

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the **GARDEN GROVE SANITARY DISTRICT**, a California special district, ("CITY") and **HF&H CONSULTANTS, LLC**, a California limited liability company, herein after referred to as "CONSULTANT".

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council Resolution No. 9212-14 (January 28, 2014).
2. DISTRICT desires to utilize the services of CONSULTANT to provide technical assistance to meet regulatory compliance with the commercial recycling mandates per AB 341 (2011) (Attachment "A").
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination** This Agreement shall cover services rendered from date of this Agreement until compensation reaches the not to exceed amount. This agreement may be terminated by the DISTRICT without cause. In such event, the DISTRICT will compensate CONSULTANT for work performed to date in accordance with proposal which is attached as Attachment A and is hereby incorporated by reference. Consultant is required to present evidence to support performed work.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of tasks as set forth in the Proposal. The Proposal is attached as Attachment A, and is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of Forty Nine Thousand Nine Hundred Ninety Nine Six Dollars (\$49,999.00), payable in arrears and in accordance with proposal in Attachment "A".

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by DISTRICT will be required, and payment shall be based on schedule included in Proposal (Attachment A).
- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to DISTRICT.
- 3.4 Termination. DISTRICT and CONSULTANT shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by DISTRICT, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the DISTRICT. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the DISTRICT of any material change, cancellation, or termination at least thirty (30) days in advance and provide a Waiver of Subrogation in favor of the DISTRICT.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONSULTANT shall maintain the following insurance for the duration of this Agreement:
- (a) Commercial general liability in an amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to DISTRICT and have a Best's Guide Rating of A-, Class VII or better, as approved by the DISTRICT.
- (b) Automobile liability in an amount of \$1,000,000.00 combined single limit (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to DISTRICT and have a Best's Guide Rating of A-, Class VII or better, as approved by the DISTRICT.

- (c) Professional liability in an amount not less than \$1,000,000. Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the District. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

**An On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate DISTRICT, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to DISTRICT proof of insurance and endorsement forms that conform to DISTRICT's requirements, as approved by the DISTRICT.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate DISTRICT, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONSULTANT. CONSULTANT shall provide to DISTRICT proof of insurance and endorsement forms that conform to DISTRICT's requirements, as approved by the DISTRICT.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects DISTRICT, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the DISTRICT, its officers, officials, employees, agents, and volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*If CONSULTANT maintains higher insurance limits than the minimums shown above, CONSULTANT shall provide coverage for the higher insurance limits otherwise maintained by the CONSULTANT.*

5. **Non-Liability of Officials and Employees of the DISTRICT.** No official or employee of DISTRICT shall be personally liable to CONSULTANT in the event

of any default or breach by DISTRICT, or for any amount which may become due to CONSULTANT.

6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of the DISTRICT, and shall obtain no rights to any benefits which accrue to DISTRICT'S employees.
8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONSULTANT shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The District makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - a. (CONSULTANT)  
HF&H CONSULTANTS, LLC  
19200 Von Karman Avenue, Suite 360  
Irvine, CA 92612  
Attention: Laith Ezzet, Senior Vice President
  - b. (Address of DISTRICT) (with a copy to):  
City of Garden Grove                      Garden Grove City Attorney  
11222 Acacia Parkway                      11222 Acacia Parkway  
Garden Grove, CA 92840                      Garden Grove, CA 92840
10. **CONSULTANT'S PROPOSAL.** This Agreement shall include CONSULTANT'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONSULTANT shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.

12. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by DISTRICT, it shall immediately inform DISTRICT of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from DISTRICT.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONSULTANT, its principals and employees were a substantial inducement for DISTRICT to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the DISTRICT. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of DISTRICT. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to DISTRICT for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and DISTRICT. All persons engaged in the work will be considered employees of CONSULTANT. DISTRICT will deal directly with and will make all payments to CONSULTANT.
15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** To the fullest extent permitted by law, CONSULTANT shall defend, and hold harmless DISTRICT and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless DISTRICT, is due to the sole negligence, recklessness and/or wrongful conduct of DISTRICT, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

17. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove Sanitary Board for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the DISTRICT.

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(Agreement Signature Block on Next Page)

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

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

	<b>GARDEN GROVE SANITARY DISTRICT</b>  By: _____ Scott C. Stiles General Manager
<b>ATTEST:</b>  By: _____ Teresa Pomeroy Secretary	
	<b>HF&amp;H CONSULTANTS, LLC</b>  By: <u><i>Lucretia Ezzelle, Sr. V.P.</i></u>  By: _____ _____
<b>APPROVED AS TO FORM:</b>  By: <u><i>Omar Sandoval</i></u> Omar Sandoval General Counsel	<b>If CONSULTANT is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a Partnership, Statement of Partnership must be submitted to DISTRICT.</b>

# ATTACHMENT "A"

## HF&H CONSULTANTS, LLC

### Scope of Work and Fee Estimate to Assist the City of Garden Grove and Garden Grove Sanitary District with Regulatory Compliance Technical Assistance

June 25, 2019

#### Background

On April 18, 2017, the City of Garden Grove and Garden Grove Sanitary District (City and District) received a letter from CalRecycle stating that CalRecycle staff would be closely monitoring the City's and District's progress toward compliance with AB 341, and on December 29, 2017 the City and District received another letter from CalRecycle stating that the City and District was found to be deficient in implementing AB 341 and AB 1826. HF&H Consultants (HF&H) subsequently developed AB 341 and AB 1826 implementation plans for the City and District for submittal and review with CalRecycle. The plans were approved by CalRecycle and HF&H is assisting the City and District in ensuring that tasks included in the plans are achieved. To perform the technical assistance required by AB 341, the City and District initially retained MuniEnvironmental Consultants. MuniEnvironmental developed a letter and survey for businesses and multi-family complexes which meet the thresholds of AB 341, performed follow up outreach in the form of telephone calls and site visits to a limited number of customers, and reported outreach and compliance efforts via an excel workbook.

The City and District has requested a proposal from HF&H in November 2018 to provide AB 341 technical assistance. Amendment No. 3 to the Republic Services (Republic) agreement requires that Republic perform customer outreach and technical assistance for AB 1826, and therefore, we have not included those activities in this scope. HF&H monitors Republic's compliance with AB 1826 outreach through our Legislative Compliance agreement with the City and District.

HF&H and the City/District entered into an agreement on December 4, 2018 for technical assistance consulting related to AB 341. As of the date of this letter HF&H has developed a monitoring database to track survey responses and quantify third party recycling, contacted the customers that responded to the first survey, developed/documented results of a subsequent survey, and initiated follow-up phone calls with respondents to the second survey.

The tasks below outline our approach for AB 341 technical assistance.

1. Maintain the database for AB 341 outreach monitoring and confirm the reporting format with CalRecycle.
2. Review the letters and surveys developed by the City/District and HF&H during the first project months and make updates where necessary for additional mailings.
3. Develop a list of businesses/multi-family complexes which meet the threshold of AB 341 that did not respond to the first two letters and surveys, and provide this list to the City and District for mailing of the AB 341 letters and surveys.
4. Continue follow-up phone calls to survey respondents.



5. Contact businesses/multi-family complexes that have not responded to any of the letters and surveys by telephone, document results of contact, and refer requests for recycling services to Republic Services.
6. Provide limited technical onsite assistance to large generators, if necessary, within budgetary limitations.
7. Provide quarterly progress reports to the City and District.

**Project Costs**

We will perform the scope of work based on time and materials. The proposed budget through June 30, 2020, is \$49,999. We will bill you once per month based on the number of hours worked and expenses incurred. Payment is due within 30 days of invoicing.

Hourly rates for professional and administrative personnel through December 31, 2019 are listed below.

<u>Position</u>	<u>Rate</u>
President/Senior Vice President	\$289
Vice President	\$255 - \$265
Senior Project Manager	\$225 - \$255
Senior Associate/Project Manager	\$195 - \$235
Associate Analyst	\$145 - \$180
Assistant Analyst	\$120 - \$140
Administrative Staff	\$99 - \$120

Expenses will be billed as follows:

Mileage	Prevailing IRS mileage rate
Outside document reproduction/couriers/postage	Actual
Facsimile	No charge
Telephone	No charge
Public conveyances and parking	Actual
Subcontractors	Actual, plus 15%

**Project Schedule**

We will initiate the project upon receipt of a City/District purchase order or executed professional services agreement. This engagement will continue as requested by the City up to the limits of the budgetary parameters.