

**CONTRACT MA-080-17010727  
FOR  
COST REDUCTION CONSULTING SERVICES**

THIS Contract MA-080-17010727 for Cost Reduction Consulting Services, (hereinafter referred to as “Services/Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Procure America, a State of California Corporation (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

**RECITALS**

WHEREAS, County and Contractor are entering into this Contract for Cost Reduction Consulting Services under a Usage Contract; and,

WHEREAS, County solicited Cost Reduction Consulting Services as set forth herein, and Contractor has represented that it is qualified to provide Cost Reduction Consulting Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Cost Reduction Consulting Services the County as further set forth in the Scope of Work, attached hereto as Attachment A and/or B and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment C and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

**ARTICLES**

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Cost Reduction Consulting Services under a usage Contract.

**Amendment 1**

2. **Term:** ~~The initial term of this~~ Contract shall be effective ~~upon execution of all signatures~~ December 12, 2016, and shall continue for ~~the contract terms as specified on Attachments A and B~~ for five (5) years from that date, unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **Precedence:** The Contract documents consist of this Contract and attachments. 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.

5. **County's Project Manager:** The County shall appoint a Project Manager, as specified in Article "22". Notices, 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 assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and Contractor 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 Contractor personnel. Said approval shall not be unreasonably withheld.

6. **Contractor's Project Manager:** The County shall appoint a Project Manager, as specified in Article "22", 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 assigned to work with the Contractor.

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

7. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
8. **Contractor's Records:** The contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned buyer.
9. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested. Orders may be placed against this contract at the convenience of the using agency/department.
10. **Usage Reports:** Upon County request, Contractor shall submit usage reports to the County which shall include, at minimum, summarized quantities, item descriptions (including Manufacturer/Part No.). The usage report shall be in a format specified by the County.

#### **Amendment 2**

11. ~~**Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other County departments, California local or state governmental entities. Governmental~~

~~entities wishing to use this contract will be responsible for requesting a fee proposal, issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another agency or entity that is entered into as an extension of this Contract a contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The contractor is responsible for providing each cooperative entity a copy of the contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this contract.~~

### **Amendment 3**

**Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other County departments. County departments wishing to use this contract will be responsible for requesting a fee proposal, issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another County department that is entered into as an extension of this Contract a contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative departments are responsible for obtaining all certificates of insurance and bonds required. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative department using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

### **Amendment 3**

- ~~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 Consultants; 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.~~
13. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. 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 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
14. **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 contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

15. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
16. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute 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 offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
  - c. Terminate the Contract immediately without penalty.
17. **Contract Disputes:** 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 Supervisor and the County's project manager as specified in Article "22", Notices by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

The Contractor shall submit to the County DPA 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.

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.

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 DPA 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 to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.
18. **Orderly Termination:** 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.
  19. **Expenditure Limit:** The Contractor shall notify the County Project Manager in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless an amendment to cover those costs has been issued.
  20. **Delivery Parking:** The County of Orange will not provide free parking for delivery services. Some locations may have loading zones available.
  21. **Material Safety Data Sheets (MSDS):** The Contractor is required to provide a completed Material Safety Data Sheet (MSDS) for each hazardous substance provided to the County under the contract. This includes hazardous substances that are not directly included in the contract, but are included in the goods or services provided by the Contractor to the County. The provision of the MSDS must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The MSDS for each substance must be sent to the County Project Manager and must also be sent to:

**County of Orange CEO/Risk Management**  
**Attn: Safety and Loss Prevention Program**  
**PO Box 327**  
**Santa Ana, CA 92702**

22. **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. 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.

**Amendment 3**

County:- ~~OC Public Works/Procurement Services~~  
Attn:- ~~Kristine Mariscal~~

~~300 North Flower Street, Suite 838  
Santa Ana, CA 92703  
Phone: 714-667-1628  
Email: [Kristine.Mariscal@ocpw.ocgov.com](mailto:Kristine.Mariscal@ocpw.ocgov.com)~~

cc: ~~OC Public Works/Procurement Services  
Attn: Robert Esparza, County DPA  
300 North Flower Street, Suite 838  
Santa Ana, CA 92703  
Phone: 714-667-9746  
Email: [Robert.Esparza@ocpw.ocgov.com](mailto:Robert.Esparza@ocpw.ocgov.com)~~

County: OC Public Works/Procurement Services  
Attn: Damisha English-Corsey  
300 North Flower Street, Suite 838  
Santa Ana, CA 92703  
Phone: 714-667-1628  
Email: [Damisha.English-Corsey@ocpw.ocgov.com](mailto:Damisha.English-Corsey@ocpw.ocgov.com)

cc: OC Public Works/Purchasing  
Attn: Uriah Creighton, Deputy Purchasing Agent  
Phone: 714-667-9769  
Email: [Uriah.Creighton@ocpw.ocgov.com](mailto:Uriah.Creighton@ocpw.ocgov.com)  
300 North Flower Street  
Santa Ana, CA 92703

Contractor: Procure America  
Attn: Fred Armendariz  
31103 Rancho Viejo Road, #D2102  
San Juan Capistrano, CA 92675  
Phone: 949-388-2686  
Email: [F.armendariz@procureamerica.org](mailto:F.armendariz@procureamerica.org)

23. **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.
24. **Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, 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.

25. **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.
26. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
27. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
28. **Acceptance/Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears.
29. **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 "55" below, and as more fully described in Article "55", 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.
30. **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 "55" 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.
31. **Assignment or Subcontracting:** 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 subcontracted 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.

32. **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 subcontractors 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 Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
33. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, 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.
34. **Consent to Breach Not Waiver:** No term or provision of this Contract 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.
35. **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.
36. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
37. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions 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 goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
38. **Insurance Provisions:** 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 subcontractors 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 subcontractors performing work on behalf of Contractor pursuant to this Contract 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 subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract 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).

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:

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability \$2,000,000 aggregate	\$1,000,000 per occurrence
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

**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:

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.

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.

The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance. (Only include this provision when Employee Dishonesty Insurance is required).

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.

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.

**\*Certificate Holder Information**

The County of Orange has contracted with Ebix RCS to monitor insurance certificates and endorsements for compliance with the above requirements. Upon initial award of a Contract, the certificate(s) and endorsement(s) should be forwarded to the agency/department address listed on the solicitation. The County will forward these documents to Ebix RCS on your behalf. Ebix RCS may contact you to advise you of deficiencies and request corrected documents. Please cooperate with their request for information or corrections in order for the County to continue your Contract through the expiration date.

39. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment 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 "55" below, 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.
40. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

**Amendment 3**

41. ~~**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.~~
42. **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 hours of the start of the delay and Contractor avails himself of any available remedies.
43. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and 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.
44. **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 “55” below, 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.

45. **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.
46. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Contractors Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
47. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
48. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and Articles, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
49. **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.
50. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
51. **Attorneys 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.
52. **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 effect the purpose of the Parties and this Contract.
53. **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.
54. **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.

55. **Indemnification:** 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.
56. **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 subcontractor 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.

### **Amendment 3**

57. **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, 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. 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 of 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, or conflict of interest, 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.

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

**PROCURE AMERICA\***

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

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

Print  
Name: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

Title: \_\_\_\_\_  
Corporate Officer

Title: \_\_\_\_\_  
Corporate Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**COUNTY OF ORANGE**, a political subdivision of  
the State of California

By \_\_\_\_\_

Print  
Name \_\_\_\_\_

Title Deputy Purchasing Agent

Date \_\_\_\_\_

\* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

**Amendment 1****ATTACHMENT A  
SCOPE OF WORK FOR  
OC PUBLIC WORKS  
UTILITY PROVIDERS**

~~I. INTRODUCTION: Contractor shall provide County with a Cost Recovery and Reduction Service for the purpose of obtaining refunds through audits and assessments relating to utility invoices and taxes. Contractor shall review, audit, and implement applicable billing rates amongst all County utility accounts in an effort to provide cost recovery and rate reduction. Term for this service shall be 2.5 years.~~

~~In an effort to reduce current utility costs and ensure all rates are secured and correct amongst vendors, the County of Orange is requesting expertise in utility audit cost reduction. The Contractor will review and audit in depth the utility accounts to recover overpayment and correct billing rates including taxes (when compared with levels of energy use and in accordance with federal laws).~~

~~The County has multiple contracts with Utility Providers for supply of the following:~~

- ~~1. Refuse~~
- ~~2. Solar~~
- ~~3. Electric~~
- ~~4. Water~~
- ~~5. Natural Gas~~
- ~~6. Sewer~~

**III. GENERAL CONTRACTOR REQUIREMENTS:**

~~A. Contractor will have six (6) months to conduct deep dive analytics.~~

~~B. Contractor shall use its' best efforts to obtain cost savings for County's benefit by analyzing County's policies, procedures, supplier contracts, past invoices and other pertinent information as it relates to the above selected expense categories set for review.~~

~~C. Contractor will further gather information as to County's needs (past, present and future) from County's service providers to build a solution that not only lowers cost, but also matches County's operational requirements and expectations.~~

~~D. Contractor will provide progress reports throughout the audit review, designated deliverable dates will be determined based on review timeline. After analyzing County current spending patterns, Contractor shall provide County with a full report outlining Contractor's observations. Contractor's report will include a review of operations, cost reduction recommendations and potential service level enhancements.~~

~~E. Contractor will review County's invoicing and deliverables to ensure accountability by County's service providers with respect to the spirit and intent of the Contract between County's and the third party service provider. The review will take into account service levels, cost controls and overall County satisfaction.~~



- ~~F. Contractor will continue ongoing consulting services with County to anticipate changes in service needs to ensure that the proper service provider, contract and procedures are in place to address County's go forward requirements.~~
- ~~G. Contractor's report will include a full catalogue of all meters and accounts surveyed and will document the Established Rates for each service or product chosen for review and outline the methodology for Contractor's findings. County and Contractor will discuss, agree and document the Established Rates for the targeted service or product.~~
- ~~H. Contractor may discover over billing, credits, rebates, ongoing savings or other sources of revenue. This income is to be considered expense reduction for purposes of this Contract and will be accounted for in the same manner as the expense reduction savings. Contractor may pursue other savings categories and if approved by the County, the Contractor and County may agree upon a negotiated cost savings split on a case by case basis.~~
- ~~I. Contractor may have the ability to recover rebates or other compensation by contractors or service providers. Contractor shall disclose this compensation to the County and both parties shall share this revenue as savings at the time the revenue is received.~~
- ~~J. It may be necessary to institute cost reduction strategies within a specific expense category in stages. If this occurs, then each stage of implementation will be viewed with its' own billing cycle.~~
- ~~K. Contractor acknowledges that all information supplied by County shall be kept confidential. Contractor, its' subcontractors, employees, or agents shall not disclose such information to any third parties other than Contractor's subcontractors, employees, or agents on a need to know basis for the purpose of contract performance and to other third parties as required for providing services under this contract. Contractor shall not use any information, documents, or data provided by County for any proprietary purposes and shall not copy, sell, exchange, disclose, or provide to others, or use any information, documents, or data reasonably related to this Contract for its own proprietary interests.~~
- ~~L. Contractor shall perform all Cost Recovery/Cost Containment Services required under this Contract in conformity with professional standards, and shall provide qualified personnel (licensed, if applicable) to meet such standards.~~
- ~~M. **Ownership of County Data.** Contractor acknowledges and agrees that all information supplied by County to Contractor (hereinafter, "County Data") shall remain the property of County. The County Data shall not be used by Contractor other than in connection with providing the services pursuant to this Contract, disclosed, sold, assigned, leased or otherwise provided to third parties by Contractor, or commercially exploited by or on behalf of Contractor, its' employees, officers, agents, subcontractors, invitees, or assigns in any respect. Contractor shall not delete or destroy any County Data or media on which County Data resides without prior written authorization of County. At no cost to County, Contractor shall, upon request, promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County Data it may possess or control.~~
- ~~N. It shall be Contractor's responsibility to ensure compatibility of County's data files and transmittal medium to Contractor's computer system. Contractor shall bear all costs, if necessary, for data conversion to make County's computer system compatible with that of Contractor's and any incidental costs related to the data transfer. Contractor shall promptly~~

- ~~inform County of any problems and/or issues with any data conversion or transfer of County's data files.~~
- ~~O. Contractor is responsible for ensuring that all transmittals to County are compatible with County's ability to record and read such data. Any and all corrupted or otherwise defective data shall be replaced by Contractor at no cost, additional or otherwise, to County.~~
- ~~P. Contractor shall provide four (4) hours of in-house training post completion of the six (6) month review and an additional four (4) hour training one year thereafter. The specific time and place to be mutually agreed upon with reasonable notice. Training shall entail cost reduction strategies and efforts conducted as part of this Contract. It is expected that County staff will be sufficiently trained within two (2) years to have the ability to conduct similar cost reduction efforts in the future.~~

#### **IV. COUNTY'S REQUIREMENTS:**

- ~~A. County shall give its full cooperation to Contractor in providing all required documents, invoices, contracts and staff consultation time to Contractor's evaluation team in order to conduct the expense reduction review.~~
- ~~B. During the review process, County agrees not to renegotiate, amend or extend in place contracts or introduce operational procedures/changes that will effect cost/pricing and or contractual obligations of the County to the supplier.~~
- ~~C. County shall provide Contractor with online access to properly review historical utility use, rates and load profile of the County's utility accounts as required by the Contract.~~
- ~~D. Any cost reduction made, during the specified assessment process will be credited to Contractor presence and is therefore treated as such and factored into the shared revenue structure. During the course of the relationship between County and Contractor, County and Contractor understand that despite Contractor(s) recommendations, suggestions, potential suppliers and other proposals; County has the right not to proceed with said proposals.~~

#### **V. COMPENSATION:**

- ~~A. There will be no up front fees or any other charges to County. County plans to pay for these services as fees, which will be paid as a percentage of the refunds and savings, identified by the Contractor, and only after County actually receives these refunds and savings and only for a period of time negotiated between County and the Contractor.~~

#### **VI. BILLING VERIFICATION:**

- ~~A. All Contractors' fee for service invoices will be submitted monthly or quarterly to County and will be accompanied by verifiable, supporting documentation from the Contractor that the correction/retroactive refund/credit/recommendation has been accomplished and savings implemented. A detailed explanation of savings for each invoice presented will clarify and further corroborate the calculated savings.~~

#### **VII. TERMS AND CONDITIONS FOR PRICING:**

- ~~A. Fees will be paid based on the refunds and cost savings identified. The fees will be a percent of the County accepted savings. These fees will be applied against the cumulative as follows:~~

- ~~1. Actual amount of all refunds obtained by Contractor; and,~~
- ~~2. Verified cost reductions as reasonably estimated by Contractor, resulting from the implementation of any item of cost savings recommended by Contractor and accepted and implemented by the County, for a period of time agreed to between the Contractor and the County.~~

**Amendment 3****ATTACHMENT A  
SCOPE OF WORK FOR  
COST REDUCTION CONSULTING SERVICES**

~~H. INTRODUCTION: Contractor shall provide County with a Cost Recovery and Reduction Service for the purpose of obtaining refunds through audits and assessments relating to utility/billing invoices and taxes. Contractor shall review, audit, and implement applicable billing rates amongst all County accounts in an effort to provide cost recovery and rate reduction.~~

~~In an effort to reduce current utility/billing costs and ensure all rates are secured and correct amongst vendors, the County of Orange is requesting expertise in utility/billing audit cost reduction. The Contractor will review and audit in depth County accounts to recover overpayment and correct billing rates including taxes.~~

~~The County has multiple contracts with Providers for supply of the following:~~

- ~~7. Refuse~~
- ~~8. Solar~~
- ~~9. Electric~~
- ~~10. Water~~
- ~~11. Natural Gas~~
- ~~12. Sewer~~
- ~~13. Irrigation~~
- ~~14. Utilities~~
- ~~15. Waste & Recycling~~
- ~~16. Telecommunications~~
- ~~17. Document Management~~
- ~~18. Treasury Services~~
- ~~19. Shipping & Logistics~~

**VI. GENERAL CONTRACTOR REQUIREMENTS:**

~~Q. Contractor will conduct deep dive analytics.~~

~~R. Contractor shall use its' best efforts to obtain cost savings for County's benefit by analyzing County's policies, procedures, supplier contracts, past invoices and other pertinent information as it relates to the above selected expense categories set for review.~~

~~S. Contractor will further gather information as to County's needs (past, present and future) from County's service providers to build a solution that not only lowers cost, but also matches County's operational requirements and expectations.~~

~~T. Contractor will provide progress reports throughout the audit review, designated deliverable dates will be determined based on review timeline. After analyzing County current spending patterns, Contractor shall provide County with a full report outlining Contractor's observations. Contractor's report will include a review of operations, cost reduction recommendations and potential service level enhancements.~~

~~U. Contractor will review County's invoicing and deliverables to ensure accountability by County's service providers with respect to the spirit and intent of the Contract between~~

- ~~County's and the third party service provider. The review will take into account service levels, cost controls and overall County satisfaction.~~
- ~~V. Contractor will continue ongoing consulting services with County to anticipate changes in service needs to ensure that the proper service provider, contract and procedures are in place to address County's go forward requirements.~~
- ~~W. Contractor's report will include a full catalogue of all accounts surveyed and will document the Established Rates for each service or product chosen for review and outline the methodology for Contractor's findings. County and Contractor will discuss, agree and document the Established Rates for the targeted service or product.~~
- ~~X. Contractor may discover over billing, credits, rebates, ongoing savings or other sources of revenue. This income is to be considered expense reduction for purposes of this Contract and will be accounted for in the same manner as the expense reduction savings. Contractor may pursue other savings categories and if approved by the County, the Contractor and County may agree upon a negotiated cost savings split on a case by case basis.~~
- ~~Y. Contractor may have the ability to recover rebates or other compensation by contractors or service providers. Contractor shall disclose this compensation to the County and both parties shall share this revenue as savings at the time the revenue is received.~~
- ~~Z. It may be necessary to institute cost reduction strategies within a specific expense category in stages. If this occurs, then each stage of implementation will be viewed with its' own billing cycle.~~
- ~~AA. Contractor acknowledges that all information supplied by County shall be kept confidential. Contractor, its' subcontractors, employees, or agents shall not disclose such information to any third parties other than Contractor's subcontractors, employees, or agents on a need to know basis for the purpose of contract performance and to other third parties as required for providing services under this contract. Contractor shall not use any information, documents, or data provided by County for any proprietary purposes and shall not copy, sell, exchange, disclose, or provide to others, or use any information, documents, or data reasonably related to this Contract for its own proprietary interests.~~
- ~~BB. Contractor shall perform all Cost Reduction Consulting Services required under this Contract in conformity with professional standards, and shall provide qualified personnel (licensed, if applicable) to meet such standards.~~
- ~~CC. **Ownership of County Data.** Contractor acknowledges and agrees that all information supplied by County to Contractor (hereinafter, "County Data") shall remain the property of County. The County Data shall not be used by Contractor other than in connection with providing the services pursuant to this Contract, disclosed, sold, assigned, leased or otherwise provided to third parties by Contractor, or commercially exploited by or on behalf of Contractor, its' employees, officers, agents, subcontractors, invitees, or assigns in any respect. Contractor shall not delete or destroy any County Data or media on which County Data resides without prior written authorization of County. At no cost to County, Contractor shall, upon request, promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County Data it may possess or control.~~
- ~~DD. It shall be Contractor's responsibility to ensure compatibility of County's data files and transmittal medium to Contractor's computer system. Contractor shall bear all costs, if~~

~~necessary, for data conversion to make County's computer system compatible with that of Contractor's and any incidental costs related to the data transfer. Contractor shall promptly inform County of any problems and/or issues with any data conversion or transfer of County's data files.~~

~~EE. Contractor is responsible for ensuring that all transmittals to County are compatible with County's ability to record and read such data. Any and all corrupted or otherwise defective data shall be replaced by Contractor at no cost, additional or otherwise, to County.~~

~~FF. Contractor shall provide four (4) hours of in-house training post completion of the six (6) month review and an additional four (4) hour training one year thereafter. The specific time and place to be mutually agreed upon with reasonable notice. Training shall entail cost reduction strategies and efforts conducted as part of this Contract. It is expected that County staff will be sufficiently trained within two (2) years to have the ability to conduct similar cost reduction efforts in the future.~~

#### ~~VII. COUNTY'S REQUIREMENTS:~~

~~E. County shall give its full cooperation to Contractor in providing all required documents, invoices, contracts and staff consultation time to Contractor's evaluation team in order to conduct the expense reduction review.~~

~~F. During the review process, County agrees not to renegotiate, amend or extend in place contracts or introduce operational procedures/changes that will effect cost/pricing and or contractual obligations of the County to the supplier.~~

~~G. County shall provide Contractor with online access to properly review historical utility use, rates and load profile of the County's utility accounts as required by the Contract.~~

~~H. Any cost reduction made, during the specified assessment process will be credited to Contractor presence and is therefore treated as such and factored into the shared revenue structure. During the course of the relationship between County and Contractor, County and Contractor understand that despite Contractor(s) recommendations, suggestions, potential suppliers and other proposals; County has the right not to proceed with said proposals.~~

#### ~~VIII. COMPENSATION:~~

~~B. There will be no up front fees or any other charges to County. County plans to pay for these services as fees, which will be paid as a percentage of the refunds and savings, identified by the Contractor, and only after County actually receives these refunds and savings and only for a period of time negotiated between County and the Contractor.~~

#### ~~VIII. BILLING VERIFICATION:~~

~~B. All Contractors' fee for service invoices will be submitted monthly or quarterly to County and will be accompanied by verifiable, supporting documentation from the Contractor that the correction/retroactive refund/credit/recommendation has been accomplished and savings implemented. A detailed explanation of savings for each invoice presented will clarify and further corroborate the calculated savings.~~

#### ~~IX. TERMS AND CONDITIONS FOR PRICING:~~

~~B. Fees will be paid based on the refunds and cost savings identified. The fees will be a percent of the County accepted savings. These fees will be applied against the cumulative as follows:~~

- ~~1. Actual amount of all refunds obtained by Contractor; and,~~
- ~~2. Verified cost reductions as reasonably estimated by Contractor, resulting from the implementation of any item of cost savings recommended by Contractor and accepted and implemented by the County, for a period of time agreed to between the Contractor and the County.~~

**ATTACHMENT A**  
**SCOPE OF WORK FOR**  
**COST REDUCTION CONSULTING SERVICES**

**I. INTRODUCTION:** Contractor shall provide County with a Cost Recovery and Reduction Service for the purpose of obtaining refunds through audits and assessments relating to utility/billing invoices and taxes. Contractor shall review, audit, and implement applicable billing rates amongst all County accounts in an effort to provide cost recovery and rate reduction.

In an effort to reduce current utility/billing costs and ensure all rates are secured and correct amongst vendors, the County of Orange is requesting expertise in utility/billing audit cost reduction. The Contractor will review and audit in depth County accounts to recover overpayment and correct billing rates including taxes.

The County has multiple contracts with Providers for supply of the following:

1. Refuse
2. Solar
3. Electric
4. Water
5. Natural Gas
6. Sewer
7. Irrigation

**II. GENERAL CONTRACTOR REQUIREMENTS:**

- A. Contractor will conduct deep dive analytics.
- B. Contractor shall use its' best efforts to obtain cost savings for County's benefit by analyzing County's policies, procedures, supplier contracts, past invoices and other pertinent information as it relates to the above selected expense categories set for review.
- C. Contractor will further gather information as to County's needs (past, present and future) from County's service providers to build a solution that not only lowers cost, but also matches County's operational requirements and expectations.
- D. Contractor will provide progress reports throughout the audit review, designated deliverable dates will be determined based on review timeline. After analyzing County current spending patterns, Contractor shall provide County with a full report outlining Contractor's observations. Contractor's report will include a review of operations, cost reduction recommendations and potential service level enhancements.
- E. Contractor will review County's invoicing and deliverables to ensure accountability by County's service providers with respect to the spirit and intent of the Contract between County's and the third party service provider. The review will take into account service levels, cost controls and overall County satisfaction.
- F. Contractor will continue ongoing consulting services with County to anticipate changes in service needs to ensure that the proper service provider, contract and procedures are in place to address County's go forward requirements.



- G. Contractor's report will include a full catalogue of all accounts surveyed and will document the Established Rates for each service or product chosen for review and outline the methodology for Contractor's findings. County and Contractor will discuss, agree and document the Established Rates for the targeted service or product.
- H. Contractor may discover over billing, credits, rebates, ongoing savings or other sources of revenue. This income is to be considered expense reduction for purposes of this Contract and will be accounted for in the same manner as the expense reduction savings. Contractor may pursue other savings categories and if approved by the County, the Contractor and County may agree upon a negotiated cost savings split on a case by case basis.
- I. Contractor may have the ability to recover rebates or other compensation by contractors or service providers. Contractor shall disclose this compensation to the County and both parties shall share this revenue as savings at the time the revenue is received.
- J. It may be necessary to institute cost reduction strategies within a specific expense category in stages. If this occurs, then each stage of implementation will be viewed with its' own billing cycle.
- K. Contractor acknowledges that all information supplied by County shall be kept confidential. Contractor, its' subcontractors, employees, or agents shall not disclose such information to any third parties other than Contractor's subcontractors, employees, or agents on a need-to-know basis for the purpose of contract performance and to other third parties as required for providing services under this contract. Contractor shall not use any information, documents, or data provided by County for any proprietary purposes and shall not copy, sell, exchange, disclose, or provide to others, or use any information, documents, or data reasonably related to this Contract for its own proprietary interests.
- L. Contractor shall perform all Cost Reduction Consulting Services required under this Contract in conformity with professional standards, and shall provide qualified personnel (licensed, if applicable) to meet such standards.
- M. **Ownership of County Data.** Contractor acknowledges and agrees that all information supplied by County to Contractor (hereinafter, "County Data") shall remain the property of County. The County Data shall not be used by Contractor other than in connection with providing the services pursuant to this Contract, disclosed, sold, assigned, leased or otherwise provided to third parties by Contractor, or commercially exploited by or on behalf of Contractor, its' employees, officers, agents, subcontractors, invitees, or assigns in any respect. Contractor shall not delete or destroy any County Data or media on which County Data resides without prior written authorization of County. At no cost to County, Contractor shall, upon request, promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County Data it may possess or control.
- N. It shall be Contractor's responsibility to ensure compatibility of County's data files and transmittal medium to Contractor's computer system. Contractor shall bear all costs, if necessary, for data conversion to make County's computer system compatible with that of Contractor's and any incidental costs related to the data transfer. Contractor shall promptly inform County of any problems and/or issues with any data conversion or transfer of County's data files.

- O. Contractor is responsible for ensuring that all transmittals to County are compatible with County's ability to record and read such data. Any and all corrupted or otherwise defective data shall be replaced by Contractor at no cost, additional or otherwise, to County.
- P. Contractor shall provide four (4) hours of in-house training post completion of the six (6) month review and an additional four (4) hour training one-year thereafter. The specific time and place to be mutually agreed upon with reasonable notice. Training shall entail cost reduction strategies and efforts conducted as part of this Contract. It is expected that County staff will be sufficiently trained within two (2) years to have the ability to conduct similar cost reduction efforts in the future.

**III. COUNTY'S REQUIREMENTS:**

- A. County shall give its full cooperation to Contractor in providing all required documents, invoices, contracts and staff consultation time to Contractor's evaluation team in order to conduct the expense reduction review.
- B. During the review process, County agrees not to renegotiate, amend or extend in place contracts or introduce operational procedures/changes that will effect cost/pricing and or contractual obligations of the County to the supplier.
- C. County shall provide Contractor with online access to properly review historical utility use, rates and load profile of the County's utility accounts as required by the Contract.
- D. Any cost reduction made, during the specified assessment process will be credited to Contractor presence and is therefore treated as such and factored into the shared revenue structure. During the course of the relationship between County and Contractor, County and Contractor understand that despite Contractor(s) recommendations, suggestions, potential suppliers and other proposals; County has the right not to proceed with said proposals.

**IV. COMPENSATION:**

- A. There will be no up-front fees or any other charges to County. County plans to pay for these services as fees, which will be paid as a percentage of the refunds and savings, identified by the Contractor, and only after County actually receives these refunds and savings and only for a period of time negotiated between County and the Contractor.

**X. BILLING VERIFICATION:**

- A. All Contractors' fee-for-service invoices will be submitted monthly or quarterly to County and will be accompanied by verifiable, supporting documentation from the Contractor that the correction/retroactive refund/credit/recommendation has been accomplished and savings implemented. A detailed explanation of savings for each invoice presented will clarify and further corroborate the calculated savings.

**XI. TERMS AND CONDITIONS FOR PRICING:**

- A. Fees will be paid based on the refunds and cost savings identified. The fees will be a percent of the County-accepted savings. These fees will be applied against the cumulative as follows:
1. Actual amount of all refunds obtained by Contractor; and,

2. Verified cost reductions as reasonably estimated by Contractor, resulting from the implementation of any item of cost savings recommended by Contractor and accepted and implemented by the County, for a period of time agreed-to between the Contractor and the County.

**ATTACHMENT B  
SCOPE OF WORK  
CEO/REAL ESTATE  
SPECIAL TAX ASSESSMENT SERVICES**

- I. INTRODUCTION:** County properties may be subject to special/direct assessments levied by local government agencies, as provided for in the California Constitution. Until recently special/direct assessments on County property were placed directly on the Secured Property Tax Roll and paid as part of the tax bill payment. Recently, the County has begun to receive invoices directly by the assessing agencies.

The general Scope of Work is to: 1) Perform review of all special/direct assessments currently levied against County properties, 2) Process and receive refunds on payments previously made to Special Assessment Districts and 2) Establish a procedure for County review and verification of future special/direct assessments on County properties. Term for this service shall not exceed five (5) years.

**II. GENERAL CONTRACTOR REQUIREMENTS:**

**A. REVIEW VALIDITY OF THE CURRENT ASSESSMENTS—ISSUING DISTRICT REVIEW.**

1. If valid, verify general applicability to County properties in accordance with the provisions of Proposition 218, which added Articles XIII C and D to the California Constitution.
2. If applicable to the County, create an electronic file for each agency. At a minimum this file shall contain:
  - a. Copy of local government resolution approving formation of Special Assessment District.
  - b. Copy of authority to issue and collect the specific assessment(s).
  - c. Copy of Special Assessment District Management Plan.
  - d. Map of the Special Assessment District, including delineation of County property.
  - e. Amount chargeable to entire Special Assessment District.
  - f. Special Assessment District contact information.
  - g. Special Assessment meeting information, including annual budget processing details.
  - h. Assessment validity dates. (Duration of required assessment)
  - i. Any reports available to property owners assessed by Special Assessment District.
  - j. Determine how the assessment is calculated. Example: A sewer assessment may be calculated based on the amount of purchased water.
    1. Is averaging allowed to be used in the calculation?
    2. Is estimating allowed to be used in the calculation?
    3. Are allowances available for uses such as cooling towers?

3. Summary opinion regarding validity and correctness of Special Assessment.

**B. REVIEW CURRENT ASSESSMENTS ON COUNTY PROPERTIES**

(Complete “A” above prior to performing this step for each property)

Obtain/review/develop the following regarding each current assessment:

1. Documents proving County ownership of property
2. Justification for Special Assessment
  - a. Verify validity of assessment to the property. Example: A park may have potable water service for irrigation and no restrooms. Therefore a sewer assessment would not be applicable to the property.
  - b. Description of benefit to property for assessment in accordance with the provisions contained in Article XIII C and D of the California Constitution
3. Verify the amount chargeable to County’s parcel. If a discrepancy is found, perform Step “C” below.
  - a. Is the amount owed calculated correctly? Example: A park has water service for irrigation and a small rest room. Does the calculation use gross water use or does it calculate usage based on the size of the restroom?
  - b. Is the assessment based on current usages, historic data and or estimates? How does the data used compare to actual usage?
4. Summary opinion regarding validity and correctness of Special Assessment

**C. PROCESS REFUND REQUESTS FOR SPECIAL ASSESSMENT PAYMENTS**

1. Identify statutory limitations for the request for refunds on payments made by County to Special Assessment Districts
2. Review payments previously made by County to Special Assessment Districts within the statutory time limits for refunds.
3. Provide detailed information regarding payments made to Special Assessment Districts deemed to not meet statutory requirements for the levy of charges against County property for which County can, statutorily, request refund of payment. This would include at a minimum:
  - a. Projected refund amount(s)
  - b. Reason refund is warranted. Include narrative and calculations)
4. Receive County approval to request refund for such payments
5. Process refund requests, including follow-up with Special Assessment District representatives with regular reporting of status to County.

**D. PROCEDURE FOR FUTURE REVIEW OF ASSESSMENT ON COUNTY PROPERTIES**

1. Establish and document recommended procedures for future review of current assessments by County staff

2. Establish and document recommended procedures for future review of proposed/new/increased/modified assessments by County staff
3. Meet with County staff to discuss and explain detailed recommendations
4. Provide any/all information necessary for County staff to prepare requests for modifications to/refunds of assessments levied and paid by County, where necessary and appropriate

**E. SUMMARY OF KNOWN CURRENT ASSESSMENTS TO COUNTY**

1. Current Special Assessments known to the County include the following:
  - a. Approximate Total Annual Special Assessment Amount: \$8,000,000
  - b. Approximate Number of Special Assessment Authorities: 20
  - c. Approximate Number of Special Assessment Invoices: 650

**ATTACHMENT C  
CONTRACTOR’S RATES/COMPENSATION**

**I. COMPENSATION:** This is a usage Contract between County and Contractor to provide Cost Reduction Consulting Services, as needed and as set forth in Attachment A and or B, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the Total Not to Exceed Contract Amount specified herein below unless authorized by amendment in accordance with Article “25” and “40” of the County Contract Terms and Conditions.**

If County elects to proceed with any or all of the recommendations as set forth in Contractor’s report, County agrees to compensate Contractor for the savings associated with the proposal. This cost savings/revenue shall be shared with Contractor after the refunds, ongoing savings, or other credits are realized by County. If payment to contractor exceeds \$100,000.00, the Board of Supervisors must approve release of payment.

Should Contract be terminated, Contractor shall be compensated for any authorized work performed up to the date of termination notification.

**II. PRICING:** County will pay fees at the following percentage rate of cost savings in accordance with the provisions of this Contract.

**A. FEE SCHEDULE:**

- 1. COST REDUCTION UTILITIES CONTRACT: 70% COUNTY  
30% CONTRACTOR

Additional services authorized by the County within the Scope of Work shall be billed at the following rates:

TITLE	HOURLY RATE
DIRECTOR	\$205.00
SENIOR CONSULTANT	\$160.00
CONSULTANT	\$140.00
ANALYST	\$120.00
RESOURCE ANALYST	\$95.00

**Amendment 3**

~~**B. TOTAL ANNUAL CONTRACT SHALL NOT TO EXCEED:.....\$ 100,000.00**~~

**B. TOTAL CONTRACT SHALL NOT TO EXCEED OVER FIVE YEARS:.....\$ 5700,000.00**

**III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term period of the Contract. All price decreases will automatically be extended to the County.

**IV. FIRM DISCOUNT AND PRICING STRUCTURE:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

**V. INVOICING INSTRUCTIONS:** The Contractor shall submit invoices to County on Contractor's letterhead. Each invoice shall have a unique number and shall include the following information:

- A. Contractor's name and address
- B. Contractor's remittance address, if different from (A), above
- C. Name of County agency/department/contact person
- D. Delivery/service address
- E. Contract number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and supporting documentation are to be forwarded to:

OC Public Works  
Attn: Accounts Payable  
300 North Flower Street  
Santa Ana, CA 92703

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.