

FIRST AMENDMENT TO AGREEMENT

This First Amendment of the Agreement, entered into this 7th day of July, 2020, by and between the CITY OF ALAMEDA, a municipal corporation (hereinafter "City") and **HF&H CONSULTANTS, LLC** a California Limited Liability Company, whose address is **201 NORTH CIVIC DRIVE, SUITE 230, WALNUT CREEK, CALIFORNIA, 94596**, (hereinafter the "Provider"), is made with reference to the following:

RECITALS:

A. On March 18, 2020, an agreement was entered into by and between City and HF&H Consultants, LLC (hereinafter "Agreement") to provide consulting services to assist with the review of City's Franchise Waste Hauler, Alameda County Industries, AR, Inc. (ACI) cost-based rate adjustment request for Rate Period Nineteen, Fiscal Year 2020-2021 and Technical Assistance and Planning for the new solid waste and collection agreement and related services in the amount of \$74,175.

B. City and Provider desire to modify the Agreement on the terms and conditions set forth herein (Exhibit A.1).

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Item No. 1, **TERM** of the Agreement is modified to read as follows:

"The term of this Agreement shall commence on the 7th day of July 2020, and shall terminate on the 6th day of July 2021, unless terminated earlier as set forth herein."

"This Agreement may be mutually extended on a year-by-year basis, for up to three (3) additional years, at the sole discretion of the Public Works Director, based, at a minimum, upon satisfactory performance of all aspects of this Agreement. The Public Works Director may submit written notice that the Agreement is to be extended at the same terms and compensation as the existing Agreement and the compensation adjusted by the Consumer Price Index for the San Francisco Bay area as reported by the U.S. Department of Labor, Bureau of Labor Statistics for the previous calendar year."

2. Item No. 2, **SERVICES TO BE PERFORMED** of the Agreement is modified to read as follows:

"Consultant agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A and Exhibit A.1 as requested. The Consultant acknowledges that the work plan included in Exhibit A and Exhibit A.1 is tentative and does not commit the City to request Consultant to perform all tasks included therein."

3. Item No. 3, COMPENSATION TO CONSULTANT, Paragraph b of the Agreement is modified to read as follows:

b. The total compensation for the work under this First Amendment to Agreement is not to exceed \$148,200, for a total contract amount of \$222,375.

4. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

Signatures on following page

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

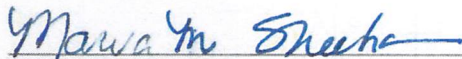
HF&H CONSULTANTS, LLC
A Limited Liability Company



Rob Hilton
President

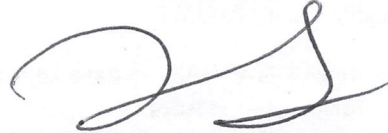
CITY OF ALAMEDA
A Municipal Corporation

Eric J. Levitt
City Manager



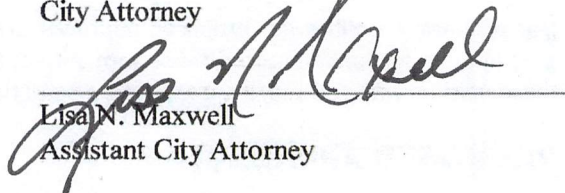
Marva M. Sheehan, CPA
Vice President

RECOMMENDED FOR APPROVAL:



Liam Garland
Public Works Director

APPROVED AS TO FORM:
City Attorney



Lisa N. Maxwell
Assistant City Attorney

EXHIBIT A



HF&H CONSULTANTS, LLC

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Walnut Creek, California 94596
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Robert D. Hilton, Emeritus
John W. Farnkopf, PE
Lalth B. Ezzet, CMC
Richard J. Simonson, CMC
Marva M. Sheehan, CPA
Robert C. Hilton, CMC

February 11, 2020

Mr. Liam Garland
Public Works Director
City of Alameda
950 West Mall Square, First Floor
Alameda, California 94501-7552

**Subject: Review of Rate Period 19 Rate Adjustment Application (Index-Based Adjustment) and
Technical Assistance**

Dear Mr. Garland:

HF&H Consultants, LLC (HF&H) is pleased to provide the City of Alameda (City) this proposal to provide consulting services to assist with the review of Alameda County Industries AR, Inc. (ACI) index-based rate adjustment request for Rate Period Nineteen (RP19) and provide technical assistance related to future contracting for solid waste collection and related services.

Our proposal describes our proposed approach, scope of work, fee estimate, staffing, schedule, and assumptions and limitations for the performance of this project. We would be pleased to discuss any of these matters with you and, if appropriate, amend this proposal to better meet your needs.

PROPOSED APPROACH

Our approach to this rate setting portion of this engagement is to objectively follow the compensation adjustment terms of the Agreement between ACI and the City. When performing the procedures described in the Agreement, we will rely on ACI's audited financial statements, current year-to-date financial results of operations, copies of transactions, operations and other information provided by ACI, and industry standards.

The results of our review and our findings will be documented by the staff performing the engagement and reviewed by the Engagement Director. This documentation will be the basis for calculation of our adjustments prior to the submission of our written report and will be available to the City and ACI for review. Drafts of our written report will be presented to ACI and the City before the final report is submitted to the City.

While taking direction from the City, we will work cooperatively with ACI in an open and transparent manner to ensure that they: understand the procedures we will be performing and our preliminary findings; have an opportunity to correct any misunderstandings we may have acquired; and, understand the reasons for any adjustments to their application that we may recommend to the City.

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Since the current contract with ACI expires in 2022, we understand the City wants to carefully plan out the contract negotiation process. We will meet with City staff to begin planning phase and determine the best approach for the City.

SCOPE OF WORK

Our scope of work includes the following tasks:

Task 1: Preliminary Application Review

We propose to review ACI's application by performing the following subtasks:

Kick-off Meeting

Prepare for, and meet with, the City and ACI to receive ACI's application and obtain an explanation for any unanticipated changes in its compensation for RP19; provide an initial request for documents and information necessary for the conduct of our review; identify the individuals with whom we will be working; and, establish a schedule for the conduct of our field work.

Review Completeness & Compliance

Thereafter, we will review the application to ensure that it is complete and in compliance with the methodology described in the Agreement; and, if necessary, request information necessary to bring the application into compliance.

Review Mathematical Accuracy and Logical Consistency

We will review the application to verify the rate application is mathematically correct, that the rows and columns of numbers add down and across as intended and that the stated assumptions were in fact used in the projection calculations. Also to determine that the rate application is internally consistent and that summary schedules agree to the supporting schedules and worksheets.

Verify Projected Expenses Based on Allowable Expenses Escalated by Proper Index

We will verify ACI correctly calculated their RP19 compensation using the RP18 allowable expenses (as approved by Council last year), and the correct percentage changes in CPI (in accordance with the Agreement).

Task 2: Rate Revenue and Expense Review

We propose to review ACI's rate application by performing the following subtasks:

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Review Labor-Related Expense

We will verify ACI has correctly projected union-related wages in accordance with the agreed-upon methodology described in the Second Amendment to the Agreement entered into in April 2009 and the adjusted labor Exhibit J. The adjusted labor Exhibit J includes changes per the allowed incremental growth review completed in RP18.

Review Vehicle-Related Expense

We will verify ACI has correctly projected vehicle-related expenses in accordance with the agreed-upon methodology described in the Second Amendment to the Agreement entered into in April 2009.

Review of Solid Waste Disposal Expense

HF&H will verify that solid waste disposal costs have been calculated in accordance with the Agreement and the disposal agreement with Waste Management. We will compare the tonnage for the most-recently-completed 12-month period to the period 12-months prior and seek explanations for material variances. HF&H will test at least one month of solid waste tonnage data reported to be from the City and verify the tonnage reported against invoices provided by ACI.

Review of Organics Material Processing Expense

HF&H will verify that organics material processing costs have been calculated in accordance with the Agreement. We will compare the tonnage for the most-recently-completed 12-month period to the period 12-months prior and seek explanations for material variances. HF&H will test at least one month of organics tonnage data reported and verify the tonnage reported against invoices provided by ACI.

Review of Recyclable Material Tonnage and Processing Expense.

HF&H will verify that recyclable material processing costs have been calculated in accordance with the Agreement. We will compare the tonnage for the most-recently completed 12-month period to the prior 12-month period and seek explanations for material variances. HF&H will test at least one month of recycling tonnage data reported and verify the tonnage reported against support provided by ACI.

Review of Depreciation and Interest Expense

HF&H will review ACI's calculation of depreciation and related interest expense to determine if it was calculated in accordance with the Agreement. We will review and verify the accuracy of ACI's reconciliation of actual RP17 interest compared to its allowable RP17 compensation.

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Review of Container Replacement Cap

HF&H will review ACI's container replacement purchases to determine the purchases are within the cap established in prior years.

Review Calculation of City Fees

The current rates include a franchise fee, waste management recycling and program fee (AB 939 fee), infrastructure impacts mitigation fee, Doolittle Landfill maintenance fee, City parks fee, and an annual contribution to a rate stabilization fund. The franchise fee is specified in the Franchise Agreement as 10% of actual gross rate revenues; the other fees are specified through a City resolution as amounts to be adjusted annually by CPI.

Review of Rate Revenue

HF&H will review and verify the accuracy of ACI's reconciliation of actual RP17 revenue compared to its allowable RP17 compensation. We will do a variance analysis comparing the projected RP18 revenue and actual (six months actual revenues annualized) RP18 revenue. We will request explanations for significant variances.

In addition, with the assistance of ACI, we will project RP19 revenue based on current rates and subscriptions levels. The RP19 projected revenue is necessary in order to determine the rate adjustments necessary to generate sufficient revenue to cover ACI's RP19 allowable compensation.

Review of Compensation Related to Wages at the Material Recovery Facility (MRF)

HF&H will review ACI's RP19 calculations of changes to MRF wages, related franchise fees, etc. to ensure the calculations are in accordance with the 2015 special rate adjustment for the incremental costs of providing its MRF employees union wages and benefits. When setting RP15 rates, ACI requested and the City agreed to allow ACI to include the additional costs in its profit calculation commencing with RP17.

Summarize Recommended Adjustments

We will summarize our recommended adjustments and calculate ACI's RP19 compensation. Based on the recalculated compensation, we will determine the rate adjustment based on the RP19 revenue projected to be received assuming current rates.

Review Work Papers and Preliminary Findings

We will prepare and review our work papers documenting the results of our analysis and our preliminary findings.

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Task 3: Review Commodity Revenue and Update Balancing Account

In accordance with Section G of Exhibit J of the Agreement, in RP19 the City shall receive a percentage share of ACI's RP17 revenue from the sale of recyclable materials collected within the City if the average revenue per ton exceeds \$26. We will review ACI's revenue share calculation to determine if it was calculated in accordance with the Agreement.

Our review shall also include an updated "Due to/from ACI" (Balancing Account) after the addition of the RP17 revenue reconciliation adjustment, interest reconciliation adjustment and the addition of the City's commodity revenue share.

Task 4: Prepare and Present Findings and Recommendations

Meet with City and ACI to Review Preliminary Findings

We will meet once with City and ACI staff to review our preliminary findings, receive comments and any additional information, and adjust our preliminary findings, as appropriate.

Prepare Draft Report

Based on the completion of each of the above tasks, we will develop a draft report for review by City and ACI staff. This report basically functions as a working document intended to solicit comments and direction.

Prepare Final Report

As appropriate, we will incorporate City and ACI staff comments and prepare a final report.

Prepare for and Attend Council Meeting

We will present our recommendations to the Alameda City Council at one public hearing and will be available at that meeting to answer questions from Council members and members of the public. If additional public hearings or Council meetings are necessary, we will be pleased to participate on a time-and-materials basis.

Task 5: Engagement Management

We will prepare and amend detailed work plans, monitor engagement progress, and provide sufficient resources to ensure timely completion of the engagement, review analytical results and interim findings,

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review the draft and final reports, and respond to questions regarding the progress of the engagement and other issues.

Task 6: Technical Assistance

We will provide assistance to the City as it plans for its next contract for solid waste collection and related services. We will meet with City staff to develop a plan for the initial phase. During this meeting, we will begin the evaluation process of existing and future services the City may need.

If any other situations arise during our review of ACI's application, we will confer with City staff to determine if additional work is required and the necessary steps to achieve the City's objective. Upon direction from the City, we will perform the additional tasks and present our findings to City staff.

FEE ESTIMATE

The detailed fee estimate for the Review of the RP19 Rate Adjustment Application (Index-Based Adjustment) and Technical Assistance is presented in Attachment A.

During the engagement, certain unanticipated matters might arise that could increase our fees, such as: additional meetings and additional review beyond those listed in our Scope of Work. However, if such events occur, we will not exceed this budget without prior approval from the City. If less time is required to complete the scope of work, we will bill you the lesser amount.

HF&H proposes to bill the City on a time-and-materials basis for actual work performed, plus direct expenses (incurred on your behalf related to this project), not to exceed an agreed-upon budget for our scope of services. We will bill the City on a monthly basis. Our hourly professional fees, direct expense policies, billing policies, and invoicing and payment procedures are presented in Attachment B.

STAFFING

The following summarizes the key staff for the scopes of services:

Marva Sheehan, CPA, Vice President – Engagement Director

As Engagement Director, Ms. Sheehan will prepare and supervise the performance of our proposed scope of work, manage the project schedule, and draft the findings and recommendations, as well as any other work products. She will supervise and review the work performed by staff assigned to the project to ensure that it is performed in accordance with the proposed scope of work, our detailed work plans, and meets the City's objectives. Ms. Sheehan will:

- Attend all key meetings with the City, ACI and the Public; and,
- Present our findings and recommendations to the City Council.

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Ms. Sheehan has over 35 years of financial and accounting experience as a consultant and controller, the past 28 years in the solid waste industry. During her 15 years with HF&H, she has managed rate review projects, billing and franchise fee audits, procurement and contract negotiations, and financial and operational reviews for jurisdictions throughout Northern California. She is very familiar with the City's solid waste issues and directed the City's rate adjustment reviews for RP13 through RP18.

Dave Hilton, Project Manager – Engagement Manager – Rate Review

Mr. Dave Hilton, will serve as the Engagement Manager on the RP19 index-based rate adjustment application to be submitted by ACI. Mr. Hilton will prepare and supervise the performance of our proposed scope of work, manage the project schedule, and draft the findings and recommendations, as well as any other work products, for Ms. Sheehan's review. Along with Ms. Sheehan, Mr. Hilton will supervise and review the work performed by staff assigned to the project to ensure that it is performed in accordance with the proposed scope of work, our detailed work plans, and meets the City's objectives.

Mr. Hilton has 8 years of experience in solid waste and recycling field audits, contract analysis, procurement evaluation, rate applications, operational reviews, and surveys. Mr. Hilton worked on rate reviews for the Cities of Pacifica, Union City, San Bruno, as well as the Castro Valley Sanitary District, West Contra Costa Integrated Waste Management Authority, the Central Contra Costa Solid Waste Authority, seven Member Agencies of the Monterey Regional Waste Management District, and the Marin Franchisors Group. He has participated in prior rate adjustment reviews for the City and has a working relationship with ACI from HF&H's projects with other agencies.

Colleen Costine, Senior Associate – Engagement Advisor –

Ms. Colleen Costine will be the Engagement Advisor. As Engagement Advisor, she will be available to provide insight into prior years review results as necessary. She will also ensure there is year over year continuity in the review and the reporting of findings.

Ms. Costine has over 36 years of financial and accounting experience, with over 28 years in the solid waste industry. She has been assigned many projects including: operational reviews; detailed rate application reviews; billing service reviews; contract compliance reviews. She has participated in ten rate adjustment reviews for the City and have developed many of the analyses used during the rate review process.

Lauren Barbieri, Senior Project Manager – Engagement Manager – Contract Services

Ms. Lauren Barbieri will be the Engagement Manager for contract services portion of our Technical Assistance task. As Engagement Manager for the contract services, Ms. Barbieri will prepare for and attend all meetings with the City. She will provide the guidance to the City on the best approach for the upcoming contract activity.

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Ms. Barbieri has over ten years of experience working with government agency/private sector partnerships, with a focus on achieving environmental benefits through franchise arrangements. In 2018, she assisted the City of San Ramon in developing one of the first SB 1383-compliant franchise agreements in the State, and managed competitive negotiations with multiple haulers for both San Ramon and the Castro Valley Sanitary District. She also managed sole source negotiations for unincorporated regions of Nevada County, which position the agency for compliance with SB 1383.

Additional Staff

Ms. Sheehan, Mr. Hilton, and Ms. Barbieri will be assisted by other well-qualified staff in the gathering and analysis of data under their direct supervision. This structure allows not only for the cost-effective performance of service but also the high level of quality assurance that can only be provided through the independent review of the performance of analytical tasks by qualified professionals.

SCHEDULE

Based on the procedures described in the Agreement for performing the review of ACI's application for compensation for RP19, we developed the following preliminary schedule for the performance of the engagement and delivery of key work products.

Milestone	Deliverable	Estimated Completion Date
ACI Delivers RP19 (2020-21) Rate Application		Tuesday, March 31, 2020
Commence Engagement	Kick-Off Agenda	Saturday, April 04, 2020
Review of ACI's Application for RP 19	Adjustment Schedule	Friday, April 24, 2020
Determine ACI's Rate Adjustment for RP 19	Draft Report	Wednesday, May 06, 2020
Review City and/or ACI Comments	Final Report	Friday, May 15, 2020
Council Presentation	Presentation	Tuesday, June 02, 2020

At the commencement of the engagement, we will meet with City staff and ACI's management to review and agree upon a final, more-detailed schedule for the performance of the engagement. We are prepared to commence this engagement promptly and pursue the completion of the engagement diligently. Nevertheless, we are dependent on the performance of certain activities by persons outside our control. Should the engagement become delayed for any reason, we will immediately notify the City.

We will begin our Technical Assistance task upon receipt of the approval to proceed.

ASSUMPTIONS AND LIMITATIONS

HF&H prepared its proposed scope of work, fees, and schedule based on the following assumptions:

- The scope of work described above is different from an audit of financial statements performed in accordance with Generally Accepted Auditing Standards, which is performed by ACI's auditor.

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- We will perform the tasks presented above in a manner that will allow us to achieve the objectives of the review in a cost-effective manner. We will rely on ACI's auditor with regard to matters related to ACI's internal controls. Our testing of ACI's Application (using judgmental samples of transactions and analytical procedures) will only be for the purpose of providing evidence that allows us to reach conclusions and recommendations regarding ACI's Application.
- We will conduct our review in accordance with the rate-setting methodology prescribed in the Agreement. This methodology includes the review of ACI management's projection of the future results of operations. We will review these projections for reasonableness and propose adjustments, as appropriate. We accept no responsibility to update these adjusted projected results after the date of our report. Additionally, the projections result from assumptions regarding future events and management's planned response to them. Frequently, future events do not occur as anticipated and the difference can be material.
- Further, we have not included modifications to any rates or rate structures in our scope of work. If the City would like us to perform modifications to its rate structures, we would be pleased to do and would develop a separate scope of services and fee estimate.

In the event the assumptions above are not correct or are modified during the project work, the City and HF&H agree to discuss the implications to the scope of work, estimated fees, and schedule and amend the consulting services agreement, as appropriate.

* * * *

We appreciate this opportunity to be of continued service to the City. We value our relationship with you and the City and are committed to providing you the highest level of service in the performance of this matter for you.

Very truly yours,
HF&H CONSULTANTS, LLC

A handwritten signature in cursive script, appearing to read 'Marva M. Sheehan'.

Marva M. Sheehan, CPA
Vice President

cc: Liz Acord, City of Alameda
Kimberly Erwin, HF&H
Dave Hilton, HF&H
Lauren Barbieri, HF&H

Attachments:

- (A) Fee Estimate
- (B) Standard Hourly Rates and Billing Arrangements

EXHIBIT A

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EXHIBIT A

ATTACHMENT A

FEE ESTIMATE

**REVIEW OF RP19 RATE ADJUSTMENT APPLICATION
(INDEX-BASED ADJUSTMENT)**

		M. Sheehan \$275	D. Hilton \$220	C. Costine \$215	L. Barbieri \$255	Analyst \$160	Administrative \$110	Total Hours	Proposed Cost
Task 1	Preliminary Application Review	5	15	4	0	18	0	42	\$ 8,415
Task 2	Rate Revenue and Expense Review	11	34	4	0	36	5	90	\$ 17,675
Task 3	Review Commodity Revenue and Update Balancing Account	2	4	1	0	2	0	9	\$ 1,965
Task 4	Prepare and Present Findings & Recommendations	17	24	3	0	16	8	68	\$ 14,040
Task 5	Engagement Management RP19 Index-based Review	5	5	3	2	3	0	18	\$ 4,110
Task 6	Technical Assistance	30	10	5	45	24	8	122	\$ 27,720
Total Labor - All Tasks		70	92	20	47	99	21	349	\$ 73,925
Out-of-Pocket Expenses									\$ 250
Total Budget									\$ 74,175

EXHIBIT A

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EXHIBIT A

ATTACHMENT B

HF&H CONSULTANTS, LLC

STANDARD HOURLY RATES AND BILLING ARRANGEMENTS

(Effective January 1, 2020)¹

Professional Fees

Hourly rates for professional and administrative personnel are as follows:

<u>Position</u>	<u>Rate</u>
President	\$305
Senior Vice President & Vice President	\$260 - \$290
Senior Project Manager	\$240 - \$260
Senior Associate/Project Manager	\$175 - \$240
Associate Analyst	\$160 - \$175
Assistant Analyst	\$120 - \$160
Administrative Staff	\$99 - \$110

Direct Expenses

Standard charges for common direct expenses are as follows:

Automobile Travel	Prevailing IRS mileage rate
Airfare and Public Transit	Actual Cost

Billing Policies

Our policy is to bill for our services based on the standard hourly rates of the staff member assigned, multiplied by the time required to perform the client-related tasks, plus the direct expenses as described above. In implementing this policy we adhere to the following practices:

- It is our standard practice to e-mail invoices to our clients, although hard copies of invoices can be sent to clients on request.
- We round to the nearest one-quarter hour (e.g., if two hours and 55 minutes are spent on a task, it is recorded as three hours, if two hours and 5 minutes are spent on a task, it is recorded as two hours). A minimum charge of one-quarter hour is charged for any client work performed in a day.
- We do not markup out-of-pocket expenses, however, we may charge administrative or professional time related to the provision of the goods and services associated with these charges.
- If subcontractors are used, HF&H reserves the right to charge a 5% markup should the subcontractor's services require cumbersome administrative oversight (e.g., multiple subcontractors; engagement turns out to solely require services of subcontractor, but HF&H as the prime must prepare billings).
- Mileage fees are based on the round-trip distance from the point of origin.

¹ Litigation Support and Expert Witness Services are not covered by this schedule of fees and expenses.

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HF&H CONSULTANTS, LLC

STANDARD HOURLY RATES AND BILLING ARRANGEMENTS

- If a client's change to a previously scheduled meeting results in penalties being assessed by a third party (e.g., airline cancellation fee), then the client will bear the cost of these penalties.

While no minimum fee for a consulting engagement has been established, it is unlikely (given the nature of our services) that we can gain an understanding of a client's particular requirement, identify alternatives, and recommend a solution in less than twenty-four consulting hours.

Insurance

We maintain the following policies of insurance with carriers doing business in California:

- Comprehensive General Liability Insurance (\$2,000,000 Occurrence/\$4,000,000 Aggregate)
- Workers' Compensation (\$1,000,000)
- Professional Liability Insurance (\$2,000,000 Occurrence/\$2,000,000 Aggregate)
- Hired and Non-Owned Auto Liability² (\$2,000,000)
- Umbrella Liability (\$3,000,000 Occurrence/\$3,000,000 Aggregate)

All costs incurred in complying with additional coverages or limits (excluding additional insured and waiver of subrogation endorsements) become the responsibility of the client and are not included in the fees for services or direct charges but are billed in addition to the contract at cost, plus any professional or administrative fees.

Invoices and Payment for Services

Our time reporting and billing system has certain standard formats that are designed to provide our clients with a detailed invoice of the time and charges associated with their engagement. (We typically discuss these with our clients at our kick-off meeting.) We are also pleased to provide our clients with a custom invoice format but we will have to bill the client for time spent conforming our invoices to their unique requirements.

Billings for professional services and charges are submitted every month, in order that our clients can more closely monitor our services.

² HF&H Consultants does not own any company automobiles.



Mr. Liam Garland

May 4, 2020

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SCOPE OF WORK

Task 1: Process Design

In Task 1, HF&H will perform the following tasks which are specifically planned and sequenced to develop consensus through the City, from program staff, through management, and ultimately with the City Council, about the future policy decisions, business terms, and services that will be a part of the future franchise agreement. This process will be designed and facilitated by HF&H to thoroughly review the options the City has in dozens of different areas affecting the solid waste system, consider alternatives to current practices, and make decisions about how the future system should look, whether it is with ACI or another provider. HF&H will perform the following tasks:

1. Develop the Process Design Outline for all policy, business term, service, and regulatory compliance issues for the upcoming franchise.
2. Review the current franchise agreement and document current practices in the Process Design Outline.
3. Facilitate up to twenty (20) hours of meetings (up to five four-hour sessions) with solid waste program staff to discuss key issues and alternatives and complete the Design Recommendation to Senior Management.
4. Perform SB 1383 compliance gap analysis to ensure the franchise includes all appropriate SB 1383 requirements to be performed by the contractor and/or City.
5. Document Proposed Process Design for Senior Management and City Council (PowerPoint-style).
6. Facilitate one (1) meeting (up to 2 hours) with Senior City Management to present/discuss Proposed Process Design.
7. Revise Proposed Process Design based on Senior City Management input.
8. Prepare for and participate in one (1) stakeholder engagement workshop regarding the Proposed Process Design.
9. Prepare for and attend one (1) City Council Meeting to present the Proposed Process Design and receive City Council input.
10. Any final changes to the process design directed by City Council will be made directly in the documents prepared as part of Task 2.

Task 2: Prepare Sole Source RFP Package

In Task 2, HF&H will prepare the Sole Source RFP documents which will provide the basis for the negotiations discussions. In the event that the City and ACI are unable to reach agreement satisfactory to



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Robert C. Hilton, CMC

May 4, 2020

Mr. Liam Garland
Public Works Director
City of Alameda
950 West Mall Square, First Floor
Alameda, California 94501-7552

Subject: Proposal for Solid Waste Procurement Services

Dear Mr. Garland:

HF&H Consultants, LLC (HF&H) appreciates the opportunity to assist the City of Alameda (City) in securing a new solid waste franchise agreement at the end of the current term with the City's current franchise hauler, Alameda County Industries (ACI). This proposal describes our proposed approach, scope of work, fee estimate, staffing, and tentative schedule for the performance of this project. We would be pleased to discuss any of these matters with you and, if appropriate, amend this proposal to better meet your needs.

PROPOSED APPROACH

Our goal through this process is to provide the City with a negotiations and/or competitive procurement process that will be efficient, uncontentious, and fruitful in terms of service changes/enhancements, reasonable contract terms and conditions, and acceptable cost/rate impacts. HF&H understands that City Council has directed City staff to negotiate sole source with ACI prior to opening the process up to other potential bidders. In addition, HF&H understands that the City and ACI will agree to a short term extension to the existing agreement that will allow adequate time for the negotiations process, as well as some contingency in the event that negotiations are unsuccessful.

In response to this direction, we have presented a "Sole Source RFP" approach to help the City avoid common traps and pitfalls often present in traditional sole source negotiations. HF&H has successfully used this Sole Source RFP approach with the Cities of Mountain View, Pleasanton, and Hayward, the South Bayside Waste Management Authority, Town of Truckee, and County of Nevada. In the event that the City and ACI are unable to arrive at a satisfactory arrangement through sole source negotiations, we have also presented our proposed approach for efficiently pivoting into a competitive procurement process.



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City Council, HF&H will use the Sole Source RFP documents as the basis for the Competitive RFP documents (Contingency Task 4). HF&H will perform the following tasks:

1. Develop a draft franchise agreement, a draft mini-RFP, and draft proposal cost forms (Draft RFP Package) based on the Phase 1 Process Design Outline for all policy, business term, service, and regulatory compliance areas required for the upcoming franchise. Note that the mini-RFP will not include a request for ACI qualifications, nor detailed program, customer, and demographic information, since neither is necessary for a sole source process.
2. Provide the Draft RFP Package to the City staff for review and comment, followed by one (1) meeting or conference call to review and discuss the comments. HF&H requests that the City consolidate all comments into one response document and ensure that a party is assigned to clarify issues and resolve any conflicting comments/direction that may have been provided.
3. Prepare a revised Draft RFP Package based on comments provided by City staff.
4. Provide the revised Draft RFP Package to the City Attorney and to City senior management for review and comment, followed by one (1) meeting or conference call to review and discuss Legal and Management comments.
5. Prepare a final Sole Source RFP Package based on final City comments.

Task 3: Sole-Source Negotiations

In Task 3, HF&H will provide the Sole Source RFP Package to ACI, evaluate materials subsequently provided by ACI, and engage in negotiations discussions with ACI management staff. HF&H has recently engaged in competitive and sole source negotiations with the ACI management team in other local jurisdictions. This experience provides HF&H the ability to efficiently navigate otherwise tough issues and identify actionable solutions that fit within ACI's existing operating structure. HF&H will perform the following tasks:

1. Conduct every-other-week pre-negotiations meetings (up to 5) with ACI during the preparation of the Sole Source RFP Package (Task 2) to inform approach to issues where City desires cooperative development of solutions or where the operational nature of the issue requires contractor input.
2. Provide the Sole Source RFP Package to ACI.
3. Answer clarifying questions from ACI regarding the Sole Source RFP process generally, as well as specific questions related to the Sole Source RFP documents.
4. Evaluate and analyze proposal materials submitted by ACI in response to the Sole Source RFP.
5. Facilitate two (2) negotiations meetings with ACI and City negotiating team.
6. Prepare for and facilitate one (1) stakeholder engagement workshop regarding the status and/or results of the negotiations process.



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7. Prepare for and attend one (1) City Council Meeting to present the status and/or results of the negotiations process and receive City Council input.
8. Facilitate one (1) final negotiation meeting following receipt of City Council and stakeholder input.
9. Perform cost analysis to establish proposed new customer rates.
10. Prepare for and attend one (1) City Council Meeting to present the final negotiated agreement and proposed rates.
11. Assist with final agreement document preparation, if so directed by City Council. Note that this proposal assumes that City staff will manage final legal review and document production for signatures. (Note that if City Council directs City staff to engage in a competitive RFP process, this task will be performed under Phase 4).

Task 4 (Contingency): Competitive RFP

In the event that the City and ACI are unable to reach agreement through negotiations satisfactory to City Council, HF&H will assist the City in preparing for a competitive RFP process. HF&H will develop a full Competitive RFP Package, as well as manage the RFP release, pre-proposal process, proposal evaluation, and final contract negotiations. HF&H will perform the following tasks:

1. Gather detailed program, customer, and demographic data from City and ACI for inclusion in Competitive RFP Package.
2. Transfer Sole Source RFP content into Competitive RFP Package, expand content to include request for proposer qualifications, and detailed program, customer, and demographic data.
3. Provide the Draft Competitive RFP Package to the City staff for review and comment, followed by one (1) meeting or conference call to review and discuss the comments.
4. Prepare a revised Draft Competitive RFP Package based on comments provided by City staff.
5. Provide the revised Draft Competitive RFP Package to the City Attorney and to City senior management for review and comment, followed by one (1) meeting or conference call to review and discuss Legal and Management comments.
6. Prepare a Final Competitive RFP Package based on final City comments.
7. Manage Competitive RFP release and pre-proposal process (including preparing for and attending pre-proposal meeting, receiving and responding to proposer questions, and issuing RFP addenda as needed).
8. Conduct preliminary review of submitted proposals for RFP compliance, followed by detailed technical and cost proposal evaluation, including proposer interviews.



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9. Prepare for and attend one (1) City Council Meeting to present the proposal evaluation results and receive City Council input.
10. Negotiate agreement terms with final proposer (pending evaluation results and City Council direction).
11. Prepare for and attend up to two (2) City Council Meetings to present the final negotiated agreement and proposed rates.
12. Assist with final agreement document preparation. Note that this proposal assumes that City staff will manage final legal review and document production for signatures.

FEE ESTIMATE

HF&H proposes to perform the above scope of work on a time and materials basis with a not to exceed a total budget of \$99,755 (exclusive of Contingency Task 4 and net of the existing authorized budget to begin the planning for this work), as shown in Figure 1 below, consistent with our billing terms (Attachment A). This reflects our best estimate of the effort required to perform the scope of work, however we respectfully reserve the right to reallocate budget between tasks, within the not-to-exceed total, to meet the needs of the project as it actually unfolds.

Figure 1: Proposed Fee Estimate

Task Description		Total Hours	Total Proposed Cost
Task 1	Process Design	156	\$ 35,985
Task 2	Prepare Sole Source RFP Package	150	\$ 30,155
Task 3	Sole-Source Negotiations	200	\$ 47,980
	Engagement Management	12	\$ 3,060
	Existing Technical Assistance Budget Deduction	-78	\$ (17,925)
	Total Labor - All Tasks	440	\$ 99,255
	Out-of-Pocket Expenses		\$ 500
	Total Budget		\$ 99,755
Task 4	Competitive RFP (Contingency)	345	\$ 74,025

SCHEDULE

Based on discussions between the City and ACI, HF&H understands that the goal is to proceed as promptly as possible with the negotiations process, but with an understanding that the current COVID-19 pandemic has and will continue to create impacts on the ability of the parties to fully engage and be available for meetings as they might otherwise. The Task 1 design process should be concluded by May 22, except that the City Council presentation would not likely happen until July. The Task 2 RFP package work will happen



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during May with a goal of providing documents to ACI by June 12. HF&H will work with ACI during the pre-negotiations meetings and during the development of the RFP package to provide them information as early as possible to allow them to get ahead of proposal preparation. HF&H assumes that we will have a proposal from ACI in July and that negotiations would be conducted, in earnest, during late July and August with the potential to bring information to City Council in September (Task 3.7). Assuming that City Council approves of the deal terms and services presented, HF&H would work with the City and ACI to conclude negotiations and bring a final agreement for approval by Council during November or December.

* * * * *

HF&H sincerely appreciates the opportunity to support the City on this important effort. If you have any questions or concerns regarding this proposal, please do not hesitate to contact me directly at (925) 977-6959 or rchilton@hfh-consultants.com.

Very truly yours,
HF&H Consultants, LLC

A handwritten signature in black ink, appearing to read 'Rob Hilton', is written over a horizontal line.

Rob Hilton, CMC
President

Attachment A: HF&H STANDARD HOURLY RATES AND BILLING ARRANGEMENTS

(Effective January 1, 2020)¹

Professional Fees

Hourly rates for professional and administrative personnel are as follows:

<u>Position</u>	<u>Rate</u>
President	\$305
Senior Vice President & Vice President	\$260 - \$290
Senior Project Manager	\$240 - \$260
Senior Associate/Project Manager	\$175 - \$240
Associate Analyst	\$160 - \$175
Assistant Analyst	\$120 - \$160
Administrative Staff	\$99 - \$110

Direct Expenses

Standard charges for common direct expenses are as follows:

Automobile Travel	Prevailing IRS mileage rate
Airfare and Public Transit	Actual Cost

Billing Policies

Our policy is to bill for our services based on the standard hourly rates of the staff member assigned, multiplied by the time required to perform the client-related tasks, plus the direct expenses as described above. In implementing this policy we adhere to the following practices:

- It is our standard practice to e-mail invoices to our clients, although hard copies of invoices can be sent to clients on request.
- We round to the nearest one-quarter hour (e.g., if two hours and 55 minutes are spent on a task, it is recorded as three hours, if two hours and 5 minutes are spent on a task, it is recorded as two hours). A minimum charge of one-quarter hour is charged for any client work performed in a day.
- We do not markup out-of-pocket expenses, however, we may charge administrative or professional time related to the provision of the goods and services associated with these charges.
- If subcontractors are used, HF&H reserves the right to charge a 5% markup should the subcontractor's services require cumbersome administrative oversight (e.g., multiple subcontractors; engagement turns out to solely require services of subcontractor, but HF&H as the prime must prepare billings).

¹ Litigation Support and Expert Witness Services are not covered by this schedule of fees and expenses.

HF&H CONSULTANTS, LLC STANDARD HOURLY RATES AND BILLING ARRANGEMENTS

- Mileage fees are based on the round-trip distance from the point of origin.
- If a client's change to a previously scheduled meeting results in penalties being assessed by a third party (e.g., airline cancellation fee), then the client will bear the cost of these penalties.

While no minimum fee for a consulting engagement has been established, it is unlikely (given the nature of our services) that we can gain an understanding of a client's particular requirement, identify alternatives, and recommend a solution in less than twenty-four consulting hours.

Insurance

We maintain the following policies of insurance with carriers doing business in California:

- Comprehensive General Liability Insurance (\$2,000,000 Occurrence/\$4,000,000 Aggregate)
- Workers' Compensation (\$1,000,000)
- Professional Liability Insurance (\$2,000,000 Occurrence/\$2,000,000 Aggregate)
- Hired and Non-Owned Auto Liability² (\$2,000,000)
- Umbrella Liability (\$3,000,000 Occurrence/\$3,000,000 Aggregate)

All costs incurred in complying with additional coverages or limits (excluding additional insured and waiver of subrogation endorsements) become the responsibility of the client and are not included in the fees for services or direct charges but are billed in addition to the contract at cost, plus any professional or administrative fees.

Invoices and Payment for Services

Our time reporting and billing system has certain standard formats that are designed to provide our clients with a detailed invoice of the time and charges associated with their engagement. (We typically discuss these with our clients at our kick-off meeting.) We are also pleased to provide our clients with a custom invoice format but we will have to bill the client for time spent conforming our invoices to their unique requirements.

Billings for professional services and charges are submitted every month, in order that our clients can more closely monitor our services.

² HF&H Consultants does not own any company automobiles.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/06/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Newfront Insurance Services, LLC 55 2nd Street Floor 18 San Francisco CA 94105		CONTACT NAME: Dylon Riley PHONE (A/C, No, Ext): (415) 754-3635 E-MAIL ADDRESS: dylon.riley@newfront.com FAX (A/C, No):													
INSURED HF&H Consultants, LLC 201 N Civic Dr #230 Walnut Creek CA 94596		INSURER(S) AFFORDING COVERAGE <table border="1"><tr><td>INSURER A: Citizens Ins Co of America</td><td>NAIC # 31534</td></tr><tr><td>INSURER B: Hartford Casualty Ins Co</td><td>29424</td></tr><tr><td>INSURER C: Gemini Insurance Company</td><td>10833</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>		INSURER A: Citizens Ins Co of America	NAIC # 31534	INSURER B: Hartford Casualty Ins Co	29424	INSURER C: Gemini Insurance Company	10833	INSURER D:		INSURER E:		INSURER F:	
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INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	OBF-D681476-02	09/06/2019	09/06/2020	EACH OCCURRENCE \$ 2,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000						
	MED EXP (Any one person) \$ 10,000						
	PERSONAL & ADV INJURY \$ 2,000,000						
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	OBF-D681476-02	09/06/2019	09/06/2020	COMBINED SINGLE LIMIT (Ea accident) \$ INCLUDED
	BODILY INJURY (Per person) \$						
	BODILY INJURY (Per accident) \$						
	PROPERTY DAMAGE (Per accident) \$						
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$			OBF-D681476-02	09/06/2019	09/06/2020	EACH OCCURRENCE \$ 3,000,000
	AGGREGATE \$ 3,000,000						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/>	N/A	57 WEC ZR5765	09/06/2019	09/06/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	E.L. EACH ACCIDENT \$ 1,000,000						
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000						
	E.L. DISEASE - POLICY LIMIT \$ 1,000,000						
C	Errors & omissions			VCPL065988	09/06/2019	09/06/2020	General aggregate: \$2,000,000 Retention: \$10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Alameda, its City Council, boards and commissions, officials & employees and volunteers are included as additional insured per written contract or agreement. Waiver of subrogation applies.

OK. 4/23/20 *ll***CERTIFICATE HOLDER****CANCELLATION**

City of Alameda, Public Works Department Alameda Point, Building 1 950 West Mall Square, Room 110 Alameda CA 94501-7558	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>[Signature]</i>

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SUMMARY OF COVERAGES	Limits	Page
1. Additional Insured by Contract, Agreement or Permit	Included	1
2. Additional Insured - Broad Form Vendors	Included	2
3. Alienated Premises	Included	3
4. Broad Form Property Damage - Borrowed Equipment, Customers Goods and Use of Elevators	Included	3
5. Incidental Malpractice (Employed Nurses, EMT's and Paramedics)	Included	3
6. Personal and Advertising Injury - Broad Form	Included	4
7. Product Recall Expense	Included	4
Product Recall Expense Each Occurrence Limit	\$25,000 Occurrence	5
Product Recall Expense Aggregate Limit	\$50,000 Aggregate	5
Product Recall Deductible	\$500	5
8. Unintentional Failure to Disclose Hazards	Included	6
9. Unintentional Failure to Notify	Included	6

This endorsement amends coverages provided under the Businessowners Coverage Form through new coverages and broader coverage grants. This coverage is subject to the provisions applicable to the Businessowners Coverage Form, except as provided below.

The following changes are made to **SECTION II - LIABILITY**:

1. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured**:

Additional Insured by Contract, Agreement or Permit

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit to add such person or organization as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

- (2) Premises you own, rent, lease or occupy; or

- (3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

- (1) Only applies to the extent permitted by law; and

- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.

- (4) Will not be broader than coverage provided to any other insured.

- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

c. This provision does not apply:

- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor.
- (4) To any:
 - (a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

- e. All other insuring agreements, exclusions, and conditions of the policy apply.

2. **Additional Insured - Broad Form Vendors**

The following is added to **SECTION II - LIABILITY, C. Who is An Insured**:

Additional Insured - Broad Form Vendors

- a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.
- b. The insurance afforded to such vendor described above:
 - (1) Only applies to the extent permitted by law;
 - (2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;
 - (3) Will not be broader than coverage provided to any other insured; and
 - (4) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto
- c. With respect to insurance afforded to such vendors, the following additional exclusions apply:

The insurance afforded to the vendor does not apply to:

 - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reasons of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
 - (2) Any express warranty unauthorized by you;

- (3) Any physical or chemical change in the product made intentionally by the vendor;
 - (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;
 - (5) Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product;
 - (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
 - (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or
 - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
 - (9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.
 - (10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
 - (11) Any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- d. With respect to the insurance afforded to these vendors, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

The most we will pay on behalf of the vendor for a covered claim is the lesser of the amount of insurance:

1. Required by the contract or agreement described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

3. Alienated Premises

SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage k. Damage to Property, paragraph (2) is replaced by the following:

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises and occurred from hazards that were known by you, or should have reasonably been known by you, at the time the property was transferred or abandoned.

4. Broad Form Property Damage - Borrowed Equipment, Customers Goods, Use of Elevators

- a. The following is added to **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage, k. Damage to Property:**

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraph (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor to the use of elevators.

- b. For the purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**

1. "Customers goods" means property of your customer on your premises for the purpose of being:

- a. Worked on; or
- b. Used in your manufacturing process.

- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent or on any other basis.

5. Incidental Malpractice - Employed Nurses, EMT's and Paramedics

SECTION II - LIABILITY, C. Who Is An Insured, paragraph 2.a.(1)(d) does not apply to a nurse,

emergency medical technician or paramedic employed by you if you are not engaged in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.

6. Personal Injury - Broad Form

a. **SECTION II - LIABILITY, B. Exclusions, 2. Additional Exclusions Applicable only to "Personal and Advertising Injury"**, paragraph e. is deleted.

b. **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, 14. "Personal and advertising injury"**, paragraph b. is replaced by the following:

b. Malicious prosecution or abuse of process.

c. The following is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, Definition 14. "Personal and advertising injury"**:

"Discrimination" (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such "discrimination" is:

(1) Not done intentionally by or at the direction of:

(a) The insured;

(b) Any officer of the corporation, director, stockholder, partner or member of the insured; and

(2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.

d. For purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions**:

1. "Discrimination" means the unlawful treatment of individuals based upon race, color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.

e. This coverage does not apply if liability coverage for "personal and advertising injury" is excluded either by the provisions of the Coverage Form or any endorsement thereto.

7. Product Recall Expense

a. **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage,**

o. Recall of Products, Work or Impaired Property is replaced by the following:

o. Recall of Products, Work or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

If such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it, but this exclusion does not apply to "product recall expenses" that you incur for the "covered recall" of "your product".

However, the exception to the exclusion does not apply to "product recall expenses" resulting from:

(4) Failure of any products to accomplish their intended purpose;

(5) Breach of warranties of fitness, quality, durability or performance;

(6) Loss of customer approval, or any cost incurred to regain customer approval;

(7) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;

(8) Caprice or whim of the insured;

(9) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;

(10) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or

(11) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.

b. The following is added to **SECTION II - LIABILITY, C. Who Is An Insured, paragraph 3.b.**:

"Product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

- c. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance:**

Product Recall Expense Limits of Insurance

- a. The Limits of Insurance shown in the SUMMARY OF COVERAGES of this endorsement and the rules stated below fix the most that we will pay under this Product Recall Expense Coverage regardless of the number of:
- (1) Insureds;
 - (2) "Covered Recalls" initiated; or
 - (3) Number of "your products" withdrawn.
- b. The Product Recall Expense Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.
- c. The Product Recall Each Occurrence Limit is the most we will pay in connection with any one defect or deficiency.
- d. All "product recall expenses" in connection with substantially the same general harmful condition will be deemed to arise out of the same defect or deficiency and considered one "occurrence".
- e. Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Product Recall Expense Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.
- f. If the Product Recall Expense Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Product Recall Expense Each Occurrence Limit, the remaining Aggregate Limit is the most that will be available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.
- g. **Product Recall Deductible**
We will only pay for the amount of "product recall expenses" which are in excess of the \$500 Product Recall Deductible. The Product Recall Deductible applies separately to each "covered recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount, if applicable. Upon notice of our payment

of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

The Product Recall Expense Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

- d. The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expense General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
 - (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance.
- e. For the purpose of this endorsement, the following definitions are added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**
1. "Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".
 2. "Product recall expense(s)" means:
 - a. Necessary and reasonable expenses for:
 - (1) Communications, including radio or television announcements or printed advertisements including stationary, envelopes and postage;

- (2) Shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
 - (3) Remuneration paid to your regular "employees" for necessary overtime;
 - (4) Hiring additional persons, other than your regular "employees";
 - (5) Expenses incurred by "employees" including transportation and accommodations;
 - (6) Expenses to rent additional warehouse or storage space;
 - (7) Disposal of "your product", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal,
- you incur exclusively for the purpose of recalling "your product"; and
- b. Your lost profit resulting from such "covered recall".
- f. This Product Recall Expense Coverage does not apply:
- (1) If the "products - completed operations hazard" is excluded from coverage under this Coverage Part including any endorsement thereto; or
 - (2) To "product recall expense" arising out of any of "your products" that are otherwise excluded from coverage under this Coverage Part including endorsements thereto.
8. **Unintentional Failure to Disclose Hazards**
- The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions:**
- Representations**
- We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.
9. **Unintentional Failure to Notify**
- The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**
- Your rights afforded under this Coverage Part shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury", "property damage" or "personal and advertising injury" is not covered under this Policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

1. **SECTION I - PROPERTY**, if two or more of this coverage part's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.
2. **SECTION II - LIABILITY**, it is our stated intent that the various Coverage Parts, forms, endorsements or policies issued to the named insured by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same claim, "suit", "occurrence", offense, accident, "wrongful act" or loss. We will not pay more than the actual amount of the loss or damage.

If this Coverage Part and any other Coverage Part, form, endorsement or policy issued to the named insured by us, or any company affiliated with us, apply to the same claim, "suit", occurrence, offense, accident, "wrongful act" or loss, the maximum Limit of Insurance under all such Coverage Parts, forms, endorsements or policies combined shall not exceed the highest applicable Limit of Insurance under any one Coverage Part, form, endorsement or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

G. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

H. Other Insurance

1. SECTION I - PROPERTY

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But, we will not pay more than the applicable Limit of Insurance of **SECTION I - PROPERTY**.

2. SECTION II - LIABILITY

If other valid and collectible insurance is available to the insured for a loss we cover under **SECTION II - LIABILITY**, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in paragraph c. below.

However, if you agree in a written contract, written agreement, or written permit that the insurance provided to any person or organization included as an Additional Insured under this Coverage Part is primary and non-contributory, we will not seek contribution from any other insurance available to that Additional Insured which covers the Additional Insured as a Named Insured except:

- (1) For the sole negligence of the Additional Insured; or
- (2) When the Additional Insured is an Additional Insured under another liability policy.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Property Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION II - LIABILITY, Exclusion g. Aircraft, Auto or Watercraft**; and
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under **SECTION II - LIABILITY** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

4. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

6. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

7. Representations Or Fraud

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us;

c. We have issued this policy in reliance upon your representations; and

d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

8. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

9. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER FROM
OTHERS ENDORSEMENT - CALIFORNIA**

Policy Number: 57 WEC ZR5765

Endorsement Number:

Effective Date: 09/06/19

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: HF&H CONSULTANTS LLC
201 N CIVIC DR STE 230
WALNUT CREEK CA 94596

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

Any person or organization from whom you are required by written contract or agreement to obtain this waiver of rights from us

Countersigned by _____

Authorized Representative