

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

DEPT: Environmental Resources *[Signature]*

BOARD AGENDA # B-15

Urgent Routine

AGENDA DATE November 25, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Revised Strategy for Managing Franchise Refuse Collection in Franchise Area #3 in the Unincorporated Areas of Stanislaus County and to Amend the Agreement with HF&H, LLC, for Additional Refuse-related Consulting Services

STAFF RECOMMENDATIONS:

1. Direct staff to develop a Request for Proposals for Stanislaus County Refuse Removal in Franchise Area #3.
2. Authorize the Director of Environmental Resources, or her designee, to sign a contract with HF&H, LLC, for refuse rate consulting services to include assisting staff with finalizing a Franchise Agreement, Scope of Work, proposed Contract, bid documents, and a Request for Proposals for Franchise Area #3 in the amount of \$33,415.
3. Authorize the Director of Environmental Resources, or her designee, to sign amendments to the contract for an overall total not to exceed \$38,427.

FISCAL IMPACT:

The proposed strategy for managing franchise refuse collection in the unincorporated areas of Stanislaus County, would provide an opportunity to bid these services for Area #3, ensuring that residents and businesses are receiving the most competitive rates available for the level of service provided.

(Continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2008-815

On motion of Supervisor Grover, Seconded by Supervisor Monteith
 and approved by the following vote,
 Ayes: Supervisors: Grover, Monteith, and Vice Chairman DeMartini
 Noes: Supervisors: O'Brien
 Excused or Absent: Supervisors: Mayfield
 Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) _____ Denied
- 3) _____ Approved as amended
- 4) _____ Other:

MOTION:

[Signature: Christine Ferraro]

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of a Revised Strategy for Managing Franchise Refuse Collection in Franchise Area #3 in the Unincorporated Areas of Stanislaus County and to Amend the Agreement with HF&H, LLC, for Additional Refuse-related Consulting Services

FISCAL IMPACT: (Continued)

The residents and businesses in Area #3 will continue to be subject to refuse collection rates as approved by the Stanislaus County Board of Supervisors. The current period for which rates have been established is through June 30, 2009, although the current Franchise Agreement for Area #3 expires on November 5, 2009. If the Board directs staff to develop a Request for Proposals for Franchise Area #3, staff anticipates the successful bidder for Area #3 will be considered by the Board for award in the summer of 2009, and that the approval will include fixed refuse collection rates for a given period which would also be considered by the Board at that time. The current rates approved by the Board of Supervisors effective July 1, 2008, would remain in place until the new proposal collection rates became effective upon the new contract term commencing November 6, 2009.

If the contract for consulting services is awarded, the maximum amount to be paid for services provided by HF&H, LLC, under this agreement will not exceed \$38,427, which will be funded through the collection of franchise fees. This includes contingency funding of up to \$5,012, which is equal to a maximum of 15% of the total contract amount. There are adequate funds in the Department's fund balance to cover the cost of this service.

DISCUSSION:

For over a year, staff from the Department of Environmental Resources has been working with the Board's Solid Waste Ad Hoc Committee and representatives from the Chief Executive Office and County Counsel to review our future direction as a County relative to solid waste collection services. These efforts included the development of a more simple approach to the rate setting process, a more comprehensive contract for franchise services, and a long-term strategy for improving the overall level of service at competitively bid pricing.

On November 4, 2008, the Board of Supervisors approved several staff recommendations relating to the first of these efforts; development of a more simple approach to the rate setting process. Included in these recommendations was a revised Refuse Rate Adjustment Methodology for determining franchise refuse rates in the unincorporated areas. This revised methodology is simpler and it provides cost recovery for the franchisees in a shorter timeframe. In addition, the Board approved amended franchise regulations which incorporated the revised methodology along with two performance measures that are aimed at maintaining a high level of customer service. Concurrent with these performance measures, staff was directed to develop an ordinance for the Board's consideration that will incorporate an enforcement process for

Approval of a Revised Strategy for Managing Franchise Refuse Collection in Franchise Area #3 in the Unincorporated Areas of Stanislaus County and to Amend the Agreement with HF&H, LLC, for Additional Refuse-related Consulting Services

failure to meet performance measures or conditions specified in the Ordinance or Regulations. Lastly, the Board adopted new base rates from which the maximum franchise rates for solid waste collection services in the unincorporated areas will be set beginning July 1, 2009.

On November 4, 1997, the Board approved the award of Franchise Area #3 to USA Waste of California, Inc., which operates under the umbrella of the parent company Waste Management, Inc., when the previous franchise holder desired to sell their Area. The Agreement was for a fixed term of 10 years and was set to expire on November 5, 2007. Since that time, the Board has approved two one-year extensions to this Agreement, the most recent on June 24, 2008, extending the Agreement through November 5, 2009. Area #3 consists of the following unincorporated areas: a portion of southwestern Modesto, Empire, Hughson, Denair, Waterford, and LaGrange.

There are many options the Board may wish to consider for Area #3 at this time. One option would be to put Area #3 out to a competitive procurement process. A second option is to enter into long-term negotiations with USA Waste, the existing franchisee. A third option would be to allow the Agreement to expire and divide it among the three remaining franchise holders, perhaps creating Area Numbers 1B, 2B, and 4A. While the County has been satisfied with services provided by USA Waste and the Franchise Agreement between the County and the vendor is more modern than the historical 'evergreen' agreements, the expiration of the current contract provides the County with the opportunity to evaluate service delivery and place the franchise area out to competitive bid, ensuring that residents and businesses are receiving the most competitive rates available for the level of service provided. Staff, therefore, is recommending the first option.

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

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also be needed as part of the Request for Proposals package.

Although the bulk of the work to develop the Agreement and the related procurement documents will be done in-house, specialized outside expertise is needed to ensure that the end product is of the highest possible quality. Given this, the Department asked HF&H, LLC, 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 assisting with this process. In response, HF&H has proposed to perform the requested tasks for an amount not to exceed \$33,415. Their proposal is incorporated into the contract which is included as Attachment "A."

If the Board of Supervisors approves staff's recommendations, the Department will return to the Board in January 2009, for approval of the proposed Agreement and Scope of Work and to set the bid opening.

POLICY ISSUE:

The Board of Supervisors should determine if approving a revised strategy for managing franchise refuse collection in Franchise Area #3 in the unincorporated areas of Stanislaus County and amending the agreement with HF&H, LLC, for additional refuse-related consulting services is consistent with the Board's priorities of the efficient delivery of public services, effective partnerships, a healthy community, and a well-planned infrastructure system.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.



DEPARTMENT OF ENVIRONMENTAL RESOURCES
3800 Cornucopia Way, Suite C, Modesto, CA 95358
Phone: (209) 525-6700
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 Dec 1, 2008 (the "Agreement").

Introduction

WHEREAS, the County has a need for services involving review and advice with finalizing a Franchise Agreement, Scope of Work, bid documents, and a Request for Proposal for Franchise Area #3; 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** and **EXHIBIT B**, 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.

Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

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 A. 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 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 a 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.

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,
Prof. Serv. Agmt. (Rev. 2.12.07)

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 allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and

representatives.

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 Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code. Consultant shall provide legal counsel reasonably acceptable to the County.

7.4 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.

7.5 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.

7.6 Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

7.7 Duty to Cooperate: Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

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 disability, 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 North California Boulevard
Suite 990
Walnut Creek, CA 94596
Attn: Robert D. Hilton

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 hereinabove written.

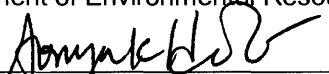
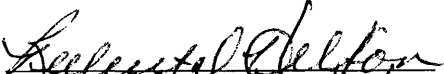
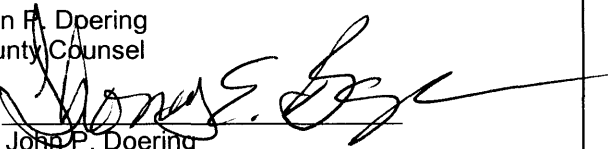
<p>COUNTY OF STANISLAUS Department of Environmental Resources</p> <p>By:  Sonya K. Harrigfeld Director</p> <p style="text-align: center;">"County"</p>	<p>HF&H CONSULTANTS, LLC</p> <p>By:  Name <u>Robert D. Hilton</u> Title <u>President</u></p> <p style="text-align: center;">"Consultant"</p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By:  John P. Doering County Counsel</p>	

EXHIBIT A

A. SCOPE OF WORK

The Consultant shall provide all the labor and material to draft and deliver to the County a Request for Proposal (RFP) for Collection Contractor Selection Process and the County's Counsel's office shall draft the franchise agreement without Consultant's assistance.

The Consultant shall perform the following Tasks:

- Task 1 - Draft RFP
- Task 2 - Prepare for and facilitate conference call with the County
- Task 3 - Finalize RFP based on County written comments
- Task 4 - Prepare for and attend Board or Sub-committee Meeting
- Task 5 - Prepare for and attend 2 Additional Meetings

The work the Consultant shall perform shall include the following:

- An overview of the RFP;
- Goals and objectives of the RFP;
- Rights reserved by the County;
- An overview of the process and the schedule;
- A description of the current services and conditions;
- A description of the requested services (including optional services);
- A summary of business terms under which the services shall be provided;
- A description of the proposal requirements including an outline for the proposal and required forms and information;
- A description of the proposal submittal process; and,
- A description of the evaluation criteria.

The draft franchise agreement shall be prepared by County Counsel's office and shall be included in the RFP as an attachment. It is the County's practice to reference the franchise agreement in the RFP, rather than duplicate information both places and risk having conflicts between the two documents. Consultant shall have proposers 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 to the County staff in an editable electronic format such as Microsoft Word and provide a hard copy for the County's review. After the County has reviewed the documents and provided the Consultant with one set of consolidated and non-conflicting written comments, the Consultant shall confer with the County staff (by phone) and make one round of appropriate revisions to these documents.

Consultant shall attend one County Board meeting (or one subcommittee meeting) at which the County Board of Supervisors (BOS) shall consider and approve the RFP. The Consultant shall make a presentation and answer any questions the BOS may have. Once the RFP and the draft agreement have been approved by the BOS, the documents shall be duplicated and distributed by the County to potential proposers. County staff shall be responsible for making any changes resulting from comments by the BOS.

Consultant shall attend up to two additional meetings with County staff, ad-hoc committee of the BOS, or other groups as needed to discuss the RFP and procurement process. Consultant will assist the County in formulating responses to bidder's questions.

Engagement Team

Consultant's President, Robert Hilton, shall serve as the Engagement Director. He shall provide the leadership, guidance, and perspective needed to ensure the contractor selection process is performed with the needs of the County in mind. He shall be available to present the Consultant's findings and reports to the BOS; and also shall be involved in the review of work plans and schedules, and the review of analyses, reports, and other work products.

Consultant's Senior Associate, Rob Hilton, shall be the Engagement Manager. As Engagement Manager, Mr. Hilton shall prepare and supervise the performance of the Scope of Work, manage the project schedule, and assist in drafting and reviewing the RFP, proposal analyses, reports and other work products. He is also available to participate in the BOS presentations.

Under Robert Hilton and Rob Hilton's supervision, several well-qualified staff shall participate in completing the County's scope of work including, but not limited to Marva Sheehan who has worked with the County on a number of recent engagements.

B. COMPENSATION

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, not to exceed basis, based upon the rates set forth in Exhibit B attached hereto and made a part of this Agreement and the not to exceed amounts per each task. In addition to the aforementioned fees, Consultant shall be reimbursed the actual cost of the following items that are reasonable, necessary and actually incurred by the Consultant in connection with the services:

- i. Expenses, fees or charges for printing, reproduction or binding of documents at actual costs with no mark up added to the actual cost.
- ii. Any filing fees, permit fees, or other fees paid or advanced by the Consultant at actual costs with no mark up added to the actual cost.
- iii. Travel expenses shall be reimbursed in accordance with the County's travel policy, which is incorporated herein by reference. Reimbursement shall be made at actual costs with no mark up added to the actual cost.
- iv. Fees plus reimbursable expenses shall not exceed the amounts set forth in Exhibit B.

The terms of payment are Net 30 days after approval of the invoice.

Fees plus reimbursable expenses shall not exceed the amounts set forth in Exhibit B and a copy of the original invoice for the items listed in i, ii or iii above shall be attached to the invoice submitted to the County for reimbursement. 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 needs, not work in process. The County shall not pay a mark up on any of the above items listed in i, ii or iii or any item identified in Exhibit B. Items such as a telephone, fax, postage or freight are already included in the billable hourly rate.

C. LIMIT OF EXPENDITURE

The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed **\$33,415.00** 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 pursuant to Paragraph 1.4 of this Agreement.

D. INVOICE REMIT TO:

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, task, staff and reimbursable items. Consultant shall be reimbursed for the following 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
Attention: Accounting
3800 Cornucopia Way, Suite C
Modesto, CA 95358

E. REPRESENTATIVES

The County's Project Manager is Jami Agger, (209) 525-6768. The Contractor's representative is Robert D. Hilton, (925) 977-6952.

F. AGREEMENT PERIOD

This shall be effective from December 1, 2008 or date of award; whichever is later, through March 31, 2009.

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. WORK SCHEDULE

Consultant is obligated to perform in a timely manner the services and work provided for under this Agreement and the Contracting Communities hereby gives the Consultant notice to proceed with the work as of the effective date of 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.

I. RESPONSIBILITY FOR ERRORS

Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

J. SUBCONTRACTORS

All insurance coverage for subcontractors shall be subject to all of the insurance and indemnity requirements stated herein.

K. OWNERSHIP OF DOCUMENTS

Any interest, including copyright interests, of Consultant or its contractors or subconsultants in studies, reports, memoranda, computational sheets, drawings, plans or any other documents, including electronic data, prepared in connection with the Services, shall be the property of County. To the extent permitted by law, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire, Consultant hereby assigns to County all copyrights to such works. With the County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

L. DUTY TO DEFEND

The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code. Consultant shall provide legal counsel reasonably acceptable to the County.

M. DUTY TO COOPERATE

Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

N. PATENT RIGHTS

Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

O. DOCUMENTS

In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this

Agreement Number A110508

Agreement including, but not limited to, finished or unfinished documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

(intentionally left blank)

**EXHIBIT B
PRICE SCHEDULE**

PRICE SCHEDULE:

The Consultant shall provide all the supervision, labor, equipment, materials and tools necessary to perform the services identified in Exhibit A – Scope of Work / Specifications in accordance with the rate schedule below.

HOURLY RATES

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

TITLE	HOURLY BILLABLE RATES
Bob Hilton	\$235.00
Rob Hilton	\$165.00
Marva Sheeham	\$180.00
Associate	\$110.00
Administrative	\$75.00

PROJECT PRICE

The below project pricing is devised to allow the County the ability to identify costs associated with the frequency of tasks performed in a given calendar year. The Consultant shall be compensated based on the billable 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, travel expenses, contingency items, equipment charges and reimbursable expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services:

Task	Description	Total Not to Exceed Price
1	Draft RFP	\$15,070.00
2	Prepare for and facilitate conference call with County	\$ 2,290.00
3	Finalize RFP based on County comments	\$ 3,620.00
4	Prepare for and attend Board Meeting	\$ 3,935.00
5	Prepare for and attend 2 Additional Meetings	\$ 8,200.00
6	Expenses	\$ 300.00
	TOTAL PROJECT PRICE	\$33,415.00

EXHIBIT C
WORK SCHEDULE

The following is a timeline for which the tasks identified below shall be performed or completed:

Task	Description	Duration	Early Start	Early Finish
1	Draft RFP	30 work days	5 work days after receiving a notice to proceed	30 work days from date of notice to proceed
2	Receipt of one (1) set of consolidated non-conflicting written comments from the County staff following receipt of the County staff comments.	10 work days	1 workday after receipt of draft RFP from Consultant	10 work days after receipt of draft RFP from Consultant
3	Consultant and County staff meet at earliest mutually convenient date following receipt of the staff comments	10 work days	1 workday after receipt of County comments	10 work days after receipt of County comments
4	Consultant provides County with a revised RFP	10 work days	1 workday after Consultant and County staff meet	10 work days after Consultant and County staff meet
5	Consultant available to meet with County Board of Supervisors or its committee	1 work day	The earliest mutually convenient date following submission of the final RFP	The earliest mutually convenient date following submission of the final RFP



DEPARTMENT OF ENVIRONMENTAL RESOURCES
 3800 Cornucopia Way, Suite C, Modesto, CA 95358
 Phone: (209) 525-6700
 Fax: (209) 525-6773

AMENDMENT NO. 1

TO

PROFESSIONAL SERVICE AGREEMENT

HF&H CONSULTANTS, LLC

This Amendment No. 1 to the Agreement for Professional Service ("Amendment No. 1") by and between the COUNTY OF STANISLAUS ("County") and HF&H CONSULTANTS, LLC ("Consultant") is made and entered into on December 1, 2008.

Whereas, the County and Contractor entered into an Agreement for Professional Service dated December 1, 2008 ("the Agreement"); and

Whereas, Paragraph 3.1 says the contract terminates on the completion of the agreed upon services; and

Whereas, Exhibit B Task number 5 is not yet complete "prepare for and attend 2 additional meetings"; and

Whereas, this amendment is for the mutual benefit of County and Consultant;

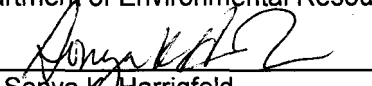
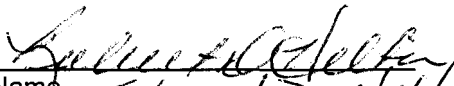
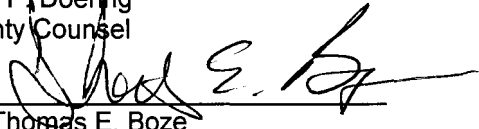
Now, therefore, the County and Consultant agree as follows:

1. Exhibit A, Section F is amended as follows:

"This shall be effective from December 1, 2008 or date of award; whichever is later, through December 31, 2009."

2. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

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

<p>COUNTY OF STANISLAUS Department of Environmental Resources By:  Sonya K. Harrigfeld Director "County"</p>	<p>HF&H CONSULTANTS, LLC By:  Name <u>Robert D. Hiltner</u> Title <u>President</u> "Consultant"</p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel By:  Thomas E. Boze Deputy County Counsel</p>	

Proposed Strategy for Managing Franchise Refuse Collection Area # 3

Jami Aggers, Assistant Director

Department of Environmental Resources and Parks & Recreation

November 25, 2008

Franchise Agreements

Of the County's four Agreements...

One is a fixed term of 10 years, set to expire on November 5, 2009 (*Area 3*); and,

Three are "evergreen", originally a 10-year term which is automatically extended by one year on April 1 of each year (*Areas 1, 2, & 4*).

Franchise Agreements (cont'd.)

The Area # 3 Agreement with USA Waste/WMI will expire in about 11 months.

This pending expiration is an opportunity to develop a more current franchise Agreement, and to introduce change in the franchise system.

Options for Area 3

- (1) Staff's recommendation, put Area # 3 out to a competitive procurement process; or
- (2) Negotiate a long-term agreement with the existing franchisee, USA Waste/WMI; or,
- (3) Allow the current agreement with USA Waste/WMI to expire and divide it among the three remaining franchise holders.

Options for Area 3 (cont'd.)

Why a Competitive Procurement?

- Evaluate service delivery with the possibility of lower costs and increased services to residents of the County, and
- Result in the development of a more comprehensive franchise Agreement.

Options for Area 3 (cont'd.)

What's needed for an Area 3 competitive procurement?

- New Franchise Agreement
- Scope of Work
- Bid Documents
- Request for Proposals (RFP)

Options for Area 3 (cont'd.)

While County Counsel and DER staff will develop the new franchise Agreement, specialized outside expertise is needed to ensure that the RFP documents are of the highest possible quality.

Staff's recommendation is to accept a proposal from Hilton, Farnkopf & Hobson for the needed assistance in the amount of \$33,415. In addition, staff recommends a 15% contingency of \$5,012. Total: \$38,427

Summary of Recommendations

- Direct staff to develop a Request for Proposals putting Area 3 out to a competitive procurement process.
- Authorize the Department to enter into a contract with Hilton, Farnkopf & Hobson for assistance with the procurement documents.

Questions?