



COUNTY OF ORANGE

**FINANCIAL ADVISORY SERVICES
FOR
OC WASTE & RECYCLING**

Attachment B

This Contract Number **MA-299-15010862** to provide Financial Advisory Services (“**Contract**”) is made and entered into upon execution of all necessary signatures between the County of Orange, a political subdivision of the State of California, by its OC Waste & Recycling (“**County**”) and HF&H Consultants, LLC with a principal office located at 19200 Von Karman Avenue, Suite 360, Irvine, CA 92612 (“**Contractor**”). County and Contractor are collectively referred to as “**Parties.**”

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) to provide Financial Advisory Services as defined in this Contract; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract with Contractor to provide Financial Advisory Services as defined in this Contract; and

WHEREAS, the County and Contractor desire to enter into this Contract Number MA-299-15010862 effective March 7, 2015 through and including March 6, 2018, in an amount not to exceed \$500,000.

WHEREAS, in accordance with the Contract’s Additional Terms and Conditions, Sections 2 and 3, the County updated Exhibit B, Compensation/Payment, Personnel & Position detail per attached, with no change to the monetary limit of the Contract; and

WHEREAS, the County deleted Article Y, Waiver of Jury Trial, and replace it with “Intentionally left blank”; and

WHEREAS, the County now desires to renew the Contract for one year, effective March 7, 2018 through March 6, 2019, in an amount not to exceed \$100,000; and

WHEREAS, County now desires to amend Article S of the County General Terms and Conditions, in its entirety, as follows and incorporated herein:

Change of Ownership/Name, Litigation Status, Conflicts with County Interests:

Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

And,

WHEREAS, Contractor has confirmed in writing that they understand and are in compliance with the County's Conflict of Interest Policy as stated in Article S herein; and

WHEREAS, County now desires to renew the Contract for one year, effective March 7, 2019 through March 6, 2020, in an amount not to exceed \$100,000;

NOW, THEREFORE, the Parties agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, its Attachments and Exhibits, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee, hereinafter "Purchasing Agent".
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services or to cancel all or any part of the services not conforming to applicable specifications, reports, samples or description, or services that do not conform to the prescribed statement of work. Acceptance of any part of the services shall not bind County to accept future services, nor deprive it of the right to return documentation already accepted, at Contractor's expense. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County,

and 2) payment shall be made in arrears after satisfactory acceptance.

- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in Article HH below, and as more fully described in Article HH, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Article HH below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract. Notwithstanding the foregoing, the County hereby authorizes Contractor to use the services of sub-Contractors listed in Exhibit D.
- A. **Licensed Sub-Contractor:** Each sub-Contractor selected for the work shall be licensed in accordance with the State of California requirements in the sub-Contractor's particular field.
 - B. **Transactions:** Transactions with sub-Contractor shall be made through Contractor except when in emergency situations Contractor is not readily available, in which case detailed instructions shall be transmitted to sub-Contractors directly.
 - C. **Responsibility:** Contractor shall be fully responsible to County for the acts and omissions of sub-Contractors and all persons directly or indirectly employed by them as Contractor is for Contractor's acts and omissions and of persons directly or indirectly employed by Contractor. Contractor shall pay each sub-Contractor promptly the amount allowed Contractor on account of such sub-Contractor's work to the extent of such sub-Contractor's interest therein.
 - D. **Contractual Relations:** Nothing contained in this Contract shall create any Contractual relations between County and a sub-Contractor.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-Contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 *et seq.* of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and as set forth in paragraphs 21-23, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations. See termination clauses listed within Additional Terms and Conditions, paragraphs 21-23.

- L. **Consent to Breach Not Waiver:** No term or provision of this Contractor shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees, nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all services performed by sub-Contractors.
- P. **Insurance Provision:** Prior to the provision of services under this contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this contract. In addition, all sub-Contractors performing work on behalf of Contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all sub-Contractors performing work on behalf of Contractor pursuant to this agreement shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow sub-Contractors to work if sub-Contractors have less than the level of coverage required by County from Contractor under this agreement. It is the obligation of Contractor to provide notice of the insurance requirements to every sub-Contractor and to receive proof of insurance prior to allowing any sub-Contractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this agreement for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management upon review of Contractor's current audited financial report.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

Attachment B

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange its elected and appointed officials, officers, agents and employees as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the County may suspend or terminate this contract.

If Contractor's Professional Liability is a "Claims Made" policy, Contractor shall agree to maintain Professional Liability coverage for two (2) years following the completion of the contract.

Attachment B

The Commercial General Liability policy shall contain a severability of interests clause also known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for professional services and material used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article HH, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. ~~**Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.~~
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 (thirty-six) hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article HH, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract pricing shall include full compensation for providing all required services in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Intentionally left blank Waiver of Jury Trial:** ~~Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.~~
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- FF. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes

and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. Indemnification Provisions: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

II. Audits/Inspections: Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-Contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County’s Project Manager.

Additional Terms and Conditions

1. Term

~~The term of this Contract shall be three (3) years commencing March 7, 2015, through and including March 6, 2018. This Contract may be renewed for up to two (2) one (1) year periods in an amount not to exceed \$100,000 per year by mutual agreement of the Parties.~~ This Contract renewal term shall be for one (1) year, in an amount not to exceed \$100,000. The County is not obligated to renew this Contract and does not have to give reason if it elects not to renew.

2. Project Manager-County

The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and key personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

3. Contractor's Project Manager and Key Personnel

Contractors shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor's Project Manager.

4. Entirety

This Contract and all of its Attachments and Exhibits comprise the entire Contract between the Contractor and the County. Additional or new terms contained in this Contract, which vary from the Contractor's proposal, are deemed accepted by the Contractor by execution of this Contract or other commencement of performance hereunder. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this Contract, oral or written, are hereby superseded, except to the extent that they have incorporated into this Contract. No future waiver of, exception to, addition to, or alteration of any of the terms, conditions and/or provisions of this Contract shall be considered valid unless specifically agreed to in writing by both Parties.

5. Precedence

The documents herein consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments and exhibits.

6. Task Orders

These activities will be billed and paid on a professional classification cost and materials basis for a three-year term. Contractor costs are budgeted per task but monthly billing may be allocated based on actual time and material basis that results from contract performance in each specific area not-to-exceed total contract amount.

The total not-to-exceed contract amount has been broken down into individual tasks. The amounts allocated for each task may be transferred and adjusted within these tasks with the written approval of the Director of OC Waste & Recycling or Manager of Budget Services.

It will be the sole responsibility of the County's Project Manager assigned to this contract/project to monitor, track and move task dollars within the not-to-exceed contract amount.

Each activity under this Contract will be covered by a Task Order. It is expressly understood that the tasks to which the Contractor is asked to respond to and authorized by the County Project Manager. As each task is identified, the Contractor will prepare a "Task Order" which details the scope of work to be accomplished, list of deliverables, schedule for completion, and a not-to-exceed cost for its completion. Each task order will be reviewed and approved by the County Project Manager prior to commencement

of the proposed work. These services may be paid on a time and materials basis or lump sum basis as mutually agreed by County Project Manager and Contractor. The County Project Manager's Task Order authorization shall be submitted with the invoice in order for payment to be made.

7. Changes/Extra Work/Modifications

The Contractor shall make no changes in this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes affect price, the Contractor's ability to deliver services or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the change was proposed and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract modification before becoming effective. Said modification shall be issued by the Deputy Purchasing Agent or his designee and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work set forth in Exhibit A, Scope of Work. All extra services are by mutual consent of all Parties and may be subject to the approval of the County Board of Supervisors.

8. Ownership of Documents

The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

9. Data – Title to

All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, shall be returned to the County at the end of this Contract.

10. Reports/Meetings

The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirement as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract. Meetings held between OC Waste & Recycling staff and Contractor's staff to discuss Contractor's non-performance or lack thereof shall not be billable to the County.

11. Records

Contractor shall keep an accurate record of time expended by Contractor and/or sub-Contractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times.

12. Conflict of Interest

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

13. Errors & Omissions

All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and personnel prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

14. Child Support Enforcement Requirements (Attachment 1)

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract, but prior to official award of Contract, the selected Contractor hereby agrees to furnish OC Waste & Recycling/Purchasing with the required Contractor data and certifications, Attachment 1, Child Support Enforcement Certification Requirements.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Contract.

15. Contractor Bankruptcy/Insolvency

If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the County may terminate this Contract.

16. Publication

No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County

unless otherwise agreed to by both Parties.

17. Subject to Fiscal Appropriations

This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, this Contract will be terminated without penalty to the County.

18. Breach of Contract

The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
- c. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

19. Interpretation of Contract

In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by the County's Project Manager. If disagreement exists between the Contractor and the County's Project Manager in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.

20. Disputes

- A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
 1. The Contractor shall submit to OC Waste & Recycling Project Manager a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the

Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction.

21. Termination -- Default

If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten (10) days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

22. Termination -- Convenience of the County

Notwithstanding any other provision of the Contract, County may at any time and without cause terminate in whole or in part, upon not less than thirty (30) days written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part and if applicable the portion of work to be terminated. The Contractor shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by County. The County shall pay the Contractor for the work completed and accepted by County prior to the effective date of the termination, and such payment shall be Contractor's sole remedy. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. The Contractor shall insert in all sub-contracts that the sub-Contractors shall stop work on the date of and if applicable the portion of work to be terminated in a Notice of Termination, and shall require sub-Contractors to insert the same condition in any lower tier sub-contracts.

23. Termination -- Orderly

After receipt of a termination notice from the County of Orange, the Contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each party will assist the other party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.

24. Notices

Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services.

Attachment B

Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

TO: COUNTY

OC Waste & Recycling/Purchasing
300 N. Flower Street, Ste. 400
Santa Ana, CA 92703
Attn: ~~Olivia Prudencio, Buyer~~
Deputy Purchasing Agent
Phone: 714-834-2166

TO: CONTRACTOR

HF&H Consultants, LLC
19200 Von Karman Avenue, Suite 360
Irvine, CA 92612
Attn: Laith Ezzet, Senior Vice President
Phone: 949-251-8902

[Signature Page Follows]

Attachment B

IN WITNESS WHEREOF, the Parties have executed this Contract on the dates opposite their respective signatures.

CONTRACTOR*

Date _____

By _____

Signature and Title*

Date _____

By _____

Signature and Title*

COUNTY OF ORANGE

Date _____

By _____

APPROVED AS TO FORM:

County Counsel

Date _____

By _____

Deputy

* Unless otherwise demonstrated that the person(s) executing this Contract on behalf of Contractor has the requisite authority to legally obligate and bind Contractor, if Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

EXHIBIT A

**SCOPE OF WORK
FOR
FINANCIAL ADVISORY SERVICES**

GENERAL

This document contains the scope of work (SOW) for the Contractor to provide ongoing financial advisory services to the County of Orange (County) OC Waste & Recycling Department as required by this Request for Proposals.

OC Waste & Recycling owns, operates and maintains the County of Orange's waste disposal system comprised of three active landfills and four household hazardous waste collection centers. The active landfills are located in three geographical regions: North Region, Central Region and South Region. The Olinda Alpha Landfill (Olinda) opened in 1960 and is the active landfill in the North Region. Olinda is permitted to receive 8,000 tons of refuse per day and is scheduled to remain open through approximately 2021. The Frank R. Bowerman (FRB) Landfill opened in March, 1990 and is the active landfill in the Central Region. FRB is permitted to receive 11,500 tons of refuse per day and is scheduled to remain open until 2053. The Prima Deshecha Landfill (Prima) opened in 1976 and is the active landfill in the South Region. Prima is permitted to receive 4,000 tons of refuse per day and is scheduled to remain open through 2067.

PURPOSE

Contractor shall provide ongoing financial advisory services as it relates to sustaining current and long term landfill system operations. The range of services include, but are not limited to the following: financial analysis, advice and support for the County's landfill system, periodic updates of the long range financial model; conduct audits of the disposal tonnage within and outside the County and of other related areas; general support related to the Waste Disposal Agreements (WDA) contract renewal process; annual financial advisory review and support that assists the County in its operations of the landfills.

TASKS

Anticipated tasks include but are not limited to:

- Task A Financial analysis evaluation, including a review and evaluation of the existing model, updating of financial projections.
- Task B Disposal fee evaluation including review of existing disposal fee rate strategies. Identify disposal fee impacts from changes in tonnage trends.
- Task C Landfill closure/post closure/expansion analysis.
- Task D Report preparation on analysis, findings and recommendations.
- Task E General financial advisory support and assistance related to the WDA contract renewal process. Provide options and alternatives. Provide support with presentation to stakeholders, city/county officials.
- Task F Perform audits of disposal tonnage within and outside the County. Perform audits of other related areas if/as required.
- Task G Ongoing annual financial advisory support services. Includes update support of the financial model, review of alternative revenue options. General financial advisory support related to landfill operations.

EXHIBIT B

COMPENSATION/PAYMENT

I. GENERAL

This is a fixed ceiling, time and materials contract between the County and the Contractor for Financial Advisory Services as provided in Exhibit A, Scope of Work, for the County of Orange, OC Waste & Recycling.

The Contractor agrees to accept the compensation specified herein as full remuneration for performing all services and furnishing all staffing and materials called for; and for any reasonably foreseeable difficulties which may arise or be encountered in the prosecution of the services; and for performance by the Contractor of all its duties and obligations hereunder.

The ceiling amount of this contract shall include all expenses related to the performance of work and services required to meet the tasks and deliverables as set forth in Exhibit A, Scope of Work.

The County shall have no obligation to pay any sum in excess of said ceiling price, unless authorized by a written modification issued in accordance with Article 6 of this Contract. The Contractor shall fully perform and complete its duties and obligations under this Contract, regardless of the number of man-hours required of the Contractor in effectuating such performance and completion. Labor hours and other costs incurred to complete the services and materials as set forth in this Contract, which exceed the total project cost, shall be borne by the Contractor.

All extra work resulting in an increase in the Contract total project cost shall be authorized by written modification to this Contract. Said modification shall be issued by the County of Orange, Purchasing Agent or his designee and may be subject to approval by the County Board of Supervisors.

II. PAYMENT TERMS:

• **Invoicing Instructions:**

Invoices and supporting documentation are to be submitted electronically to the following email address: ocwrinvoice@ocwr.ocgov.com

Acceptable invoicing format:

The Contractor may bill on the standard invoice form but the following references shall be made:

- County Agreement # **MA-299-15010862**
- Task Number (if available)
- Copy of pre-approved task order quote (signed by County Project Manager)
- Detailed description of tasks/services and deliverables
- Date of service
- Cost per hour (unless lump sum basis)
- Material costs (including any back-up documentation, as required, unless lump sum basis)
- Subcontractor costs (if applicable)
- Equipment costs (if applicable)
- Total Invoice Amount

The responsibility for providing an acceptable invoice to the County of Orange for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. The invoice shall be verified and approved by the County's Project Manager and is subject to routine processing requirements of the County. Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

- **Terms:**

The Contractor shall submit an invoice monthly in arrears. Payment due to the Contractor will be made within forty-five (45) days after receipt of a correctly submitted invoice.

Payments made by the County of Orange shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Agreement, and shall not be construed as acceptance of any part of the services.

- **Task and Deliverable Payment Schedule**

These activities will be billed and paid on a professional classification cost and materials basis for a three-year term. Contractor costs are budgeted per task but monthly billing may be allocated based on actual time and material basis that results from contract performance in each specific area not-to-exceed total contract amount.

The total not-to-exceed contract amount has been broken down into individual tasks. The amounts allocated for each task may be transferred and adjusted within these tasks with the written approval of the Director of OC Waste & Recycling or Manager of Budget Services.

It will be the sole responsibility of the County’s Project Manager assigned to this contract/project to monitor, track and move task dollars within the not-to-exceed contract amount.

Each activity under this Contract will be covered by a Task Order. It is expressly understood that the tasks to which the Contractor is asked to respond to, will be on an “as-needed” basis, and authorized by the County Project Manager. As each task is identified, the Contractor will prepare a “Task Order” which details the scope of work to be accomplished, list of deliverables, schedule for completion, and a not-to-exceed cost for its completion. Each task order will be reviewed and approved by the County Project Manager prior to commencement of the proposed work. These services may be paid on a time and materials basis or lump sum basis as mutually agreed by County Project Manager and Contractor. The County Project Manager’s Task Order authorization shall be submitted with the invoice in order for payment to be made.

BUDGET ESTIMATE

The estimated budget to perform the scope of services is shown in the table below. Costs may be shifted among tasks to meet the objectives of the Department:

Task A: Financial analysis review and evaluation of landfill system	\$50,000
Task B: Disposal fee evaluation	\$100,000
Task C: Landfill closure/expansion analysis	\$25,000
Task D: Reports on analysis, findings and recommendations	\$25,000
Task E: General financial advisory analysis and support related to the WDA renewal process	\$100,000
Task F Audits of disposal tonnage and other related areas	\$50,000
Task G Ongoing financial advisory support	\$150,000
Total Budget for All Tasks:	\$500,000

- Time and Materials**

LABOR REQUIREMENTS: The hourly and/or per call rate(s) shall be billed in accordance with following fee schedule and shall include direct and indirect labor charges.

Reimbursable Expenses

Contractor’s reasonable out-of-pocket expenses will be directly reimbursable by the County with prior approval by the County’s Project Manager. Reimbursable items shall be billed on an actual cost basis with no markup and submitted with complete back-up documentation as may be required by the County’s Project Manager.

Mileage	\$0.56 per mile (or as adjusted by IRS allowance)
Document Reproduction (over 20 page run)	\$0.15 per page (black & white), .075 per page (color)
Outside document reproduction/couriers/postage actual	
Public conveyances and parking	actual
All other out-of-pocket expenses	actual

Personnel, Position	Hourly Rate	Project Role
Laith B. Ezzet, Senior Vice President	\$272	Project Manager
Robert D. Hilton, President	\$272	Engagement Advisor
Lisa Keating, Manager	\$224	Financial Model Manager
Darrell L. Bice, Director	\$225	Director of Audits, Financial Data Analyst
Scott Holt, Senior Associate	\$185	Support Analyst
Rob C. Hilton, Vice President	\$249	Support Analyst
April Hilario, Associate Analyst	\$147170	Support Analyst
Tracy Swanborn, Senior Project Manager	\$239	Support Analyst
Amy Lechner, Administrative Staff	\$85	Administrative
Manager*	\$224	Financial Model Manager
Assistant Analyst*	\$100	
Intern Consultant*	\$40	

* Personnel assignment to these positions shall be pre-approved by the County Project Manager

SUBCONTRACTOR COSTS: When pre-approved by the County’s Project Manager or designee, the use of subcontractors or specialized services shall be reimbursed at the actual cost. No markup for subcontractor labor and equipment shall be allowed in this contract.

EXHIBIT C

ACCEPTANCE CRITERIA

The County's Project Manager is responsible for approval of all deliverables set forth in Exhibit A, and County's acceptance of same as correct and complete. The minimum criteria of approval to include but is not limited to the following:

- Sufficient detail is provided to demonstrate a thorough analysis was performed on each of the required tasks;
- The research for each of the tasks include at a minimum a comprehensive discussion for each of the subjects listed within each of the required tasks; and,
- Timelines provided for the project are definitive and discuss the factors contributing to the chosen timelines.

Attachment 1

County of Orange Child Support Enforcement Contract Terms and Conditions

ADDITIONAL TERMS AND CONDITIONS

In order to comply with the child support enforcement requirements of the County of Orange, within 30 of the Contract Effective Date, the Contractor agrees to furnish the required data and certifications to the Director, the Purchasing Agent, or the agency/department deputy purchasing agent.

Failure of the Contractor to timely submit the data and/or certifications required or to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

=====

County of Orange Child Support Enforcement Certificate

"I certify that **HF&H Contractors, LLC** is in full compliance with all applicable federal, state, and local reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract **MA-299-15010862**, with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract."

*Signature** *Name (Please Print)*

Title *Date*

Company Name

Contract Number

***Two signatures required if a corporation.**