

AGREEMENT **AMENDMENT** **BOARD REPORT FOR PRE-APPROVAL**

Vendor Name: MSW Consultants

Title/Brief Description of Document: Contract with MSW Consultants for the provision of rate analysis services of commercial and other rates, as well as newly proposed food scraps collection services.

Originating Dept: Health/Environmental **Dept Contact WITH Phone #:** Teresa Rios Ext 8979

This Agreement or Amendment requires Board Approval: Yes No

This Agreement requires an MYA: Yes No

AGREEMENT TYPE

<input checked="" type="checkbox"/> RQNSA – Standard Agreement	<input type="checkbox"/> RQNS – Non-Standard Agreement
<input type="checkbox"/> RQNIT – ITD Standard Agreement	<input type="checkbox"/> RQNIN – ITD Non-Standard Agreement
<input type="checkbox"/> RQNPB – Pre-Board Standard Agreement	<input type="checkbox"/> Non-Standard Board Agreement (Not to be tracked within RQN)
<input checked="" type="checkbox"/> Insurance & Endorsement Current	<input checked="" type="checkbox"/> VDR & Non-Resident State Forms Verified

JS
10/8

ROUTING AND APPROVALS*

Each Approving Authority is requested to forward the Service Contract to the next Approving Authority in the order listed herein. Thank you.

	Approving Authority:	Approval Initials	Comments:	Date Reviewed
1st	ITD (for all ITD related contracts)		Not Applicable	
2nd	County Counsel (required)	<i>[Signature]</i>	Mary Perry 2 days orig.	10/7/2015
3rd	Risk Management (non-standard insurance and/or indemnity provisions)		Not Applicable	
4th	Auditor-Controller (required)	<i>[Signature]</i>	Gary Giboney	10-7-15
5th	Contracts/Purchasing (required)	<i>[Signature]</i>	Gina Encallado	10-15-15
	Return to Originating Department Instructions		Teresa Rios Ext 8979 Stephanie Luna Ext 4540	

Vendor will need to provide current Insurance document prior to starting work

* In the event that one of the approving authorities has an issue with the document and will not sign, the document shall be returned immediately to the originating department's key contact person identified herein along with a brief written explanation regarding the issue. Once that issue is corrected, the originating department shall restart the routing process again from the beginning by resubmitting the document through the approval process. The original Routing Form should be included for reference.

MYA #: _____

**COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

MSW Consultants

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide proposal evaluation, rate analysis, other analytical and technical assistance services related to the exclusive franchise agreement for collection of solid waste, recyclables and green waste in unincorporated Monterey County.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 76,500.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from September 21, 2015 to June 30, 2020, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

**HEALTH DEPARTMENT
SEP 29 2015
ENVIRONMENTAL HEALTH**

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 **Other Requirements:**

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Terea Rios, Management Analyst III	David L. Davis, Principal
Name and Title	Name and Title
1270 Natividad Road Salinas, CA 93906	27393 Ynez Road, Suite 259 Temecula, CA 92591
Address	Address
Phone 831-755-8979 Fax: 831-755-4780	951-694-4001
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Officer

MSW Consultants

Contractor's Business Name*

Date: 10-9-15

By: [Signature]
Department Head (if applicable)

By: [Signature]
(Signature of Chair, President, or Vice-President)*

Date: _____

David Davis, President
Name and Title

Approved as to Form¹ [Signature]

Date: 9-25-15

By: [Signature]
Deputy County Counsel

Date: 10-7-15
MARY GRACE PERRY

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Approved as to Fiscal Provisions²

Chrisinda J. Davis, CFO
Name and Title

By: [Signature]
Auditor/Controller

Date: 10-7-15

Date: 9-25-15

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 7 or 8

EXHIBIT-A

**To
Professional Service Agreement
Between
Monterey County Health Department, Environmental Health Bureau (COUNTY)
AND
MSW Consultants (CONTRACTOR)**

Scope of Services / Payment Provisions

A. SCOPE OF SERVICES

- A.1 The CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
- A.1.A By October 30, 2015 CONTRACTOR shall provide an analysis of the difference in Carmel Marina's collection rates between the Salinas Valley Solid Waste Authority (SVSWA) and the Monterey Regional Waste Management District (MRWMD) under the Unified Franchise Agreement (UFA). The analysis should include a determination of how much of the difference is due to tipping fees, and how much is due to other factors.
 - A.1.B By October 30, 2015 CONTRACTOR shall evaluate the analysis of this issue conducted by the Authority. Provide a comparison of the Authority's analysis with CONTRACTOR's analysis.
 - A.1.C By October 30, 2015 CONTRACTOR shall develop decision-making model options for COUNTY's review.
- A.2 Upon request and written approval from COUNTY, assist COUNTY in analyzing and evaluating proposals from Carmel Marina for additional waste diversion programs and/or other requests from franchise hauler that may have an impact on the customer rates. This includes but not limited to a commercial food waste collection program.
- A.3 Upon request and written approval from COUNTY, assist COUNTY in evaluating up to four contractual rate adjustments requested by Carmel Marina pursuant to the UFA.

- A.4 Upon request and written approval from COUNTY, CONTRACTOR shall provide additional contractual evaluation and rate analysis services of new and/or existing services, including but not limited to:
- Confirm whether Carmel Marina has achieved the minimum waste diversion rates pursuant to Section 14 of the UFA.
 - Verify accuracy of rates charged to customers by Carmel Marina.
 - Verify accuracy of franchise and administrative fees paid by Carmel Marina.
- A.5 Upon request and written approval from COUNTY, CONTRACTOR shall perform other analytical tasks and provide other technical assistance as requested by COUNTY.
- A.6 Upon request from COUNTY for any additional services, CONTRACTOR shall provide a written proposal and estimated cost at a rate of \$155.00 per hour for work performed by the Principal and \$145.00 per hour for work performed by a Senior Associate. Services will commence upon written approval from COUNTY.

For each project,

- CONTRACTOR shall provide a proposal detailing the approach, milestones, deliverables, and timeline for the completion of the project.
- CONTRACTOR shall provide COUNTY staff with an inventory of information CONTRACTOR needs.
- CONTRACTOR shall review background materials and prepare for a kickoff meeting with COUNTY staff.
- Maintain the information it gathers in a Microsoft SharePoint online document-sharing portal or other document sharing portal as agreed to with COUNTY. COUNTY staff and CONTRACTOR shall have shared online access to the information CONTRACTOR gathers.
- CONTRACTOR shall develop tools using an Excel Workbook or other format as appropriate for use by CONTRACTOR and by COUNTY as a decision-making tool.
- CONTRACTOR shall conduct a project kickoff meeting with COUNTY staff.
- CONTRACTOR shall organize and analyze the information it gathers.
- CONTRACTOR shall evaluate the information for reasonableness based on its industry experience.

- CONTRACTOR shall meet with County staff to review its analysis and preliminary evaluation and shall make any revisions to preliminary evaluation as needed.
- CONTRACTOR shall prepare a draft report for COUNTY's review.
- CONTRACTOR shall provide a final copy of the report to COUNTY.
- CONTRACTOR'S report shall be concise and suitable for presentation to the Monterey County Board of Supervisors.
- Reports may be organized in the following manner:
 - Executive Summary
 - Background
 - Project Objective and Approach
 - Description and Analysis
 - Findings and Recommendations

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

DEPARTMENT shall pay an amount not to exceed \$76,500 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the rates in table A-1 shown below:

	Description	Amount
A.1.1	Analysis of the difference in Carmel Marina's collection rates between the SVSWA and the MRWMD. Evaluate the analysis of this issue conducted by the Authority. Provide a comparison of the Authority's analysis with CONTRACTOR's analysis and decision-making models.	20,000
A.2	Analysis and evaluation of proposals from Carmel Marina for additional waste diversion programs and/or other requests from franchise hauler that may have an impact on the customer rates. This includes but not limited to a commercial food waste collection program.	10,000
A.3	Upon request and approval from COUNTY, assist COUNTY in evaluating up to four contractual rate adjustments requested by Carmel Marina pursuant to the UFA.	10,000

A.4	Upon request from COUNTY, CONTRACTOR shall provide additional contractual evaluation and rate analysis services of new and/or existing services.	24,000
A.5	Perform other analytical tasks and provide other technical assistance as requested by COUNTY.	10,000
	Estimated Expenses (e.g. travel if requested by COUNTY)	2,500
	Total	\$76,500

B.2 EXPENSES

B.2.1 CONTRACTOR shall receive reimbursement for travel and other expenses. In order to be reimbursed for travel costs, Contractor must comply with Monterey County Travel Policy which is available on the County website at: <http://www.co.monterey.ca.us/auditor/pdfs/travelpolicy2008.pdf> . Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

B.2.2 The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$2,500.00, which amount is included in the agreement total above within Section B.1, "Compensation/Payment."

B.3 CONTRACTORS BILLING PROCEDURES

CONTRACTOR will invoice the County monthly. CONTRACTOR'S invoices will describe the work performed and extend the hours worked each day by the hourly billing rate. CONTRACTOR'S invoices will be due in 30 days.

If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany each expense item in order to receive reimbursement.

COUNTY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the County.

The County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

County of Monterey
General Services- Contracts/Purchasing Division
JUSTIFICATION OF SOLE SOURCE/SOLE BRAND REQUEST

Purchase Requisition Number _____

Date: August 11, 2015

Description of Item: provide rate analysis services of commercial and other rates, as well as a newly proposed food scraps collection service that complies with AB1826 to be added to the Unified Franchise Agreement for the collection of solid waste, recyclables, and green waste in unincorporated Monterey County.

1. Please indicate the following:

Procurement: Goods
 Services

(Check One)

Sole Source: Item is available from one source only. Item is a one-of-a kind and is not sold through distributors. Manufacturer is exclusive distributor.

Sole Brand: Various sources can supply the specified model and brand and competitive bids will be solicited for the requested brand only. Meets form, fit and function- nothing else will do.

Note: Sole Source/Sole Brand Requests are not maintained as a standing request. Each request is for a single one-time purchase only.

2. Vendor Selection:

Preferred Vendor
 Sole Source

Vendor Name: MSW Consultants
Address: 27393 Ynez Rd. City: Temecula State: CA 92591
Phone Number: (951) 694-4001 Fax: (951) 694-9001
Contact Person David L. Davis, CMA Title: Principal
Federal Employer #: 553-31-8160

3. Provide a brief description of the goods/services to be purchased and why this purchase is being proposed under a sole source acquisition.

In 2014, the City Managers group, the Salinas Valley Solid Waste Authority (SVSWA), and the Monterey Regional Waste Management District (MRWMD), contracted R3 to conduct study of the solid waste system of Monterey County. The focus of the study was to develop different solid waste system "scenarios" related to the flow of wastes in

the county that would benefit rate payers. In addition, due to a disparity in the rates charged to unincorporated county commercial customers within the SVSWA and MRWMD boundaries, the study also included a review of a report provided by the SVSWA regarding the difference in commercial rates in unincorporated county.

On July 7, 2015, R3 released its Final Draft Report of the Evaluation and Analysis of Monterey County's Solid Waste Management System. As to the rate differential, R3's report recommends that "The County EHB and USA Waste [the franchise hauler] should review and verify the findings of SVSWA's commercial rate analysis."

In addition, the recent passage of AB1826 requires all jurisdictions in California to implement programs for the diversion of organic material (e.g., green waste and food scraps). AB1826 will go into effect in January 2016. While the County's Unified Franchise Agreement already offers the collection of green waste throughout the county, it currently does not have a program for the collection of food scraps. The County is in receipt of a proposal for the provision of a food scraps collection program in unincorporated areas of Monterey County. Not only will this program help the County to further comply with the new legislation, it has a great potential to help increase the County's diversion rate. Currently, the State requires each city and county to divert 50% of waste from landfills (compared to 1990 levels). This requirement will increase to 75% by 2020. **If the State mandated diversion rate is not met, Monterey County could be fined \$10,000 per day.**

Given the gravity of R3's conclusion and the need to implement a food scraps collection in unincorporated county, the services of a consultant are needed to assist staff with an analysis of the SVSWA report, the rates of the Unified Franchise Agreement (UFA), and the newly proposed food scraps collection program. Time is of the essence as the UFA rates will be up for adjustment in January 2016. The rate adjustment would be presented to the Board for approval in October/ November so as to allow the hauler to provide adequate notification to the rate payers (30-day notice). It is imperative that staff can present the Board of Supervisors with an independent study of and recommendations for how to deal with the rate differential (if any). It would also be important to present the food scraps collection program and rates for Board approval so that the new program could be implemented in January 2016.

a) Why were product and/or vendor chosen?

MSW Consultants was chosen for the following reasons:

- MSW Consultants has a combined 24 years of experience performing rates studies for solid waste collection, processing and disposal services and negotiating solid waste collection contracts exclusively for governmental entities.
- MSW Consultants assisted the County with the development of the Unified Franchise Agreement and the evaluation and ranking of the rates submitted by

bidders. In 2009, the company also assisted the County to evaluate the rate adjustment proposed by the County's franchised waste hauler to account for the closure of the Crazy Horse Landfill. Therefore, this vendor possesses intimate knowledge of the complex issues (e.g. two solid waste joint powers authorities, population densities, geographic features, flow control restrictions, etc.) that frame solid waste collection in Monterey County.

- In 2010, MSW Consultants also assisted the County with the conducting an evaluation of the economic, environmental and public policy impacts of the County's options related to its continued membership in the Salinas Valley Solid Waste Authority.
- Mr. Davis holds a Certificate of Management Accounting and is an expert in macro and micro solid waste finance so he is equipped to navigate the finance issues posed by this project.
- Because of this intimate knowledge of the solid waste management system of the unincorporated county, MSW Consultants will be able to immediately begin productive work on analyzing the disparity in the rates charged to commercial customers within the SVSWA and MRWMD boundaries and will not be delayed by a steep learning curve that would challenge other consultants considered. The other potential contractors lacked the immediate knowledge and experience of the Monterey County waste disposal system that would enable them to accommodate the time constraints of this project.

b) What are the unique performance features of the product/brand requested that are not available in any other product/brand? For Services: what unique qualifications, rights, and licenses does the vendor possess to qualify as a sole source/brand request?

MSW Consultants possesses several unique qualifications that justify this sole source request. First, the firm specializes almost exclusively in solid waste management rate analysis and collection agreement development.

Second, the company works only for governmental agencies. In other words, MSW Consultants does not have any professional or financial relationship with any solid waste hauler, joint powers authority, or private solid waste processing firm that may have a stake in the outcome of this project.

Third, having completed the analysis of the rate adjustment for the closure of Crazy Horse Landfill, the rate analysis for the development of the Unified Franchise Agreement RFP, and conducting an evaluation of the economic, environmental and public policy impacts of the County's options related to its continued membership in the Salinas Valley Solid Waste Authority, MSW Consultants already has an in-depth understanding of the rates, tonnage volumes,

routes, flow control restrictions, and operating costs specific to the unincorporated county.

c) Why are these specific features/qualifications required?

There are two primary reasons why the specific features and qualifications outlined above are required. First, the scope and complexity of the issue to be addressed requires the consultant to have an in-depth command of the Unified Franchise Agreement, as well as the entire waste management system in Monterey County. While other consultants may possess knowledge of specific components of this system, MSW Consultants has a complete understanding of the UFA program and rate structure, routing, flow control requirements, disposal and processing facilities, joint powers authorities to which the County belongs and a complete understanding of how the County's UFA intersects with these other components.

Second, even if another company could eventually learn the county's solid waste system to the same extent as MSW Consultants, executing an RFP process may prohibit staff from bringing the results before the Board of Supervisors for consideration by the time the Board of Supervisors has to consider the hauler's request for a rate adjustment. For this reason, time is of the essence since the County the next rate adjustment must be presented to the Board of Supervisor for consideration before December 2015 to allow adequate (no less than 30 days) customer notification as the new rates would go into effect on January 1, 2016.

d) What other products/services have been examined and/or rejected?

Staff investigated several other potential procurement and rate professionals utilized by Bay Area jurisdictions. While other firms have performed rate analysis or have consulted on the development or amendment of other jurisdictions' franchise agreements, MSW Consultants is the only company that possesses a complete understanding of the waste flow control, disposal and processing facilities, joint powers authorities to which the County belongs and a complete understanding of how the County's Unified Franchise Agreement intersects with these other components.

As previously discussed, alternate firms would have to overcome a learning curve before they could begin productive work on the project. Such a delay may prohibit staff from bringing the results before the Board of Supervisors for consideration by the time the Board of Supervisors has to consider the hauler's request for a rate adjustment. For this reason, time is of the essence since the County the next rate adjustment must be presented to the Board of Supervisor for consideration before December 2015 to allow adequate (no less than 30 days) customer notification as the new rates would go into effect on January 1, 2016.

e) Why are other sources providing like goods or services unacceptable (please give a full meaningful explanation)?

Other sources providing like services are unacceptable for several reasons as outlined above. Other potential consultants had general experience in rate analysis and franchise agreement development/amendments, but lacked the requisite critical and unique knowledge of and experience in the UFA and the solid waste management specific to unincorporated Monterey County.

Alternate firms would have to overcome a learning curve in a very short time before they could begin productive work on the project. Such a delay may prohibit staff from bringing the results before the Board of Supervisors for consideration by the time the Board of Supervisors has to consider the hauler's request for a rate adjustment. For this reason, time is of the essence since the County the next rate adjustment must be presented to the Board of Supervisor for consideration before December 2015 to allow adequate (no less than 30 days) customer notification as the new rates would go into effect on January 1, 2016.

f) What are the unique performance features REQUIRED (not merely preferred), and how would your requirement be inhibited without this particular item or service?

The primary performance feature for this service is the possession by the vendor of an in-depth command of the Unified Franchise Agreement and the entire waste management system in Monterey County, including an understanding of the waste flow control requirements; disposal and processing facilities; joint powers authorities to which the County belongs; the operating costs of the County's current franchised waste hauler; and, a complete understanding of how the County's Unified Franchise Agreement intersects with these other components.

Without an existing grasp of this knowledge, alternate firms would have to overcome a steep learning curve before they could begin productive work on the project. Such a delay may prohibit staff from bringing the results before the Board of Supervisors for consideration by the time the Board of Supervisors has to consider the hauler's request for a rate adjustment. For this reason, time is of the essence since the County the next rate adjustment must be presented to the Board of Supervisor for consideration before December 2015 to allow adequate (no less than 30 days) customer notification as the new rates would go into effect on January 1, 2016.

Estimated Costs: The Bureau estimates that the new procurement will cost about \$60,000.00. Should the Contracts Purchasing Manager approve this Sole Source Request, the contract with MSW Consultants would have no impact on Net County Cost.

4. Is there an unusual or compelling urgency associated with this project?

- No
 Yes (Please describe)

Time is of the essence for this project. Executing an RFP process would seriously jeopardize staff's ability to complete this project and bring the results before the Board of Supervisors for consideration in an expeditious manner and before the approval of the next rate adjustment, which the Board would need to approve in October/November 2015. For these reasons, the Director of Health has directed staff to expedite the completion of this project.

THE FOLLOWING TO BE COMPLETED BY THE REQUESTOR

I hereby certify that:

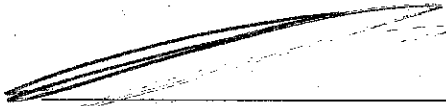
1. I am an approved department representative, and am aware of the County's requirements for competitive bidding, as well as the criteria for justification for sole source/brand purchasing.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment.
3. The information contained herein is complete and accurate.
4. There is justification for sole source/brand purchasing noted above as it meets the County's criteria.
5. A sole source/brand purchase in this case would withstand a possible audit or a vendor's protest.



Requestors Signature

8-13-15

Date



Authorized Signature by Department Head

8/17/15

Date



10-9-15

CONTRACTS/PURCHASING OFFICER
COUNTY OF MONTEREY