

## **FIRST AMENDMENT TO AGREEMENT**

THIS FIRST AMENDMENT TO AGREEMENT (Amendment) made and entered into effect the 9<sup>th</sup> day of February 2018, (Effective Date), amends the Agreement entered into between the CITY OF FRESNO, a California municipal corporation (City), and CDM Smith, Inc., a Massachusetts Corporation (Consultant).

### **RECITALS**

WHEREAS, the City and the Consultant entered into an Agreement on June 7, 2016, (Agreement) to provide professional consulting services for the Fresno Sanitary Landfill Superfund Site, Phase 3 Groundwater Remedial Action (Project) for a total fee of \$464,700; and

WHEREAS, the parties have negotiated an increase of \$56,700 in the Consultant's compensation for services related to the Project; and

WHEREAS, the City and the Consultant desire to extend the Agreement to December 31, 2018, to complete Project; and

WHEREAS, with entry into this Amendment, the Consultant agrees it has no claim, demand, or dispute against the City.

### **AGREEMENT**

NOW, THEREFORE, the parties agree that the Agreement be amended as follows:

1. The Consultant's sole compensation for satisfactory performance of the Project pursuant to this Amendment will be \$56,700. Compensation includes all expenses incurred by the Consultant in performance of such services. Total Consultant Project cost pursuant to this Amendment is \$521,400.


2. The Agreement shall be extended to December 31, 2018.

3. Except as otherwise provided herein, the Agreement entered into the City and the Consultant on June 7, 2016, remains in full force and effect.


[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Amendment at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
A municipal corporation

By:   
Thomas C. Esqueda,  
Director of Public Utilities

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By:  1/22/18  
Brandon M. Collet Date  
Deputy City Attorney


ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By:   
Marco Martinez Date

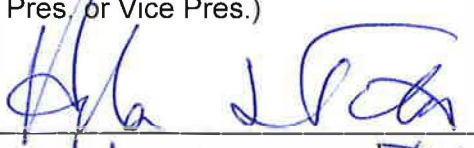
Addresses:

CITY:  
City of Fresno  
Attention: Rosa Lau-Staggs  
Wastewater Manager  
5607 W Jensen Avenue  
Fresno, CA 93706  
Phone: (559) 621-5130  
FAX: (559) 498-1700

CDM Smith, Inc.,  
A Massachusetts Corporation

By:   
Name: Servando Molina

Title: Vice President  
(If corporation or LLC, Board Chair,  
Pres. or Vice Pres.)

By:   
Name: HACA 2-Title

Title: Vice President  
(If corporation or LLC, CFO, Treasurer,  
Secretary or Assistant Secretary)

2/9/18

CONSULTANT:  
CDM Smith, Inc.  
Attention: John (Yash) Nyznyk,  
Associate  
2300 Clayton Road, Suite 950  
Concord, CA 94520  
Phone: (925) 296-8065  
FAX: (925) 933-4174



2300 Clayton Road, Suite 950  
Concord, CA 94520  
tel: 925 296-8020  
fax: 925 246-9819

December 19, 2017

Ms. Rosa Lau-Staggs  
Wastewater Manager  
City of Fresno  
5607 W. Jensen Avenue  
Fresno, CA 93706

Subject: Phase 3 Groundwater Remedial Design/Remedial Action  
Request for Additional Funding

Dear Rosa:

As we have discussed, the decision to divide the Phase 3 Groundwater Remedial Design project into two elements: 1) Groundwater Wells element, and 2) Integration element resulted in the need to extend the contract (through December 2018). Provided below is a description of proposed scope activities, and additional costs that are associated with the contract extension. The total requested additional funding is \$56,700 (see table below for a breakdown of the requested funding).

The expanded scope includes additional activities for bid period services, construction period services, regulatory agency interactions, and project management.

#### Bid Period Services

The decision to split the design into 2 elements: - 1) Groundwater Wells, and 2) Integration, will result in additional costs associated with the procurement of one contractor for each of the two elements of work. Bid period activities will include participation in a pre-bid meeting, response to questions/requests for information from prospective bidders, and providing input on the submitted bids for each of the two construction projects.

#### Construction Period Services

Construction Period activities will include participation in a pre-construction meeting and responding to questions/requests for information from the selected contractor for each of the two construction projects.

#### Regulatory Agency Interactions

EPA (and the State regulatory agencies) is expected to schedule a project meeting at the site near the completion of the overall project. The intent of this site meeting is for EPA to inspect the completed project. For past groundwater remediation projects, meetings at the site with EPA's oversight contractor are also expected to be scheduled.





Ms. Rosa Lau-Staggs  
December 19, 2017  
Page 2

Project Management

The 12-month schedule extension includes additional routine project management activities, with a higher level of activity through the end of the construction period. The Integration project construction completion is estimated to occur in August 2018.

Fresno Sanitary Landfill Phase 3 Groundwater Remedial Design/Remedial Action Request for Additional Funding	
	Requested Funding
Bid Period Services	\$15,000
Construction Period Services	
Groundwater Wells	\$12,600
Integration	\$9,000
Regulatory Agency Interactions	\$12,000
Project Management	\$8,100
<b>Total</b>	<b>\$56,700</b>

Please don't hesitate to give me if you have any questions, or would like to discuss further.

Sincerely,

John P. Nyznyk, P.E.  
Associate  
CDM Smith Inc.



**AGREEMENT  
CITY OF FRESNO, CALIFORNIA  
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the 7<sup>th</sup> day of June, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and CDM Smith, Inc., a Massachusetts Corporation (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional Engineering services for the Fresno Sanitary Landfill Superfund Site, Phase 3 Groundwater Remedial Action, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a Consulting Engineer and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Director of Public Utilities (hereinafter referred to as "Administrator") or his/her designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through December 31, 2017, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of Four Hundred Sixty Four Thousand Seven Hundred dollars (\$464,700). Such fee includes all expenses incurred by CONSULTANT in performance of the services.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably

possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.



9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam

era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state,

regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_

Thomas C. Esqueda,  
Director of Public Utilities

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_

Deputy Mario Martinez - Velasco  
6/7/12

No signature of City Attorney required.  
Standard Document #ALL-S 3.0 has been  
used without modification, as certified by  
the undersigned.

By: \_\_\_\_\_

Rosa Lau-Staggs  
Wastewater Manager

Addresses:

CITY:  
City of Fresno  
Attention: Rosa Lau-Staggs,  
Wastewater Manager  
5607 West Jensen Avenue  
Fresno, CA 93706  
Phone: (559) 621-5130  
FAX: (559) 498-1700

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

CDM Smith, Inc.,  
A Massachusetts Corporation

By: \_\_\_\_\_

Name: HALA Z. TITUS

Title: VICE PRESIDENT  
(if corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

By: \_\_\_\_\_

Name: SERVANDO MOLINA

Title: ASSOCIATE  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

Any Applicable Professional License:

Number: C 053521

Name: JOHN P. NYZNYK

Date of Issuance: 6-30-1995

CONSULTANT:  
CDM Smith, Inc.  
Attention: John (Yash) Nyznyk,  
Associate  
100 Pringle Ave, Suite 300  
Walnut Creek, CA 94596  
Phone: (925) 296-8065  
FAX: (925) 933-4147

## **Exhibit A**

### **SCOPE OF SERVICES**

#### **Consultant Service Agreement between City of Fresno ("City") And CDM Smith Inc. ("Consultant")**

##### Fresno Sanitary Landfill Superfund Site Phase 3 Groundwater Remedial Action

### **Introduction**

Provided below are descriptions of work tasks to be performed by CDM Smith Inc. (Consultant) on behalf of the City of Fresno (City) as part of groundwater remedial action currently underway at the Fresno Sanitary Landfill ("FSL" or "Site") Superfund Site. This scope of work will be performed as one element of work leading to closure of the FSL Superfund Site under the oversight of the U.S. Environmental Protection Agency (USEPA). This scope of work will be performed under four tasks, as listed below.

- Task 1 – Phase 3 Groundwater Remedial Design
- Task 2 – Bid Period and Construction Period Service
- Task 3 – Reporting to USEPA
- Task 4 – Project Management/Project Meetings

Table 1 consists of a summary of the task budgets for this scope of work. The total budget for this scope of work is \$464,700.

### **Background**

Consultant recently completed a detailed performance evaluation of the Phase 2 Enhancements Groundwater Remedial Action at the FSL as part of work under an existing contract between the City of Fresno and Consultant. This work was documented in the *Phase 2 Enhancements Groundwater Remedial Action Evaluation Report* (Phase 2 Enhancements Evaluation Report), submitted to the USEPA in December 2015. The Phase 2 Enhancements Evaluation Report included recommendations for installation of two groundwater extraction wells and associated groundwater monitoring wells. Installation of the additional extraction and monitoring wells and integration of the wells into the existing groundwater remediation system constitute the Phase 3 Groundwater Remedial Action (RA) at the FSL. The scope of work and budget presented below address design and implementation of the Phase 3 Groundwater RA .

### **Task 1 – Phase 3 Groundwater Remedial Design (RD)**

This scope of work and budget reflects a refined strategy for the design and bidding elements of work for the Phase 3 Groundwater RA project. The Phase 3 Groundwater RD will incorporate both the groundwater wells and the integration elements of the design into a single design package. Consultant will work with the City in pre-qualifying up to four drilling contractors with

the necessary experience to perform the well drilling, well construction, and well rehabilitation activities. General contractors bidding on the overall project could be directed to request bids from the list of pre-qualified drilling contractors on the groundwater wells elements of work.

### ***Objective***

The objective of this task is to develop the engineering design of the groundwater extraction and monitoring wells and the integration of the new groundwater extraction wells into the existing groundwater conveyance and treatment system, including installation of raw groundwater conveyance piping, electrical and instrumentation duct bank, and miscellaneous equipment/facilities.

Consultant will prepare a single set of bid documents (100% design package) for the Phase 3 Groundwater RD project. The bid documents will be suitable for use by the City for solicitation of bids from licensed general contractors.

### ***Activities***

The activities described below are presented in terms of the three major elements of work, including the Basis of Design Report (BODR), Pre-Qualification Information for Drilling Contractors, and Phase 3 Groundwater RD (including Groundwater Wells design elements and Integration design elements). The design approach described below is streamlined by capitalizing on the similarities between the recently completed Phase 2 Enhancements Groundwater RD (construction completed in 2014) and the current design effort (Phase 3 Groundwater RD).

#### **Basis of Design Report**

The BODR will serve as the conceptual design for the Phase 3 Groundwater Remedial Action, presenting the basis for the number and location of all wells and the design for the groundwater extraction system expansion. The BODR will define well construction details such as anticipated completion depth and screen intervals for the groundwater extraction and monitoring wells.

The existing groundwater model will be used as a tool in confirming the locations for two new C-aquifer extraction wells. Groundwater modeling will include the new groundwater extraction well locations and depths within the model system. Particle tracking will be used to evaluate the capture zone of the new wells with the existing wells operating. Some iteration may be needed to finalize well depth and location based on the modeling results. Groundwater modeling graphical output will be included in the BODR to support proposed well locations and depths.

#### **Pre-qualification of Drilling Subcontractors**

Following submittal of the 60% design package, Consultant will assist the City in identifying up to four drilling subcontractors with the capabilities and experience for performing the well drilling and construction and well rehabilitation elements of the work. The objective is to pre-qualify drilling subcontractors that can be identified in the formal request to bid for General Construction Contractors.

Consultant will perform the following activities:

- Identify up to four drilling subcontractors capable of performing the groundwater wells element of the work.



- Prepare a request-for-qualifications (RFQ) to be transmitted to prospective drilling subcontractors. The intent of the RFQ is to gauge interest in being included in the listing of pre-qualified drilling subcontractors. The RFQ will include a detailed description of the groundwater wells element of the Phase 3 Groundwater Remedial Action.
- Assist the City in review and selection of a list of qualified drilling subcontractors. The drilling subcontractor submittals will serve as the basis for developing a list of pre-qualified drilling subcontractors.

#### Phase 3 Groundwater RD

The Phase 3 Groundwater RD consists of the Groundwater Wells design elements and the Integration design elements.

##### ***Groundwater Wells Design Elements***

This subtask provides for design of two groundwater extraction wells and up to eight groundwater monitoring wells. Rehabilitation of one existing groundwater extraction well (PW-1B) is also included as part of the design package. The primary Groundwater Wells system components include:

1. Design two C-aquifer groundwater extraction wells (approximate depth of 255 feet below ground surface).
2. Design of up to eight groundwater monitoring wells – The number of wells will be determined based on evaluations of the existing remediation and monitoring system and will be documented in the BODR (see above).
3. Design Well Rehabilitation of PW-1B (existing B-aquifer extraction well) – Well rehabilitation of PW-1B is necessary to maintain effective performance of the extraction well in the control of the volatile organic compound (VOC) plume downgradient of the landfill.

##### ***Integration Design Elements***

This subtask provides for the engineering design required to integrate the new groundwater extraction well into the existing groundwater treatment system. Primary system components for each extraction well will include a below grade pre-cast concrete well vault, in-vault connectors and instruments, conveyance piping for connection to the existing raw groundwater header pipeline, and duct bank for electrical and instrumentation tie-ins. The design will include integration of the new groundwater extraction wells into the existing instrumentation and controls system. The technical specifications will include a number of system performance testing elements, including witnessed factory test, operational readiness tests, functional acceptance test, and performance acceptance test as requirements for formal system acceptance and start-up.

Following submittal and approval of the BODR, Consultant will prepare two design packages, including the 60% design package (specifications, design drawings, and associated Engineer's Opinion of Probable Construction Cost) and the 100% design package (consisting of

specifications, design drawings, and associated Engineer's Opinion of Probable Construction Cost).

Activities during the design process are described below:

- Up to two visits to the FSL by key members of the design team to confirm conditions relative to as-built drawings for the existing groundwater collection and treatment system and for evaluating system capacities.
- Prepare technical specifications addressing both the groundwater wells and integration design elements. These technical specifications will be added to the front end (Division 0) specifications to be prepared by the City.
- Develop approximately 22 drawings, including the following:
  - Six general/civil sheets – title page, general notes, and general site layout.
  - Four mechanical sheets – well vaults; piping and in-vault valves and other equipment and piping for connection to the existing raw groundwater header; and extraction and monitoring well plans and sections.
  - Eight electrical sheets – electrical power plan and single line diagram.
  - Four instrumentation sheets – P&IDs, extraction well control panel elevations, control system architecture diagram.
- Prepare Engineer's Opinion of Probable Construction Cost addressing both the groundwater wells and integration elements of the remedial design. The costs associated with the drilling contractor will be a budgetary-level estimate developed based on actual costs associated with the Phase 2 Enhancements Groundwater RA during 2013 and 2014. The Engineer's Opinion of Probable Construction Cost will be developed based on the 60% design submittal and then updated for the 100% design submittal.

#### **Assumptions**

- No investigation activities will be performed as part of the Task 1 activities.
- As-built drawings prepared for the existing groundwater treatment system provided by the City are complete and accurate.
- No architectural or landscape services are included.
- Existing SCADA system has adequate digital and analog capacity to accommodate two new extraction wells. Additionally, there is spare capacity for electrical power to the new extraction wells. Design of modifications or improvements to the City's backbone SCADA system or control center hardware are not included.
- No coordination with PG&E by Consultant is required.
- Depending on the location of the new extraction wells, new duct bank may be required between the new well locations and connection to the existing system.

- City staff will perform utility clearance (USA) of the pipeline alignment to confirm location of existing utilities.
- City will perform survey of pipeline alignment, if needed, and provide to Consultant electronic files with topographic contour information.
- Consultant will provide technical specifications to City staff for incorporating into project bid documents. Consultant will prepare draft Bid Sheet for use by the City for incorporation into the bid package. The City will word process front-end (Division 0) specifications.
- Technical specifications will be based on the specifications prepared for the *Phase 2 Enhancements Groundwater Remedial Action Groundwater Wells Project* and the *Integration Project*.
- City will consolidate written review comments, resolving any resulting discrepancies in its internal review comments, for both the BODR and the 60% design submittals.
- It is intended that the 100% design documents are final, and not a review set for purposes of generating additional review comments.
- The proposed pre-qualification of drilling contractors meets the City's procurement requirements.

#### ***Deliverables***

- Basis of Design Report. A draft report will be submitted to City staff for review. Consultant will finalize the Basis of Design Report after incorporating consolidated City review comments and submit the report to USEPA.
- RFQ to be submitted to targeted drilling subcontractors. A draft RFQ will be submitted to the City and will include a detailed description of the groundwater wells element of the Phase 3 Groundwater Remedial Action. The City will finalize the RFQ and make available to prospective drilling subcontractors.
- 60% Phase 3 Groundwater Remedial Design. Design documents will consist of drawings and technical specifications. Consultant will prepare the 60% design documents for review by City staff. The Engineer's Opinion of Probable Construction Cost based on the 60% design documents will be developed and submitted for City review. The cost associated with the drilling subcontractor will be a budgetary-level estimate developed based on actual costs associated with the Phase 2 Enhancements Groundwater RA during 2013 and 2014.
- 100% Phase 3 Groundwater Remedial Design. Comments from City staff on the 60% design package will be incorporated into the design drawings and specifications and the 100% design documents will be prepared. The stage of the design is considered final. The Engineer's Opinion of Probable Cost based on the 100% design documents will be developed and submitted for City review.

- The 100% design submittals will be stamped and sealed for distribution by the City to potential bidders. An electronic copy of the 100% drawings in AutoCAD version 2015 will be provided on CD-ROM. Electronic copy will be identical to bid set except Consultant will remove its logo, professional engineering stamps and signatures. Electronic copies of 100% technical specifications will be provided in MS Word on CD-ROM.
- Electronic files of the design documents (plans and specifications) will be provided to the City.

## **Task 2 – Bid Period and Construction Period Services**

Task 2 will consist of two major components, as described below:

### ***Subtask 2A – Bid Period Services***

#### ***Objectives***

The objective of this subtask is to provide engineering services during the bidding process for both the Phase 3 Groundwater RA Groundwater Wells and the Integration elements of work.

#### ***Activities***

- Provide assistance to the City with compilation of the formal Request-for-Bid.
- Participate in the pre-bid conference as the design engineer. If necessary, prepare responses to questions raised during the pre-bid conference.
- Prepare addenda during the bid period, as requested by the City.
- Respond to questions or requests-for-information (RFIs) from prospective bidders during the bid period, as requested by the City.

#### ***Assumptions***

- City will be responsible for compiling the front end (Division 0) technical specifications. Consultant will be responsible for developing the technical specifications. City will incorporate Consultant's technical specifications (from the 100% design package) into a full specification package to be included in the formal request-for-bid.
- City will maintain a list of bidders and will be responsible for transmitting information to bidders, as necessary.
- At the request of the City, Consultant will prepare up to two addenda during the bid process.
- Consultant will prepare responses for up to ten questions or RFIs during the bidding process.

#### ***Deliverables***

- Addenda to the plans and specifications.
- Formal responses to RFIs or other questions from prospective bidders.

### **Subtask 2B – Construction Period Services**

#### **Objectives**

The objective of this subtask is to provide engineering services during the construction of both the Phase 3 Groundwater RA Groundwater Wells and the Integration elements of work to facilitate system construction consistent with the design intent.

#### **Activities**

Construction period services for the Groundwater Wells element of work will require Consultant staff to provide oversight during the drilling and well installation activities. As on the previous Groundwater RA projects, Consultant will provide daily oversight during the well drilling, construction, development; aquifer testing; and well rehabilitation activities. Consultant will not provide staff to serve as the on-site Construction Manager for the Integration elements of work.

- Phase 3 Groundwater RA Groundwater Wells elements of work
  - Participate in a pre-drilling meeting organized by the City prior to beginning the drilling activities.
  - Review drilling contractor submittals and RFIs and provide formal written responses.
  - Provide oversight and direction to the drilling contractor during the drilling and well installation activities. The overall scope of work for the drilling contractor will include drilling and installation of two C-aquifer groundwater extraction wells, aquifer testing of the extraction wells, drilling and installation of up to eight groundwater monitoring wells, well development of all new groundwater wells, and rehabilitation of one B-aquifer groundwater extraction well.
  - Prepare Daily Activity Summaries to document field activities.
  - Participate in one project meeting at the Site with USEPA and the other regulatory agencies during the well drilling program.
- Phase 3 Groundwater RA Integration elements of work
  - Participate in a pre-construction meeting organized by the City with the selected construction contractor.
  - Review construction contractor submittals and RFIs and provide formal written responses.
  - Participate in up to two site visits during the construction activities at the request of the City.
  - Participate in one project meeting at the Site with USEPA and the other regulatory agencies near the completion of construction.
  - Participate in performance testing prior to system start-up, including Witnessed Factory Test, Operational Readiness Test, Functional Acceptance Test, and the 5-day Performance Acceptance Test.

#### **Assumptions**

- City to coordinate and transmit RFIs and submittals/responses.
- At the request of the City, Consultant will prepare up to two change orders.
- The duration of the field work for the Groundwater Wells elements of work is assumed to be 16 weeks. Soil core and residual liquid management and disposal will be the responsibility of the drilling contractor.

- Purged groundwater generated during well development and during aquifer testing will be disposed of at the existing groundwater treatment facility (water to be piped to the Groundwater Treatment Plant yard sump).
- City surveyor will survey the individual well locations.
- Duration of the mechanical well development operations is assumed to be two days per well and pumping development is assumed to be one day per well.
- Duration of the aquifer testing operations for each groundwater extraction well is assumed to be: Step draw down test; one day; 24-hour constant rate test; two days; 24-hour recovery test; one and one-half days.

#### ***Deliverables***

- Prepare formal submittal review forms and formal RFI response forms for transmittal to the City.
- Prepare Daily Summaries during construction of the Groundwater Wells elements of work.
- Prepare up to two change orders.

### **Task 3 – Reporting to USEPA**

#### ***Objective***

The objective of this task is to prepare a quality technical document for submittal to the USEPA.

#### ***Activities***

USEPA is the lead regulatory agency on the FSL Superfund Site project, providing oversight for all site activities. As part of the Phase 3 Remedial Action project, several project documents will be submitted to USEPA for review and approval. The design-related deliverables listed below will constitute formal deliverables to USEPA, and have been described under Task 1.

- BODR for the Phase 3 Groundwater RA.
- Phase 3 Groundwater Remedial Design 60% and 100% design submittals.

As part of this Task 3, Consultant will prepare the Phase 3 Groundwater RA, Interim Remedial Action Report as a formal submittal to USEPA. Following completion of the Performance Acceptance Test and system start-up, Consultant will prepare the Phase 3 Groundwater RA Interim Remedial Action Report. This report, which is a required submittal to USEPA, is intended to document completion of construction for the Phase 3 Groundwater RA. This report will be consistent in scope and length with the recent *Phase 2 Enhancements Groundwater Remedial Action, Interim Remedial Action Report*, dated August 11, 2014.

#### ***Deliverable***

- Phase 3 Groundwater RA, Interim Remedial Action Report. Consultant will prepare a draft report for review by the City. Consultant will finalize the Interim Remedial Action Report after incorporating consolidated City review comments and submit the report to USEPA.

## **Task 4 –Project Management/Project Meetings**

### ***Objective***

The objectives of this task are to manage project scope, schedule, and budget, and to maintain communication with the City, USEPA, and other regulatory agency staff.

### ***Activities***

- Project management activities, including staff oversight, budget management, and coordination with the City on budget and scope of work development.
- Prepare project schedule updates for use by the City and submittal to USEPA.
- Participate in project meetings and project conference calls, including preparing meeting agendas and other handouts.

### ***Assumptions***

- Project management activities will be performed over a 16-month period.
- Project schedule updates will be provided at three stages of the project – prior to pre-bid conference and at the beginning of construction for both the Groundwater Wells and Integration elements of work.
- Consultant will participate in up to two in-person meetings at the City of Fresno, one in-person meetings at the CDM Smith Walnut Creek office, and up to four project conference calls.

### ***Deliverables***

- Monthly invoice/progress report to the City documenting Consultant work performed.
- Up to three project schedule updates will be provided.
- Agenda and handouts for periodic project meetings or teleconferences.

## **Schedule**

The scope of work presented above reflects project duration from July through October 2016. The project schedule is presented on Figure 1.

## **Project Budget**

The budget for the work described above is \$464,700. A cost breakdown is provided on Table 1, Project Budget, Phase 3 Groundwater Remedial Action, Fresno Sanitary Landfill (Operable Unit 2).

**Table 1**  
**Project Budget**  
**Phase 3 Groundwater Remedial Action**  
**Fresno Sanitary Landfill (Operable Unit 2)**

Task Description		Budget				
		Labor Hours	Labor \$	ODCs \$	OPs \$	Total \$
<b>Task 1</b>	<b>Engineering Design Services -- Phase 3 Groundwater Remedial Action</b>	<b>1,076</b>	<b>\$173,500</b>	<b>\$1,200</b>	<b>\$0</b>	<b>\$174,700</b>
	Basis of Design Report	95	\$12,000	\$100	\$0	\$12,100
	Groundwater Modeling (support for Basis of Design Report)	95	\$17,000	\$0	\$0	\$17,000
	<b>Groundwater Wells Element</b>					
	60% Design	108	\$15,000	\$100	\$0	\$15,100
	100% Design	89	\$12,300	\$200	\$0	\$12,500
	Engineer's Opinion of Probable Cost	18	\$3,800	\$0	\$0	\$3,800
	Drilling Subcontractor Request for Qualifications (pre-qualification of drillers)	63	\$9,100	\$100	\$0	\$9,200
	<b>Integration Element</b>					
	60% Design	317	\$54,300	\$200	\$0	\$54,500
	100% Design	251	\$42,100	\$400	\$0	\$42,500
	Engineer's Opinion of Probable Cost	40	\$7,900	\$100	\$0	\$8,000
<b>Task 2</b>	<b>Bid Period and Construction Period Services</b>	<b>1,645</b>	<b>\$210,100</b>	<b>\$25,500</b>	<b>\$0</b>	<b>\$235,600</b>
	<b>Bid Period Services</b>	<b>74</b>	<b>\$11,400</b>	<b>\$600</b>	<b>\$0</b>	<b>\$12,000</b>
	<b>Groundwater Wells Element</b>					
	Construction Period Services	835	\$95,000	\$17,500	\$0	\$112,500
	Aquifer Testing	280	\$34,000	\$6,500	\$0	\$40,500
	Aquifer Testing Technical Memorandum	117	\$17,700	\$200	\$0	\$17,900
	Groundwater Modeling to support Aquifer Testing Technical Memorandum	50	\$8,300	\$0	\$0	\$8,300
	<b>Integration Element</b>					
	Construction Period Services	289	\$43,700	\$700	\$0	\$44,400
<b>Task 3</b>	<b>Reporting to USEPA</b>	<b>60</b>	<b>\$8,500</b>	<b>\$200</b>	<b>\$0</b>	<b>\$8,700</b>
	Phase 3 Groundwater Interim Remedial Action Report	60	\$8,500	\$200	\$0	\$8,700
	Note: Other project submittals are included under Tasks 1 and 2.					
<b>Task 4</b>	<b>Project Management/Project Meetings</b>	<b>249</b>	<b>\$45,100</b>	<b>\$600</b>	<b>\$0</b>	<b>\$45,700</b>
	Project Management	249	\$45,100	\$600	\$0	\$45,700
<b>TOTALS</b>		<b>3,030</b>	<b>\$437,200</b>	<b>\$27,500</b>	<b>\$0</b>	<b>\$464,700</b>

**Notes:**

1. CDM Smith will complete the tasks listed in the table on a time and materials basis, not to exceed a total of \$464,700.
2. Labor costs will be billed at actual salary rates times a 3.05 multiplier.
3. 'Other Direct Costs' and 'Outside Professional' charges will be billed with a 5% mark-up.



**Phase 3 Groundwater Remedial Action**  
**Fresno Sanitary Landfill Superfund Site (Operable Unit 2)**  
**Project Schedule**

Activity	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16
<b>1. Phase 3 Groundwater Remedial Design Services</b>																
Basis of Design Report																
Pre-qualification of Drilling Contractors																
Request-for-Qualifications for Drilling Contractors																
Recommended List of Drilling Contractors to City																
Groundwater Remedial Action – Design Services																
60% Design Package (Plans and Specifications)																
City Review																
100% Design Package (Plans and Specifications)																
City to Finalize Contract Documents and send out to Bid																
<b>2. Bid Period and Construction Period Services</b>																
2A – Phase 3 Groundwater RA – Bid Period																
City Contracting																
2B – Phase 3 Groundwater RA – Construction Period																
<b>3. USEPA Reporting</b>																
Interim Remedial Action Report – Phase 3 Groundwater RA																
<b>4. Project Management/Project Meetings</b>																
Project Management/Meeting Activities																

**Notes:**

1. "V" indicates a formal submittal.
2. The blue shading indicates a document or report that will be a formal submittal to the City.
3. The green shading indicates a document or report that will be a formal submittal to the City and to USEPA.
4. Project management activities are ongoing throughout the project. Project management submittals are not shown.

## **Exhibit B**

### **INSURANCE REQUIREMENTS**

#### **Consultant Service Agreement between City of Fresno ("CITY") and CDM Smith, Inc. ("CONSULTANT")**

Fresno Sanitary Landfill Superfund Site  
Phase 3 Groundwater Remedial Action

PROJECT TITLE

### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

### **MINIMUM LIMITS OF INSURANCE**

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

#### **1. COMMERCIAL GENERAL LIABILITY:**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

**UMBRELLA OR EXCESS INSURANCE**

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional (Errors and Omissions) policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

#### **VERIFICATION OF COVERAGE**

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

# Exhibit C

## DISCLOSURE OF CONFLICT OF INTEREST

Fresno Sanitary Landfill Superfund Site  
Phase 3 Groundwater Remedial Action  
 PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

☐ Additional page(s) attached.

  
 Signature

Date

MAY 10, 2016  
SERVANDO MOLINA  
 (name)

CDM SMITH  
 (company)

100 PRINGLE AVE. SUITE 300  
 (address)

WALNUT CREEK, CA 94596  
 (city state zip)