

CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND HF&H CONSULTANTS, LLC FOR ASSISTANCE WITH NEGOTIATIONS FOR SELECTION OF SOLID WASTE & RECYCLING COLLECTION FRANCHISEE

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and HF&H CONSULTANTS, LLC ("CONSULTANT").

WHEREAS, CITY is in need of Assistance with Negotiations for Selection of Solid Waste & Recycling Collection Franchisee

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be in accordance with the Project Schedule set forth in Exhibit "A", unless otherwise terminated. CONSULTANT shall deliver the agreed upon services to CITY as specified in Exhibit "A".

3. Duties of CITY

CITY shall supply any documents or information available to CITY required by CONSULTANT for performance of the services. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "B". Total compensation shall not exceed One Hundred Thirty-Nine Thousand Seven Hundred Twenty and No/100 Dollars (\$139,720).

CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.

7. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

8. Compliance with Laws

- A. CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the City.
- B. CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and

CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

10. Hold Harmless/Indemnification

CONSULTANT agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "C."

12. CITY Representative

Mark Bowers, Solid Waste Programs Division Manager as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Peter M. Deibler, Senior Project Manager shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph.

Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Mark Bowers, Solid Waste Programs Division Manager
Environmental Services Department
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Rob Hilton, President
HF&H Consultants, LLC
201 N. Civic Drive, Suite 230
Walnut Creek, CA 94596

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced in writing signed by all parties.

18. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

19. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

("CONSULTANT")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

EXHIBIT "A"

SCOPE OF WORK

Task 1 Kickoff Meetings

Key items for discussion with City staff include: Council and staff goals; primary City staff roles (ESD, Utilities, City Attorney); HF&H staff roles; internal and external attorney review, including approach to issues related to Propositions 218 and 26; risk management review; CEQA compliance; community outreach process and timing; HF&H tools for assessing SB 1383 roles; project schedule, etc. We also suggest discussion of the format and content for the Task 2 Workshop so City staff will have time to prepare.

Key items for discussion with Specialty include: overview of the process; Council and staff goals; company staff roles, including legal and accounting review; the company's ideas for any improvements or other modifications to the agreement; project schedule, etc. As noted above, we recommend requesting that Specialty provide the City the right to exercise a sole source option for a short, bridge agreement.

Meetings

Two sequential meetings: City and HF&H; City, HF&H, and Specialty

Deliverables

Meeting agendas, meeting summaries; draft text for Specialty letter providing option to extend

Task 2 Workshop with City Staff

We recommend a three-hour workshop to identify how best to address various issues in the process. The primary goal of workshop is to develop a shared understanding of the contents of the initial draft documents (RFP, proposal forms, draft agreement) to be developed in Task 3. HF&H will develop an annotated outline of key issues to facilitate discussion during the workshop. We anticipate the following preliminary areas for discussion:

1. Specific findings and recommendations from the Review, including additional observations not included in the report.
2. Review of the current agreement focusing on how key topics are addressed, identifying areas for which modification may be useful, identifying changes in practice over time that have not been incorporated in the agreement, areas to "modernize", and whether any reorganization and/or simplification is warranted.
3. Discussion of the current compensation approach, and how the compensation package format can be adapted for use as proposal forms.
4. Discussion of customer service/billing, and other areas of close interaction between the City and Specialty.
5. Use of a matrix HF&H has recently used with a number of clients to delineate broad City and company roles in SB1383 compliance.

6. Any program or service options for which the City would like to consider proposed Specialty pricing prior to deciding to include in the final agreement.

Following the workshop, we will revise the outline to identify any areas for HF&H or City staff follow-up, or for further pre-proposal communication with Specialty as necessary for developing the initial draft documents.

Meetings

Workshop (three hours)

Deliverables

Discussion outline; revised discussion outline with summary notes and comments following the workshop

Task 3 Prepare Initial Draft Documents

Based on the outcome of the Task 2 Workshop, and any necessary follow-up, HF&H will prepare initial drafts of the sole source RFP, proposal forms, and the draft agreement as follows:

1. The RFP will be relatively short with an overview of the process, and highlighted changes to programs, other services, compensation, etc., that are detailed in the draft agreement. The RFP will also describe any options Specialty should address in its proposal.
2. The initial draft agreement will redline changes to the current agreement, with use of comment bubbles to ask questions and to provide comments.
3. The proposal forms will be based on the annual compensation package, modified as necessary to address program and service changes, any program or service options, and any modifications to the compensation process. The forms will address Specialty provision of transport-related data (annual vehicle miles travelled by vehicle type) to support CEQA analysis.

Once City staff have reviewed the initial drafts, we will meet (or possibly meet virtually with shared screens) to discuss City comments as entered into the documents and/or verbally.

Meetings

One meeting or conference call with City staff

Deliverables

Initial draft RFP, forms, and agreement

Task 4 Prepare Revised Draft and Final Draft Documents

HF&H will prepare revised draft versions of the three documents addressing City comments, and will resubmit them for review and comment. We recommend that legal review be conducted at this stage. After City staff review, including review by the City Attorney's Office and/or outside counsel, HF&H will prepare final draft versions for Council review. HF&H will prepare a concise draft presentation summarizing key points of the package for City staff review and comment, and will then prepare a final version. HF&H will be available to present to Council and/or to answer questions as needed.

Meetings

Council meeting

Deliverables

Final revised draft and final draft versions of the RFP, proposal forms, and agreement; draft and final Council presentations

Task 5 Release RFP; Proposal Preparation

Following Council review, HF&H will make final changes as necessary to prepare the package for release to Specialty. We assume that for the final versions, revisions will be relatively minor. Approximately two weeks after providing the proposal package to Specialty, City and HF&H staff will conduct a pre-proposal meeting with Specialty. Our budget assumes we will assist City staff in preparing up to two addenda to address questions raised by Specialty at, or subsequent to the meeting.

Meetings

Pre-proposal meeting

Deliverables

Pre-proposal meeting agenda; draft and final responses to questions for two addenda

Task 6 Proposal Review

City and HF&H will finalize the approach to proposal review, including the roles of City and HF&H staff. We assume HF&H will take the lead in reviewing the forms and in reviewing and categorizing Specialty's agreement exceptions. Following initial review by City and HF&H, we recommend meeting or having a conference call to discuss the proposal, and to determine if any changes in the order and timing of the remaining tasks is warranted.

For the remainder of Task 6, City and HF&H staff will meet twice to discuss the proposal, identifying areas of necessary company clarification, and discussing negotiation strategy. HF&H will prepare and submit any requests for factual clarification to Specialty, and will prepare a draft summary of the results of the evaluation, focusing on responsiveness to program and service requests, costs, and agreement exceptions. HF&H will also compile the transport data, and work with City staff and the CEQA consultant to define scenarios for the analysis.

Meetings

Initial meeting or call; two proposal evaluation meetings

Deliverables

Agendas for each meeting, clarifications requests to Specialty, and evaluation summary; transport data and scenarios for CEQA analysis

Task 7 Negotiations

We assume that negotiations will consist of up to three meetings over five weeks. We suggest negotiations be scheduled for alternative weeks (e.g., weeks one, three and five) to allow time for necessary work in the intervening periods. HF&H is available to facilitate, or to assist City staff in facilitating the negotiations. HF&H will prepare agendas for each meeting, and track the status of open and closed issues. Task 7 will result in final draft

language for most issues, and an agreed conceptual approach to the remainder of the issues.

Meetings

Up to three negotiation sessions with Specialty

Deliverables

Agendas for each session, and an updated summary of the status of open issues (as comments within the draft agreement)

Task 8 Council Study Session

HF&H will assist City staff in presenting key content from Specialty's proposal. City staff may also present the results of a customer survey or other outreach efforts related to the negotiation. It will be important to ensure public presentation materials and discussion presents Specialty's proposal in a manner that does not prejudice the company's ability to submit a proposal should the Council decide to conduct a competitive process at a later time.

City staff will seek Council direction on whether to complete sole source negotiations and return to Council with a final agreement, or whether to proceed to a competitive process. In the latter instance, Council would provide formal direction to staff as an agenda item at the following regular meeting.

Meetings

Council study session

Deliverables

Draft and final presentations summarizing Specialty's proposal

Task 9 Finalize Negotiations and Agreement

City and HF&H staff will meet a final time with Specialty staff to address any issues raised by the Council, and to finalize any necessary final language. HF&H will provide the City Attorney and City Clerk with a final version of the agreement for execution by Specialty.

Meetings

Final negotiation meeting

Deliverables

Final agreement for City to obtain execution by Specialty

Task 10 Council Award

HF&H will revise the Council study session presentation to provide a concise summary of the final agreement. Following City review and comment on the draft, HF&H will provide a final version for City execution.

Meetings

Council meeting

Deliverables

Revised draft and final presentations

Optional Services

Our budget includes optional services of 60 hours to address potential needs such as:

- Assisting City staff with public outreach activities related to development of a new agreement. Examples include surveys (planning, developing questions and interpreting results) and planning and conducting outreach meetings.
- Additional support related to CEQA compliance, if required.
- Participating in additional meetings with City staff, the Council, etc.
- Additional negotiation sessions, if required to complete the process.

Summary of Meetings

Task 1– Two sequential kickoff meetings

Task 2 – Workshop

Task 3 – One meeting with City staff (possibly as a call)

Task 4 – Council meeting

Task 5 – Pre-proposal meeting

Task 6 – Initial meeting or call; two proposal evaluation meetings

Task 7 – Three negotiation sessions

Task 8 – Council study session

Task 9 – Final negotiation session

Task 10 – Council meeting

Summary of Deliverables

Task 1 – Meeting agendas, summary meeting notes; draft text for Specialty letter providing option to extend

Task 2 – Discussion outline; revised discussion outline with summary notes and comments following the workshop

Task 3 – Initial draft RFP, forms, and agreement

Task 4 – Final revised draft and final draft versions of the RFP, proposal forms, and agreement; draft and final Council presentations

Task 5 – Pre-proposal meeting agenda; draft and final responses to questions for two addenda

Task 6 – Agendas for evaluation meetings, clarification requests to Specialty, and evaluation summary; transport data and scenarios for CEQA analysis

Task 7 – Agendas for each session, and an updated summary of the status of open issues (as comments within the draft agreement)

Task 8 – Draft and final presentations summarizing Specialty's proposal

Task 9 – Final agreement for City to obtain execution by Specialty

Task 10 – Revised draft and final Council presentations

Tentative Project Schedule

Recognizing time is of the essence, we propose the following schedule, noting that our ability to meet it will require a group effort in coordination with City staff as well as timely participation by Specialty. We suggest revisiting the schedule at several junctures, such as following the City staff workshop and once the package has been sent to Specialty, to assess status of task work. The elapsed time between tasks is shown in parentheses.

Task 1 Kickoff Meetings – Week of May 6th

Task 2 Workshop – Week of May 27

Task 3 Initial Draft Documents

- HF&H submits initial draft to City - Week of June 24th
- City and HF&H meet to discuss initial draft - Week of July 8th

Task 4 Revised Draft and Final Documents

- HF&H submits revised draft to City - Week of July 29th
- City review (including legal) completed - Week of August 19th
- HF&H submits final draft – Week of September 2nd
- Council review at September 17th meeting

Task 5 Proposal Preparation

- HF&H finalizes package; City releases early week of September 23rd
- Pre-proposal meeting early week of September 30th
- Submittal due – November 22nd

Task 6 Proposal Review – Complete by end of week of December 30th

Task 7 Negotiations – Complete by February 7th, 2020

Task 8 Council Study Session – Council meeting of February 18th

Task 9 Finalize Negotiations and Agreement – Complete week of March 2nd

Task 10 Final Award – Council meeting of March 16th

EXHIBIT "C"
INSURANCE REQUIREMENTS FOR CONTRACTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Contractor shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The contractor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Contractor's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Contractor'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.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Contractor shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.