consultant that the performance of these services and work shall require the Consultant to perform the services and work in conformance with a work schedule agreed to by the parties in Exhibit C attached hereto and made a part of this Agreement.



**EXHIBIT B  
RATE SCHEDULE**

**HOURLY BILLABLE RATES**

The Consultant shall be compensated on a time and material per task basis. The hourly rates, and the not to exceed amounts for each task as set forth below.

<u>Title</u>	<u>Hourly Billable</u>
R. Hilton	\$240.00
K. Alm	\$280.00
Rob Hilton	\$180.00
C. Lehon	\$145.00
M. Bolander	\$110.00
Administrative	\$ 80.00

**Project Costs**

The below project pricing is devised to allow the County the ability to identify costs associated with the frequency of tasks performed. The Consultant shall be compensated based on the hourly rates set forth above to perform the work associated with each task, not to exceed the amounts listed below. Maximum Total Task Price includes fees and reimbursable expenses.

<b>TASK</b>	<b>DESCRIPTION</b>	<b>TOTAL PRICE NOT TO EXCEED</b>
<b>1</b>	<b>Planning Future Services and Contract Terms</b>	
1.1	Prepare scope and contract term matrix/work plan; review background material and prepare meeting materials	\$ 3,360.00
1.2	Facilitate two planning sessions with County staff and County Counsel	\$ 6,720.00
	<b>Subtotal Task 1</b>	<b>\$ 10,080.00</b>
<b>2</b>	<b>Prepare RFP and Franchise Agreement</b>	
2.1	Draft RFP	\$ 8,600.00
2.2	Prepare second draft RFP based on County comments	\$ 4,555.00
2.3	Finalize RFP based on County comments	\$ 2,750.00
2.4	Draft Franchise Agreement	\$ 6,400.00
2.5	Prepare second draft Franchise Agreement; attend County Board workshop and one meeting. Make presentation to Board and answer questions.	\$ 7,560.00
2.6	Finalize Franchise Agreement based on County comments	\$ 4,920.00
2.7	Prepare list of prospective proposers	\$ 360.00
2.8	Facilitate distribution of the RFP to companies	\$ 520.00
	<b>Subtotal Task 2</b>	<b>\$ 35,665.00</b>
<b>3</b>	<b>Manage Pre-Proposal Process</b>	
3.1	Prepare presentation for pre-proposal meeting	\$ 1,320.00
3.2	Facilitate pre-proposal meeting	\$ 1,440.00
3.3	Prepare written response/addendum to questions	\$ 4,320.00
	<b>Subtotal Task 3</b>	<b>\$ 7,080.00</b>
<b>4</b>	<b>Review and Evaluate Proposals (up to 4 proposals)</b>	
4.1	Initial review for completeness	\$ 1,600.00
4.2	Evaluate proposals based upon established criteria	\$ 7,440.00
4.3	Prepare follow-up questions for proposers	\$ 1,950.00
4.4	Prepare draft evaluation report	\$ 5,370.00
4.5	Interview proposers	\$ 1,800.00
4.6	Finalize evaluation report, meet with County	\$ 3,160.00
	<b>Subtotal Task 4</b>	<b>\$21,320.00</b>

TASK	DESCRIPTION	TOTAL PRICE NOT TO EXCEED
<b>5</b>	<b>Present Recommendations to Board</b>	
5.1	Review County staff report to Board and prepare Board presentation	\$ 1,880.00
5.2	Attend Board meeting	\$ 4,200.00
	<b>Subtotal Task 5</b>	<b>\$ 6,080.00</b>
<b>6</b>	<b>Negotiate Final Franchise Agreement and Rates</b>	
6.1	Participate in two negotiating sessions	\$ 7,200.00
6.2	Review and/or revise Franchise Agreement	\$ 2,320.00
	<b>Subtotal Task 6</b>	<b>\$ 9,520.00</b>
<b>7</b>	<b>Present Recommendations to Board</b>	
7.1	Prepare or review County report to Board and prepare Board presentation	\$ 1,880.00
7.2	Attend Board meeting	\$ 2,520.00
	<b>Subtotal Task 7</b>	<b>\$ 4,400.00</b>
<b>8</b>	<b>Engagement management</b>	<b>\$ 6,080.00</b>
	<b>TOTAL LABOR</b>	<b>\$100,225.00</b>
	<b>TOTAL EXPENSES</b>	<b>\$ 1,450.00</b>
	<b>TOTAL PROJECT PRICE</b>	<b>\$101,675.00</b>

Note: Not to Exceed Fee Estimate includes 537 hours of work and reimbursable expenses. Consultant's actual fees may be as much as 10% (\$9,975) less than budgeted or it may be 20% (\$19,950) higher. This range results from uncertainties regarding the number of drafts of documents that may be required, the number of meetings Consultant and Expert may be asked to attend, the number of companies expressing interest in the RFP and the number of questions they may need to respond to, the number of proposals received, etc. Consultant shall not exceed total project price without receiving prior County approval in the form of an amendment to this Agreement.

**EXHIBIT C**  
**PROJECT TIMELINE**

The following is a time line detailing the task duration.

Project Task Description	Date
Initial Meeting with County	Week of April 27, 2008
RFP Issuance, after Board approval	May 30, 2008
RFP Responses due	June 30, 2008
Interviews and evaluations completed	July 18, 2008
Selection of a contractor (Would occur at the Board' first meeting in August 2008 and a contract returned to the Board for approval at the end of the month.)	First Part of August 2008 and End of August 2008
Transition to the new contractor	September and October 2008
New services Commence	November 5, 2008