

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated November 7, 2017 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and HF&H Consultants, a limited liability company ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City desires to utilize the services of Contractor as an independent contractor to assist the City with its selection of new residential and commercial solid waste hauling franchise services.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Laith Ezzet, Senior Vice President (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the Services on the Effective Date and shall perform all Services in conformance with the project timeline, set forth in **Exhibit A**.

D. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through June 30, 2019, unless sooner terminated as provided in Section 12 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Contractor at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit A**. In no event shall Contractor be paid more than \$149,000 (the "Maximum Compensation").

The City Manager shall have authority to increase the Maximum Compensation by up to 20%; any further increase requires City Council approval.

B. Expenses. The amount set forth in paragraph 3.A. above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

5. Independent Contractor. Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings,

maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

8. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities") that are covered by Contractor's insurance, in law or equity, for the negligent acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel mutually agreed upon, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$500,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section 9.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability [Errors and Omissions] Insurance with minimum limits of \$1,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section 9 is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

11. Records and Inspections. Contractor shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least five calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

14. Default.

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

B. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve

Contractor with written notice of the default. Contractor shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: Anna Luke-Jones
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: 310-802-5000
Email: aluke@citymb.info

If to Contractor:

Attn: Laith Ezzet
HF&H Consultants, LLC
19200 Von Karman Avenue, Suite 360
Irvine, CA 92612
949-251-8628
lezzet@hfh-consultants.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@citymb.info

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or

delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, sub-contractors and agents.

21. Corrections. In addition to the above indemnification obligations, Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's report or plans. Should Contractor fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Contractor. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Contractor under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Contractor by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

23. Exhibits. Exhibit A constitutes a part of this Agreement and is incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

24. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

25. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

26. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Business Days. "Business days" means days Manhattan Beach City Hall is open for business.

29. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

30. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover actual attorneys' fees, experts' fees, and other costs, in addition to all other relief to which that Party may be entitled.

31. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and

enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

Contractor:

HF&H Consultants,
a Limited Liability Company

By: _____

Name: _____

Title: _____

By:  _____

Name: Laith Ezzet

Title: Senior Vice President

ATTEST:

By: _____

Name: _____

Title: _____

By: _____

Name: Liza Tamura

Title: City Clerk

APPROVED AS TO FORM:

By:  _____

Name: Quinn M. Barrow

Title: City Attorney

APPROVED AS TO CONTENT:

By: _____

Name: Stephanie Katsouleas, P.E

Title: Public Works Director

EXHIBIT A
SCOPE OF SERVICES

SCOPE OF WORK AND COST PROPOSAL FOR COMPETITIVE PROCUREMENT PROCESS FOR THE CITY OF MANHATTAN BEACH

Background

The City of Manhattan Beach (City) contracts with Waste Management (WM) for residential solid waste collection and recycling services under an exclusive Integrated Solid Waste Management Services Agreement. The existing Agreement with WM expires on June 30, 2018. Under Section 2.5 of the Agreement, at the City's option, there is an extension authorized up to a maximum of twenty-four months, with a 90-day advance written notice to WM prior to Agreement expiration.

Prior to the procurement process, City staff will perform a community questionnaire to solicit community feedback regarding potential service enhancements. Please note that the scope of work does not include performing the community survey, which we understand will be handled by City staff.

The City is seeking a qualified consultant to assist with the selection process associated with city-wide commercial and residential solid waste management and recycling services. HF&H Consultants has assisted over 100 California jurisdictions with the development of RFPs, evaluation of proposals, and negotiation of solid waste services agreements for refuse, recycling and green waste collection, material processing services, and disposal. Below are the tasks for a competitive procurement process for the City of Manhattan Beach.

Task 1: Determine City's Collection Needs

Subtask 1.A: Initiate Project and Define Scope of Services for RFP

HF&H will review the current solid waste agreement and amendments, the current solid waste rate schedule and other relevant documents, and prepare for a kick-off meeting to be held with City staff. During the kickoff meeting, we will discuss key issues relating to the procurement of a new franchise agreement, and confirm the detailed schedule for the contracting process.

To guide our meeting, we will develop a meeting document including existing services compared and contrasted to enhanced options that the City may wish to consider. We will include our preliminary recommendations for discussion.

Ever changing legislation requires cities to continually address new solid waste issues. The City may want to update its collection agreement to reflect industry changes since the previous agreement was drafted, and proactively address anticipated future changes. The City will benefit from an agreement that better addresses required services, performance standards, reporting and auditing requirements, and diversion requirements, among other enhancements. Examples of these issues that cities must now consider include:

- AB 1826 (Commercial organics recycling) and AB 341 (Mandatory commercial recycling program)
 - Public Outreach, Monitoring, and Compliance

- SB 1383 - Establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025, and establishes an additional target that not less than 20 percent of currently disposed edible food is recovered for human consumption by 2025.
- AB 1594 – Diversion credit for green waste used as daily cover on landfills is being eliminated as of January 1, 2020

In addition, the City is considering updating the audit language.

Based on our discussions with City staff, we will prepare a Project Plan that documents the existing and alternative solid waste and recycling services, and schedule. We will provide a copy of the Project Plan to the City and use it as a tool to manage the procurement process.

Subtask 1B: Gather and Review Operating Data

We will collect any data available regarding the current services provided. We will prepare data collection forms to assist the City and/or hauler in providing additional information in a user-friendly format. It has been our experience that when proposers are confident about the accuracy of operating data contained in the RFP, they propose lower rates and include fewer contingency costs. Collecting data in this manner may also uncover additional issues, such as poor reporting or service issues that we would address in the new agreement.

Subtask 1C: Attend One City Council Meeting to Present Recommended Enhancements to Existing Services and Key Contract Terms

Based on our analysis of the City's existing franchise agreement and understanding of best management practices in the solid waste industry, we will make a presentation to City Council regarding enhancements to current services and contract terms and seek input regarding any others services that should be included in the Draft RFP.

Task 2: Prepare and Issue Request for Proposals

Subtask 2A: Prepare Draft RFP and Agreement

Based on the information and direction received during Task 1, we will prepare the draft RFP, a redline version of the agreement, and criteria to be used in evaluating the proposals received.

Subtask 2B: Upon Review by the City Attorney and City Staff, Revise RFP and Agreement

We will submit the draft RFP and agreement to City staff for review. City staff is requested to make any changes directly to the documents in a strike-and-replace format. The City Attorney will be responsible for confirming that any proposed city fees comply with applicable legal statutes such as Prop 218 and Prop 26. After City staff reviews the documents and provides us with their written comments, we will make appropriate revisions once to these documents.

Key items to be included in the RFP package are:

- Draft Agreement – We will attach the draft of the agreement the successful proposer will be expected to sign, including insurance requirements, performance standards with liquidated damages and default provisions for specific performance failures, and indemnifications. Including the agreement in the RFP limits negotiation efforts. The RFP will require proposers to identify any exceptions they plan to take to the agreement in their proposal.
- Contract Summary – We will draft a summary of service and contract requirements included in the attached draft agreement.
- Data – We will collect, review, and provide detailed operational and service data to assist proposers in developing their proformas.
- Proposer Worksheets - Proposer worksheets designed for proposers to enter proposed rates and supporting cost data, including proposed diversion plan specifications. Proposers likely to propose on the City's RFP are accustomed to HF&H forms and have provided favorable feedback on their design and ease of use.
- RFP Submittal Requirements – HF&H will include a description of RFP requirements and an outline for proposers to follow in assembling their proposals in order to ensure that the proposers do not miss requirements and that the City can easily locate key information in the proposal. Requirements include items such as diversion program descriptions, transition and implementation plans, firm information and experience citations.

Subtask 2C: Attend Council Meeting to Approve RFP Package

HF&H will attend one City Council meeting at which the City Council will approve the RFP and draft agreement, and will make a presentation and answer questions. We recommend that contact between proposers and the City be controlled and will suggest methods to do so, based on City staff and City Council's desired level of interaction with proposers. Once the RFP and the draft agreement have been approved by the City Council, the RFP package can be distributed to potential proposers.

HF&H will send an announcement to a list of solid waste companies and hauler associations, and provide an electronic copy of the RFP to any requesting party.

Subtask 2D: Prepare for and Attend Proposers' Conference

With City staff coordination, we will schedule a proposers' conference to be conducted shortly after the release of the RFP. Potential proposers will have an opportunity to receive clarification of any issues and ask questions at this conference. We will also accept written requests for clarification about the desired services requested or other substantive questions until the date specified in the RFP.

Subtask 2E: Prepare Addenda

We will prepare written responses to questions posed at the proposers' conference, or submitted in writing, and prepare any necessary addenda arising from issues posed at the proposers' conference. All questions and responses shall be made available to all proposers in attendance at the conference a minimum of one week prior to the proposal due date.

We find that proposers will often have last-minute questions while finalizing their proposals a day or two before they are due. We arrange our personal schedules to ensure that we always have project staff available to answer these last-minute procedural or non-substantive questions.

Task 3: Review and Evaluate Proposals and Present Findings to City Council

Subtask 3A: Review Proposals for Completeness

We will perform an initial review of each proposal submitted for compliance with the City's RFP requirements and will disregard incomplete proposals.

Subtask 3B: Evaluate Complete Proposals

The specific criteria for which we evaluate the complete proposals will be developed by HF&H and refined using input received from City staff and the City Council and may include the following criteria:

- Quality and responsiveness of the proposal submitted, and demonstrated understanding of the scope of services requested;
- Exceptions taken to the terms and conditions of the draft agreement;
- Proposed total compensation (rate revenue) over the term of the agreement, based on the rates included in the financial section of the proposal;
- Experience of the proposers in providing the requested services in other jurisdictions, based on information contained in their proposals;
- Financial resources of the proposers, based on information in their proposals;
- Proposal features that exceed the RFP's minimum performance requirements.

Subtask 3C: Prepare Follow-Up Questions for Proposers

After performing our initial review and evaluation, we will provide each proposer with our summary evaluation of its individual proposal in order to confirm our understanding of the information presented.

Subtask 3D: Review Responses and Clarify Unresolved Issues

We will review responses received from proposers and resolve any open issues to help ensure that proposers are satisfied with the representation of their proposals.

Subtask 3E: Discuss Preliminary Evaluation with City Staff

We will discuss our preliminary evaluation with City staff and determine the next steps in the evaluation process, such as selecting the proposers to be interviewed.

Subtask 3F: Interview Proposers

At this stage in the process, usually one or more proposals are clearly more likely to be selected. Along with City staff, we interview up to four proposers, scheduling all interviews on one day.

Subtask 3G: Contact References for Recommended Proposer(s)

We contact references provided by the proposer(s) that are to be recommended to the City Council for award of the agreement. We summarize the results of the reference checks within the evaluation report.

Subtask 3H: Prepare Evaluation Report and Present to City Council

After our evaluation is complete, we will prepare a report describing the evaluation results and attend one City Council meeting to present the findings of that report. HF&H will seek direction from City Council regarding which hauler(s) to begin negotiations with.

Task 4: Negotiate With Top Ranked Contractors, and Prepare a New Agreement for City Council Approval**Subtask 4A: Participate in Negotiating Session**

HF&H will participate in a negotiation session with one hauler selected by City Council for final negotiations. Based on our prior experience, final negotiations can usually be completed during one session per proposer, and the fee estimate includes costs for one session with one proposer.

Subtask 4B: Prepare Revised Portions of Agreement

Based upon the negotiations, we will make one set of revisions to the final agreement negotiated with the selected proposer(s) and ask the proposer to sign the agreement. The City can then make a decision based on clearly defined contract terms. Also, at award, neither the successful nor unsuccessful proposers can debate what was or was not the final offer to the City.

Subtask 4C: Attend One City Council Meeting for Approval of Final Agreement

We will attend the City Council meeting and present a summary of the terms included in the final negotiated agreement.

PROJECT SCHEDULE

A typical competitive procurement process can take up to 18 months, including 12 months for the contracting process, and allowance of 6-months for a possible service provider transition to order for the new contractor to order and receive new trucks and equipment, hire and train drivers, change-out of customer containers, customer outreach, and transition activities related to customer billing.

The base term of the existing solid waste agreement expires June 30, 2018. Section 2.5 of the agreement provides the City an option to extend the term, upon 90-days advance written notice, on a month-to-month basis for up to 24 months. If such notice is provided, the contract will renew monthly, up to 24 months, unless the City gives Waste Management a 30-day written notice of termination. Per the minutes of the City Council meeting on July 18, 2017 the City Council approved extending the term “for a one-year plus one-year term, if needed.”

A detailed schedule is provided below.

Proposed Procurement Schedule

Activity	Party	Target Date
1. Initiate project	City/HF&H	November 2017
2. Review existing documents, identify key service issues and meet with City staff	HF&H	November 2017
3. Define scope of services and request operating data	HF&H	December 2017
4. Provide operating data	City/WM	February 2018
5. Present potential services and terms to City Council	City/HF&H	January 2018
6. Prepare preliminary RFP and draft agreement	HF&H	February 2018
7. Seek input from City staff on draft RFP and agreement	City/HF&H	March 2018
8. Prepare revised RFP and draft agreement	HF&H	March 2018
9. Present RFP package to Council for approval, and distribute to proposers (90-day window for bidding)	City/HF&H	April 2018
10. Conduct pre-proposal conference	City/HF&H	April 2018
11. Prepare addenda	HF&H	May 2018
12. Proposals due	Proposers	July 2018
13. Evaluate proposals and conduct interviews	City/HF&H	July-Sept. 2018
14. Finalize evaluation	HF&H	October 2018
15. Present to City Council; select contractor(s) for negotiations	City	October 2018
16. Conduct negotiations and resolve exceptions to agreement	HF&H/City/ Proposer	-October - November 2018
17. City Council Presentation; consider negotiated agreement for award	City Council	November 2018
18. Order equipment, distribute educational materials, conduct informational meetings and prepare for transition	Contractor	-December 2018 to 2019 – March 2019
19. Initiate rollout of new service	Contractor	May 1, 2019

COST PROPOSAL

We will perform this scope of work based on time and materials, not to exceed \$149,000 without prior written City authorization. The City's consultant costs are typically reimbursed to the City by the successful proposer upon execution of a new solid waste agreement. Any additional work not included in this scope of work would be billed on a time and materials basis at the rates listed below.

The proposed cost includes meeting with City staff, preparation of the RFP, gathering operating data, soliciting proposals, conducting a pre-proposal conference, issuing RFP addenda, evaluating up to five proposals, interviewing up to four proposers, preparing and negotiating the final agreement with one proposer, and attending/presenting at four City Council meetings throughout the process. Should more than five proposals be submitted, we estimate that the budget will increase by \$6,000 per proposal. If negotiations are conducted with more than one proposer, our cost will increase by \$7,500 per proposer. The proposed cost assumes that one integrated residential and commercial collection service RFP and agreement is developed for one set of the services desired. The proposed scope of services does not include preparing the staff reports that City staff will need to prepare to transmit various action items to the City Council during the process beyond assistance described in the scope of work.

The work plan on the next page itemizes hours by task and staff classification. Hours may be shifted among tasks. 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 through December 31, 2018 are listed below.

<u>Position</u>	<u>Rate</u>
President/Senior Vice President	\$279
Vice President	\$250
Senior Project Manager	\$245
Project Manager	\$215 to \$229
Senior Associate	\$185 to \$205
Associate Analyst	\$145 to \$175
Assistant Analyst	\$115 to \$130
Administrative Staff	\$95
Intern Consultant	\$45

Expenses will be billed as follows:

Mileage	Standard IRS allowance per mile
Outside document reproduction/couriers/postage	Actual
Public conveyances and parking	Actual
All other out-of-pocket expenses	Actual

ESTIMATED PROCUREMENT WORKPLAN

Task Description	Sr. Vice President	Senior Associate	Staff	Total Hours
1. Determine City's Collection Needs				
A. Initiate project				
1 Review existing documents and prepare for kickoff meeting	4	16	8	28
2 Analyze contract, develop meeting document, and meet with City staff (mtg. #1)	10	12	12	34
3 Prepare Project Plan	4	12	8	24
B. Gather and review operating data	8	14	14	36
Subtotal: Task 1 Hours	26	54	42	122
2. Prepare and Issue Request for Proposals				
A. Prepare draft RFP and agreement, including operating data attachments	12	57	36	105
B. Revise documents once after review by City Attorney and other City staff	8	16	5	29
C. Attend Council meeting to approve RFP package (mtg. #2)	6	6	-	12
D. Prepare for and attend proposers' conference (mtg. #3)	6	10	8	24
E. Prepare addenda	8	12	12	32
Subtotal: Task 2 Hours	40	101	61	202
3. Review and Evaluate Proposals				
A. Review proposals for completeness	-	4	-	4
B. Evaluate complete proposals (maximum of five)	20	50	40	110
C. Prepare follow-up questions for proposers	4	8	8	20
D. Review responses and clarify unresolved issues	8	8	-	16
E. Discuss preliminary evaluation with City Staff (mtg. #4)	4	4	-	8
F. Prepare for interviews and interview proposers (mtg. #5)	12	12	-	24
G. Contact references for recommended proposer	1	3	8	12
H. Prepare evaluation report and presentation	20	36	24	80
I. Attend Council meeting for contractor selection (mtg. #6)	6	6	-	12
Subtotal: Task 3 Hours	75	131	80	286
4. Negotiate Final Agreement and Prepare a New Agreement				
A. Prepare for and participate in one negotiating session (mtg. #7)	16	16	-	32
B. Prepare revised portions of Agreement	8	16	8	32
C. Attend Council meeting for approval of final agreement (mtg. #8)	8	8	-	16
Subtotal: Task 4 Hours	32	40	8	80
Total Hours	173	326	191	690
Hourly Rate	\$ 279	\$ 205	\$ 175	
Subtotal	\$ 48,267	\$ 66,830	\$ 33,425	\$ 148,522
Expenses				\$ 478
Total Fees and Expenses				\$ 149,000