

DRAFT

Agenda Item

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AGENDA STAFF REPORT

ASR Control 18-001379

MEETING DATE: 01/29/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Suzanne Luster (714) 834-3362
Mariane Teschner (949) 252-6072

SUBJECT: Approve in Concept the Refunding of Airport Revenue Bonds

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** No

Current Fiscal Year Revenue: N/A

Funding Source: Fund 283: Airport Debt **County Audit in last 3 years:** No
Service

Prior Board Action: 5/23/2017 #S72A, 6/16/2009 #89, 11/25/2008 #44, 5/22/2007 #51

RECOMMENDED ACTION(S):

1. Approve in concept the proposed refunding of County of Orange Airport Revenue Bonds, Series 2009A and Series 2009B.
2. Select Frasca & Associates, LLC as Municipal/Financial Advisor for the proposed refunding; and approve Contract with Frasca & Associates, LLC for municipal/financial advisory services in an amount not to exceed \$105,000 (plus expenses) for a two-year term commencing upon execution of all necessary signatures and continue for two years from that date, renewable for one additional one-year term. Authorize the Public Finance Director to execute Contract.
3. Select Kutak Rock LLP as Bond and Disclosure Counsel for the proposed refunding; and approve Contract with Kutak Rock LLP for bond and disclosure counsel services in an amount not to exceed \$105,000 for a two-year term commencing upon execution of all necessary signatures and continue for two years from that date, renewable for one additional one-year term. Authorize the Public Finance Director to execute Contract.
4. Select Morgan Stanley & Co. LLC as Underwriter for the proposed refunding.

SUMMARY:

Approval of the recommended actions will allow the County Executive Office and John Wayne Airport staff to analyze the option of refunding bonds to generate savings in debt service that will benefit the Airport/County.

BACKGROUND INFORMATION:

On July 9, 2009, the County, in conjunction with John Wayne Airport (JWA) issued the Airport Revenue Bonds, Series 2009A and 2009B ("2009 Bonds") in the aggregate principal amount of \$233,115,000 to finance a portion of the costs of airport facilities and improvements. On July 1, 2017, JWA partially redeemed the 2009 Bonds scheduled to mature in 2034 in the amount of \$27,210,000. As of December 31, 2018, there are a total of \$146,175,000 of 2009 Bonds outstanding.

The 2009 Bonds were structured with callable options to allow JWA to reduce interest rate costs. All of the remaining 2009 Bonds are callable at par on July 1, 2019. Based on market conditions as of December 19, 2018, preliminary analysis indicates refunding of the 2009 Bonds will generate approximately \$24.7 million or 17.97% Net Present Value savings and estimated cash flow savings of \$31.7 million.

Selection of Financing Professionals

On November 1, 2018, County Executive Office (CEO) issued three Request for Proposals (RFP) for Municipal Advisor (MA) services; Bond and Disclosure Counsel (BC) services; and Underwriter (UW) services for the proposed refunding. Using the County's online bidding site (Bidsync), the RFPs were distributed to all MA, BC and UW firms on the County's current panel of qualified consultants. Three separate five-member panels were convened to review the RFP responses and make a recommendation to Public Financing Advisory Committee (PFAC) and the Board of Supervisors.

Recommendation of Municipal Advisor. Seven MA firms were invited to participate in the RFP and three proposal responses were received. The evaluation panel recommended that the Contract for the services be awarded to Frasca & Associates, LLC (Frasca) for the refunding. Frasca served as the MA on the financing team for the 2009 Bonds. Frasca proposed a fee of \$105,000. The range of fees proposed by the firms responding to the RFP was \$75,000 to \$105,000 for the transaction.

CEO completed reference checks with San Diego County Regional Airport Authority and The Port Authority of New York & New Jersey regarding similar services and they were found to be satisfactory. The reference check responses noted that Frasca was very experienced and have significant expertise in airport financings. Both references were comfortable with recommending Frasca to the County of Orange.

CEO confirmed the primary staff assigned to the Contract hold a Series 50 registration with the Municipal Securities Rulemaking Board. The Series 50 exam is designed to ensure that MAs meet professional qualification standards.

Recommendation of Bond and Disclosure Counsel. Seven BC firms were invited to participate in the RFP and three proposal responses were received. The evaluation panel recommended that the Contract for the services be awarded to Kutak Rock LLP for the refunding. Kutak Rock LLP proposed a fee of \$105,000 to serve as both bond and disclosure counsel. The range of fees proposed by the firms responding to the RFP was \$105,000 to \$175,000.

CEO completed reference checks with San Francisco International Airport, Salt Lake City Department of Airports and Minneapolis-St. Paul International Airport regarding similar services and they were found to

be satisfactory. The reference check responses noted that Kutak Rock LLP was very knowledgeable and were highly recommended.

CEO performed an Attorney search with the State Bar of California and Colorado Supreme Court for the primary staff assigned to the Contracts and found no Disciplinary and Related Actions nor Administrative Actions.

The Contract terms and conditions with Kutak Rock LLP are not the County's standard terms and conditions. This Contract contains modified indemnification provisions which vary from the County standard indemnification language. The modified indemnification provision has been approved by County Counsel as legally sufficient and CEO/Risk Management determined the risk to be acceptable for these services.

Recommendation of Underwriters. Twenty-one UW firms were invited to participate in the RFP and 12 proposal responses were received. The evaluation panel recommended that the services be awarded to Morgan Stanley & Co. LLC (Morgan Stanley) for the refunding transaction. Morgan Stanley served as a Co-Senior Underwriter for the 2009 Bonds. Morgan Stanley proposed a takedown price per bond of \$1.75 and the range of fees proposed by the firms responding to the RFP was \$1.40 to \$3.52.

CEO completed reference checks with San Diego County Regional Airport Authority and Dallas Fort Worth Airport regarding similar services and they were found to be satisfactory. The reference check responses noted that Morgan Stanley had performed a recent transaction with excellent results and both were comfortable recommending Morgan Stanley to the County.

CEO performed a Broker Check on the Financial Industry Regulatory Authority website for the primary staff assigned to the projects and found no Disclosure Events for the brokers.

This item will be considered by PFAC at their January 10, 2019, meeting and the Airport Commission at their January 16, 2019, meeting.

FINANCIAL IMPACT:

The estimated savings to the Airport/County is net the cost of issuing bonds. Based on market conditions as of December 19, 2018, preliminary analysis indicates refunding of the 2009 Bonds will generate approximately \$24.7 million or 17.97% Net Present Value savings and estimated cash flow savings of \$31.7 million.

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

John Wayne Airport

ATTACHMENT(S):

- Attachment A - Municipal Advisor Evaluation Score Summary
- Attachment B - Bond/Disclosure Counsel Evaluation Score Summary
- Attachment C - Underwriter Evaluation Score Summary
- Attachment D - Contract No. 017-18006MA
- Attachment E - Contract No. 017-18004BC

Attachment F - Contract Summary Form
Attachment G - Risk Assessment Form

Final Scoring Summary
RFP #017-18006MA

Municipal/Financial Advisory Services for Refunding of Airport Revenue Bonds

Evaluation Criteria	Weight	Proposer: Columbia Capital Management LLC										Score Percentage	Weighted Score
		Panel #1	Panel #2	Panel #3	Panel #4	Panel #5							
Written Criteria	100%												
Proposal Organization/Completeness of Response	20%	3	12	2	8	3	12	2	8	3	12	10	10
Qualifications and Experience of the Offeror	25%	2	10	2	10	2	10	1	5	2	10	9	9
Proposed Compensation to County	20%	5	20	5	20	5	20	5	20	5	20	20	20
Staffing Experience	20%	3	12	2	8	3	12	3	12	2	8	10	10
Degree of Compliance with County Model Contract	15%	3	9	2	6	3	9	3	9	3	9	8	8
Grand Total - Must Equal 100%	100%	16.0	63.0	13.0	52.0	16.0	63.0	14.0	54.0	15.0	59.0	58	58

Evaluation Criteria	Weight	Proposer: PFM Financial Advisors LLC										Score Percentage	Weighted Score
		Panel #1	Panel #2	Panel #3	Panel #4	Panel #5							
Written Criteria	100%												
Proposal Organization/Completeness of Response	20%	4	16	3	12	4	16	4	16	4	16	15	15
Qualifications and Experience of the Offeror	25%	5	25	4	20	5	25	4	20	4	20	22	22
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	4	16	4	16	4	16	5	20	4	16	17	17
Degree of Compliance with County Model Contract	15%	3	9	3	9	3	9	4	12	3	9	10	10
Grand Total - Must Equal 100%	100%	20.0	82.0	18.0	73.0	20.0	82.0	21.0	84.0	19.0	77.0	80	80

Evaluation Criteria	Weight	Proposer: Frasca & Associates LLC										Score Percentage	Weighted Score
		Panel #1	Panel #2	Panel #3	Panel #4	Panel #5							
Written Criteria	100%												
Proposal Organization/Completeness of Response	20%	5	20	5	20	5	20	5	20	4	16	19	19
Qualifications and Experience of the Offeror	25%	5	25	5	25	5	25	5	25	4	20	24	24
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	5	20	5	20	5	20	5	20	4	16	19	19
Degree of Compliance with County Model Contract	15%	5	15	5	15	5	15	5	15	5	15	15	15
Grand Total - Must Equal 100%	100%	24.0	96.0	24.0	96.0	24.0	96.0	24.0	96.0	21.0	83.0	93	93

Final Scoring Summary
RFP #017-18002BC

Bond and Disclosure Counsel Services for Refunding of Airport Revenue Bonds

Evaluation Criteria		Proposer: Kutak Rock LLC										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	20%	5	20	4	16	5	20	5	20	4	16	18	18
Qualifications and Experience of the Offeror	25%	5	25	5	25	5	25	5	25	5	25	25	25
Proposed Compensation to County	20%	5	20	5	20	5	20	5	20	5	20	20	20
Staffing Experience	20%	5	20	5	20	5	20	5	20	5	20	20	20
Degree of Compliance with County Model Contract	15%	3	9	3	9	4	12	4	12	3	9	10	10
Grand Total - Must Equal 100%	100%	23.0	94.0	22.0	90.0	24.0	97.0	24.0	97.0	22.0	90.0	94	94

Evaluation Criteria		Proposer: Orrick, Herrington & Sutcliffe LLP										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	20%	5	20	4	16	5	20	5	20	5	20	19	19
Qualifications and Experience of the Offeror	25%	5	25	4	20	4	20	4	20	4	20	21	21
Proposed Compensation to County	20%	3	12	3	12	3	12	3	12	3	12	12	12
Staffing Experience	20%	4	16	3	12	4	16	4	16	4	16	15	15
Degree of Compliance with County Model Contract	15%	3	9	4	12	4	12	4	12	3	9	11	11
Grand Total - Must Equal 100%	100%	20.0	82.0	18.0	72.0	20.0	80.0	20.0	80.0	19.0	77.0	78	78

Evaluation Criteria		Proposer: Nixon Peabody LLP										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	20%	5	20	4	16	4	16	5	20	4	16	18	18
Qualifications and Experience of the Offeror	25%	4	20	3	15	3	15	3	15	3	15	16	16
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	4	16	3	12	3	12	3	12	3	12	13	13
Degree of Compliance with County Model Contract	15%	2	6	2	6	2	6	3	9	3	9	7	7
Grand Total - Must Equal 100%	100%	19.0	78.0	16.0	65.0	16.0	65.0	18.0	72.0	17.0	68.0	70	70

Final Scoring Summary
RFP #017-18001UW
Underwriter Services for Refunding of Airport Revenue Bonds

Evaluation Criteria		Proposer: Siebert Cisneros Shank & Co.										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	25%	4	20	4	20	4	20	3	15	3	15	18	18
Qualifications and Experience of the Offeror	20%	4	16	4	16	3	12	4	16	3	12	14	14
Proposed Compensation to County	20%	5	20	5	20	5	20	5	20	5	20	20	20
Staffing Experience	20%	5	20	5	20	4	16	4	16	4	16	18	18
Net Capital Position	15%	3	9	3	9	3	9	2	6	3	9	8	8
Grand Total - Must Equal 100%	100%											78	78

Evaluation Criteria		Proposer: Jefferies										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	25%	5	25	5	25	4	20	5	25	4	20	23	23
Qualifications and Experience of the Offeror	20%	4	16	4	16	3	12	4	16	3	12	14	14
Proposed Compensation to County	20%	5	20	5	20	5	20	5	20	5	20	20	20
Staffing Experience	20%	4	16	4	16	3	12	4	16	3	12	14	14
Net Capital Position	15%	4	12	5	15	4	12	4	12	5	15	13	13
Grand Total - Must Equal 100%	100%											84	84

Evaluation Criteria		Proposer: Morgan Stanley										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	25%	5	25	5	25	5	25	5	25	5	25	25	25
Qualifications and Experience of the Offeror	20%	5	20	5	20	5	20	5	20	5	20	20	20
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	5	20	5	20	5	20	5	20	5	20	20	20
Net Capital Position	15%	5	15	5	15	5	15	5	15	5	15	15	15
Grand Total - Must Equal 100%	100%											96	96

Final Scoring Summary
RFP #017-18001UW
Underwriter Services for Refunding of Airport Revenue Bonds

Evaluation Criteria		Proposer: Raymond James										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	25%	4	20	4	20	4	20	3	15	4	20	19	19
Qualifications and Experience of the Offeror	20%	4	16	4	16	3	12	3	12	3	12	14	14
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	2	8	3	12	2	8	2	8	3	12	10	10
Net Capital Position	15%	3	9	4	12	3	9	3	9	4	12	10	10
Grand Total - Must Equal 100%	100%	17.0	69.0	19.0	76.0	16.0	65.0	15.0	60.0	18.0	72.0	69	69

Evaluation Criteria		Proposer: Academy Securities										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	25%	4	20	4	20	3	15	4	20	4	20	19	19
Qualifications and Experience of the Offeror	20%	3	12	3	12	2	8	2	8	2	8	10	10
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	3	12	3	12	2	8	2	8	2	8	10	10
Net Capital Position	15%	2	6	2	6	2	6	1	3	2	6	5	5
Grand Total - Must Equal 100%	100%	16.0	66.0	16.0	66.0	13.0	53.0	13.0	55.0	14.0	58.0	60	60

Evaluation Criteria		Proposer: FTN Financial										Score	Weighted
Written Criteria	Weight	Panel #1		Panel #2		Panel #3		Panel #4		Panel #5		Percentage	Score
Proposal Organization/Completeness of Response	25%	3	15	3	15	3	15	2	10	3	15	14	14
Qualifications and Experience of the Offeror	20%	2	8	3	12	2	8	2	8	2	8	9	9
Proposed Compensation to County	20%	2	8	2	8	2	8	2	8	2	8	8	8
Staffing Experience	20%	3	12	3	12	2	8	3	12	2	8	10	10
Net Capital Position	15%	2	6	3	9	2	6	2	6	3	9	7	7
Grand Total - Must Equal 100%	100%	12.0	49.0	14.0	56.0	11.0	45.0	11.0	44.0	12.0	48.0	48	48

Final Scoring Summary
RFP #017-18001UW
Underwriter Services for Refunding of Airport Revenue Bonds

Evaluation Criteria	Weight	Proposer: J.P. Morgan										Score Percentage	Weighted Score
		Panel #1		Panel #2		Panel #3		Panel #4		Panel #5			
Proposal Organization/Completeness of Response	25%	5	25	4	20	5	25	4	20	4	20	22	22
Qualifications and Experience of the Offeror	20%	5	20	5	20	5	20	5	20	4	16	19	19
Proposed Compensation to County	20%	5	20	5	20	5	20	5	20	5	20	20	20
Staffing Experience	20%	5	20	5	20	4	16	5	20	4	16	18	18
Net Capital Position	15%	5	15	5	15	4	12	5	15	5	15	14	14
Grand Total - Must Equal 100%	100%	25.0	100.0	24.0	95.0	23.0	93.0	24.0	95.0	22.0	87.0	93	93

Evaluation Criteria	Weight	Proposer: Piper Jaffray										Score Percentage	Weighted Score
		Panel #1		Panel #2		Panel #3		Panel #4		Panel #5			
Proposal Organization/Completeness of Response	25%	4	20	4	20	4	20	4	20	4	20	20	20
Qualifications and Experience of the Offeror	20%	4	16	4	16	3	12	3	12	3	12	14	14
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	4	16	4	16	3	12	4	16	4	16	15	15
Net Capital Position	15%	3	9	4	12	3	9	3	9	4	12	10	10
Grand Total - Must Equal 100%	100%	19.0	77.0	20.0	80.0	17.0	69.0	18.0	73.0	19.0	76.0	75	75

Evaluation Criteria	Weight	Proposer: Wells Fargo										Score Percentage	Weighted Score
		Panel #1		Panel #2		Panel #3		Panel #4		Panel #5			
Proposal Organization/Completeness of Response	25%	4	20	4	20	4	20	3	15	4	20	19	19
Qualifications and Experience of the Offeror	20%	5	20	4	16	5	20	4	16	4	16	18	18
Proposed Compensation to County	20%	4	16	4	16	4	16	4	16	4	16	16	16
Staffing Experience	20%	4	16	5	20	4	16	4	16	4	16	17	17
Net Capital Position	15%	4	12	4	12	4	12	5	15	4	12	13	13
Grand Total - Must Equal 100%	100%	21.0	84.0	21.0	84.0	21.0	84.0	20.0	78.0	20.0	80.0	83	83

Final Scoring Summary
RFP #017-18001UW
Underwriter Services for Refunding of Airport Revenue Bonds

Evaluation Criteria	Weight	Proposer: RBC Capital Markets										Score Percentage	Weighted Score
		Panel #1	Panel #2	Panel #3	Panel #4	Panel #5							
Written Criteria	100%												
Proposal Organization/Completeness of Response	25%	5	25	4	20	4	20	4	20	5	25	22	22
Qualifications and Experience of the Offeror	20%	5	20	4	16	5	20	5	20	5	20	19	19
Proposed Compensation to County	20%	5	20	5	20	5	20	5	20	5	20	20	20
Staffing Experience	20%	5	20	5	20	4	16	4	16	5	20	18	18
Net Capital Position	15%	5	15	4	12	5	15	4	12	5	15	14	14
Grand Total - Must Equal 100%	100%	25.0	100.0	22.0	88.0	23.0	91.0	22.0	88.0	25.0	100.0	93	93

Evaluation Criteria	Weight	Proposer: Citigroup										Score Percentage	Weighted Score
		Panel #1	Panel #2	Panel #3	Panel #4	Panel #5							
Written Criteria	100%												
Proposal Organization/Completeness of Response	25%	5	25	5	25	5	25	5	25	4	20	24	24
Qualifications and Experience of the Offeror	20%	5	20	5	20	5	20	5	20	5	20	20	20
Proposed Compensation to County	20%	3	12	3	12	3	12	3	12	3	12	12	12
Staffing Experience	20%	5	20	5	20	5	20	5	20	5	20	20	20
Net Capital Position	15%	5	15	5	15	5	15	5	15	5	15	15	15
Grand Total - Must Equal 100%	100%	23.0	92.0	23.0	92.0	23.0	92.0	23.0	92.0	22.0	87.0	91	91

Evaluation Criteria	Weight	Proposer: Goldman Sachs & Co										Score Percentage	Weighted Score
		Panel #1	Panel #2	Panel #3	Panel #4	Panel #5							
Written Criteria	100%												
Proposal Organization/Completeness of Response	25%	5	25	5	25	5	25	4	20	4	20	23	23
Qualifications and Experience of the Offeror	20%	4	16	4	16	4	16	4	16	4	16	16	16
Proposed Compensation to County	20%	5	20	5	20	5	20	5	20	5	20	20	20
Staffing Experience	20%	4	16	4	16	4	16	4	16	4	16	16	16
Net Capital Position	15%	4	12	5	15	4	12	5	15	5	15	14	14
Grand Total - Must Equal 100%	100%	22.0	89.0	23.0	92.0	22.0	89.0	22.0	87.0	22.0	87.0	89	89

CONTRACT NO. 017-18006MA
FOR
MUNICIPAL/FINANCIAL ADVISORY SERVICES
BETWEEN
CEO/PUBLIC FINANCE DIVISION
AND
FRASCA & ASSOCIATES, LLC



CONTRACT 017-18006MA
with
Frasca & Associates, LLC
for
Municipal/Financial Advisory Services

This Contract for Municipal/Financial Advisory Services (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as “County” and Frasca & Associates, LLC, with a place of business at 521 Madison Avenue, 7th Floor, New York, NY 10022 (hereinafter referred to as “Contractor” or “Frasca”), with a County and Contractor sometimes referred to as “Party” or collectively as “Parties”.

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Payment/Compensation
Attachment C – Staffing Plan

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Municipal/Financial Advisory Services under a firm fixed fee Contract; and

WHEREAS, County solicited Contract for Municipal/Financial Advisory Services as set forth herein, and Contractor represented that it is qualified to provide Municipal/Financial Advisory Services to the County as further set forth here; and

WHEREAS, Contractor agrees to provide Municipal/Financial Advisory Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnittees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or

statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. Intentionally left blank.

I. Assignment: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. Termination: In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Independent Contractor: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. Performance Warranty: Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. Insurance Requirements: Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory

Employers Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims-made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT..***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability are "Claims-Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy). Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Intentionally left blank.**
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.
The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Municipal/Financial Advisory Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** The Contract shall commence upon execution of all necessary signatures and continue for two (2) years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for one (1) additional one (1) year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting

discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

7. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
8. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
9. **Project Manager, County:** The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

11. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
12. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County’s Project Manager and the Contractor’s Project Manager will meet on reasonable notice to discuss the Contractor’s performance and progress under this Contract. If requested, the Contractor’s Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
13. **Contractor’s Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3)

years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.

14. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
15. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "Z" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
16. **County of Orange Child Support Enforcement:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Purchasing Agent, or the agency/department Deputy Purchasing Agent:
 - A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
 - C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

17. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
18. **Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those

goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

19. Disputes – Contract:

- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or their designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

20. Drug-Free Workplace: The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

21. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm

22. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
23. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

24. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

25. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
26. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Frasca & Associates, LLC
521 Madison Avenue, 7th Floor
New York, NY 10022

County: County Executive Office/Public Finance Division
Attn: Public Finance Director
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701

Assigned DPA: County Executive Office/Public Finance Division
Attn: Public Finance
333 W. Santa Ana Blvd., 3rd Floor

Santa Ana, CA 92701

27. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
28. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
29. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
30. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
31. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
32. **Compliance with Gift and Political Contribution Ban:** By executing this Contract, Contractor covenants to the County that it has complied in all respects with the “Ban on Political Contributions and Gifts” provisions of Article V of the County of Orange, Board of Supervisors, Policies and Procedures for Consideration and Approval of Proposed Public Financings.
33. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
34. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services

which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

35. **Follow-On Work - Services Contract:** No person, firm, subsidiary or subcontractor of a firm that has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a Contract for the performance of services, the purchase of goods or supplies, or the provision of any other related action which arises from or can reasonably be deemed an end-product of work performed under the initial consulting to consulting-related Contract.
36. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.


In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

37. **Nondiscrimination – Statement of Compliance:** The Contractor’s signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Sections 11102 and 11103.
38. **Order Dates:** Orders may be placed during the term of the Contract even if delivery may not be made until after the term of the Contract. The Contractor must clearly identify the order date on all invoices to County and the order date must precede the expiration date of the Contract.
39. **Statement of Economic Interests - Form 700 Requirement:** The contractor must comply with California state law and regulations regarding conflicts of interest. The Fair Political Practices Commission (“FPPC”) requires employees of the contractor who provide services to the County under this contract to complete an initial and annual Statement of Economic Interests (“Form 700”).

Signature Page

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

Frasca & Associates, LLC

	Kenneth J. Cushman	Principal	12/18/18
Signature	Name	Title	Date

Signature	Name	Title	Date

COUNTY OF ORANGE

A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:

Signature	Name	Title	Date

APPROVED AS TO FORM:

County Counsel

By  Deputy

Date 12/24/18

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

ATTACHMENT A

SCOPE OF WORK

1. Assist the finance team including: County and Airport staff, County Counsel, Bond Counsel, Underwriter in structuring and executing legal financial transactions.
2. Participate in the review of all documents for authorization, issuance and sale/placement of the transaction.
3. Review and assist the Airport with preparation of cash flow forecast for refunding issues, addressing detail debt service requirements, sources and types of funding, and other analyses consistent with expected questions from rating and investor credit analysts.
4. Review appropriate taxable and tax-exempt market supply and demand variables in connection with transactions.
5. Assist County and financing team in securing ratings from Rating Agencies.
6. Monitor market conditions and provide recommendations regarding the timing of the transaction pricing.
7. Assist County with investor outreach calls and meetings with principal institutional investors.
8. Advise the Airport on Private Activity Bonds backed by Passenger Facility Charges (PFC), potential PFC eligible project funding, and preparation of new PFC application, as needed.
9. Advise the Airport on compliance with PFC regulations, guidelines and restrictions affecting the Airport revenue bond refunding.
10. Assist staff in planning and developing an annual financing plan including identifying short and long-term financing needs of the Airport, to provide flexibility for the Airport to time PFC and other revenue collections with debt service and redemption needs.
11. Advise the County/Airport staff with respect to financial structure, including the relative costs and benefits to the Airport on different types and appropriate mix of financing, terms and maturity schedules, sources of security (e.g. parity revenue bonds, PFCs, and others), and market timing.
12. Advise staff of matters relevant to the scope of work and transaction, prepare and present reports to County staff, Public Financing Advisory Committee and members of the Orange County Board of Supervisors, and assist with due diligence and disclosure processes.
13. Assist with the bond closing details, providing a follow-up analysis of the sale and final terms of the bond refunding sale and post-financing review.
14. Advise and assist the Airport staff with special projects or tasks relating to any aspect of the Airport's financing program.
15. Provide other customary municipal/financial advisory services.

ATTACHMENT B**COMPENSATION/PAYMENT**

- 1. Compensation:** This is a Contract between the County and Contractor for municipal/financial advisory services as provided in Attachment A, Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the rates specified herein unless authorized by amendment in accordance with Article C of the County Contract Terms and Conditions.

- 2. Fees and Charges:** County will pay the following fee in accordance with the provisions of this Contract. In no event shall compensation under this Contract exceed \$105,000 for the Airport Revenue Bonds Refundings.

	Fee
Airport Revenue Bonds Refundings	\$105,000

In addition to the rates set forth above, actual travel-related expenses (such as airfare or lodging), incurred consistent with all County travel policies, will be reimbursed by the County. All travel-related expenses must be negotiated with the Public Finance Director prior to engagement of services.

The amounts paid to the Contractor under this paragraph shall constitute payment in full for all services rendered under this Contract.

Payment Schedule: Compensation of Contractor under this Contract is contingent upon & payable from funds made available by the delivery of and receipt of payment for such issue of the Bonds. County shall pay Contractor at the fixed rate for the bond issuance.

- 3. Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
- 4. Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
- 5. Payment Term:** Invoices are to be submitted within 30 days from the date Contractor completes deliverables as defined in Attachment A - Scope of Work. Contractor shall reference Contract number and bond issue on invoice. Payment will be net 30 days after receipt, and approval, by County of an invoice in a

format acceptable to the County and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

6. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
7. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor’s letterhead for services rendered. Each invoice will have a number and will include the following information:
 - a. Contractor’s name and address
 - b. Contractor’s remittance address, if different from 1 above
 - c. Contractor’s Taxpayer ID Number
 - d. Name of County Agency/Department
 - e. Service address
 - f. Contract number
 - g. Date of invoice
 - h. Description of fees/service
 - i. Dates service was provided
 - j. Specify the specific bond issue
 - k. Sales tax, if applicable
 - l. Total

Invoices and support documentation are to be forwarded to:

County of Orange
County Executive Office
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
Attn: Public Finance Director

OR

E-mailed to PFACctg@ocgov.com

ATTACHMENT C

STAFFING PLAN

1. **Key Personnel to perform duties**

Name	Classification/Title
Ken Cushine	Principal
Marvin Sun	Managing Director
Doreen Frasca	Principal
Matt Townsend	Director
Tim McNutt	Director
George Lemmon	Analyst

2. **Alternate Key Personnel** (for use only if key personnel is not available)

Name	Classification/Title
Larry Belinsky	Managing Director
Juan Pittman	Managing Director
Sandy Kanu	Analyst

Contractor understands that the individuals represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by the County. Substitution or addition of Contractor's key personnel shall be allowed only with prior written approval of the County Project Manager.

The Contractor may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/class required. Assignment of additional key personnel shall be subject to County written approval. County reserves the right to have any of Contractor personnel removed from providing services to the County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.

CONTRACT NO. 017-18004BC
FOR
BOND AND DISCLOSURE COUNSEL SERVICES
BETWEEN
CEO/PUBLIC FINANCE DIVISION
AND
KUTAK ROCK LLP



CONTRACT 017-18004BC
 with
 Kutak Rock LLP
 for
 Bond and Disclosure Counsel Services

This Contract for Bond and Disclosure Counsel Services hereinafter referred to as (“Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” and Kutak Rock LLP, with a place of business at 1801 California Street, Suite 3000, Denver, CO 80202, hereinafter referred to as “Contractor” or “Kutak”, which are sometimes individually referred to as “Party,” or collectively referred to as “Parties.”

ATTACHMENTS

This Contract is comprised of this documents and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Services
 Attachment B – Payment/Compensation
 Attachment C – Staffing Plan

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Bond and Disclosure Counsel Services under a firm fixed fee Contract; and

WHEREAS, County solicited Contract for Bond and Disclosure Counsel Services as set forth herein, and Contractor represented that it is qualified to provide Bond and Disclosure Counsel Services to the County as further set forth here; and

WHEREAS, Contractor agrees to provide Bond and Disclosure Counsel Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including

the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Intentionally left blank.**

I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Requirements:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory

Employers Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims-made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability are "Claims-Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Intentionally left blank.**
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") from any and all claims, demands or liability of any kind or nature arising from or related to the negligent performance, mistakes or omissions regarding services provided under this Contract. If judgment is entered against Contractor and County (or any County Indemnitee), by a court of competent jurisdiction because of the concurrent active negligence of Contractor and County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection. The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Bond and Disclosure Counsel Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** The Contract shall commence upon execution of all necessary signatures and continue for two (2) years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for one (1) additional one (1) year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting

discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

7. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
8. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
9. **Project Manager, County:** The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

11. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
12. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County’s Project Manager and the Contractor’s Project Manager will meet on reasonable notice to discuss the Contractor’s performance and progress under this Contract. If requested, the Contractor’s Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
13. **Contractor’s Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.

14. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
15. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "Z" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
16. **County of Orange Child Support Enforcement:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Purchasing Agent, or the agency/department Deputy Purchasing Agent:
- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
 - C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

17. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
18. **Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this

cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

19. Disputes – Contract:

- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or their designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

20. Drug-Free Workplace: The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and

- b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

21. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm

22. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
23. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
24. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee

or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

25. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
26. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Kutak Rock LLP
 1801 California Street, Suite 3000
 Denver, CO 80202-2652

County: County Executive Office/Public Finance Division
 Attn: Public Finance Director
 333 W. Santa Ana Blvd., 3rd Floor
 Santa Ana, CA 92701

Assigned DPA: County Executive Office/Public Finance Division
 Attn: Public Finance
 333 W. Santa Ana Blvd., 3rd Floor
 Santa Ana, CA 92701

27. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

28. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
29. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
30. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
31. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
32. **Compliance with Gift and Political Contribution Ban:** By executing this Contract, Contractor covenants to the County that it has complied in all respects with the “Ban on Political Contributions and Gifts” provisions of Article V of the County of Orange, Board of Supervisors, Policies and Procedures for Consideration and Approval of Proposed Public Financings.
33. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
34. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
35. **Follow-On Work - Services Contract:** No person, firm, subsidiary or subcontractor of a firm that has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a Contract for the performance of services, the purchase of goods or supplies, or the provision of

any other related action which arises from or can reasonably be deemed an end-product of work performed under the initial consulting to consulting-related Contract.

36. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

37. **Nondiscrimination – Statement of Compliance:** The Contractor’s signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Sections 11102 and 11103.
38. **Order Dates:** Orders may be placed during the term of the Contract even if delivery may not be made until after the term of the Contract. The Contractor must clearly identify the order date on all invoices to County and the order date must precede the expiration date of the Contract.
39. **Statement of Economic Interests - Form 700 Requirement:** The contractor must comply with California state law and regulations regarding conflicts of interest. The Fair Political Practices Commission (“FPPC”) requires employees of the contractor who provide services to the County under this contract to complete an initial and annual Statement of Economic Interests (“Form 700”).

Signature Page

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

Kutak Rock LLP

	<i>Michael K Reppe</i>	<i>Partner</i>	<i>12-26-2018</i>
Signature	Name	Title	Date

<i>N/A</i>			
Signature	Name	Title	Date

COUNTY OF ORANGE

A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:

Signature	Name	Title	Date
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APPROVED AS TO FORM:

County Counsel

By  Deputy

Date *12/27/18*

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

ATTACHMENT A

SCOPE OF WORK

1. Legal review of the financing structure of the Bonds and Prior Bonds;
2. Consulting with County of Orange officials, the Office of County Counsel, the underwriter and the financial advisor concerning the timing, terms and structure of the financing plan relating to the Bonds;
3. Preparation and/or review of and advice to the County in connection with, any and all documents, agreements, resolutions, ordinances, instruments, to be used for the issuance and sale of the Bonds including, but not limited to, the resolution of the Board of Supervisors acting as the legislative body of the District approving certain matters in connection with the issuance of the Bonds and setting forth the terms and conditions thereof, the bond indenture, the purchase agreement for the Bonds, the escrow agreement pursuant to which certain outstanding Prior Bonds shall be redeemed, insurance policies and surety policies and related documents and certificates;
4. Review and advice to the County in connection with the preparation of the Preliminary Official Statement and the Official Statement for the Bonds (the "Official Statement") describing the issuance or refunding of the Airport Revenue Bonds, the bond purchase agreement relating to the Bonds and the related documents, agreements, resolutions, instruments and certificates;
5. Preparation, review and advice to the County in connection with the preparation of any ordinances, authorizing resolutions and other official actions to be taken by the County in connection with the issuance or refunding of the Airport Revenue Bonds;
6. Review and approve the agreements and certificates prepared by counsel to the underwriter to comply with any continuing disclosure requirements under the Securities and Exchange Commission Rule 15c2-12, including any continuing disclosure agreement;
7. The rendering of written opinions relating to the issuance or refunding of the Airport Revenue Bonds as shall be acceptable to the County to the effect that the Bonds have been duly authorized and issued and constitute legally valid and binding obligations of the County enforceable in accordance with their terms, and expressing an approving opinion as to the exclusion from gross income for federal income tax purposes of interest on the Bonds and as to the state tax exemption of interest on the Bonds and such other opinions to municipal bond insurance companies and related financing participants as may be required in connection with the issuance of the Bonds;
8. Rendering of a legal opinion to the effect that Contractor has reviewed the final Official Statement and that based upon Contractor's participation in the preparation of such Official Statement or other disclosure statement (which nature and scope of participation shall be described in the opinion) that nothing has come to Contractor's attention that would lead Contractor to believe that, as of its date, the Official Statement contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. Such opinion may include appropriate reliance language and may exclude financial and statistical data and other matters as may be reasonable and customary for such opinions;
9. Assisting the County in reviewing remarketing agreements, reimbursement agreements, letters of credit, bond insurance policies, and any documents or cash flow analyses prepared by the underwriter, consultants, credit provider or counsel;
10. Assisting in planning of financing schedules;

11. Assuring that all approvals and notices are prepared and processed in a timely manner including required filings with the California Debt and Investment Advisory Commission and Secretary of State;
12. Notifying County and County of Orange staff of any changes made to bond documents after approval by the Board of Supervisors' acting as the legislative body of the District;
13. Rendering the final approving opinion as to validity of the Bonds for use and distribution upon their issuance;
14. After the closing of the Bonds, upon written request of the County, provide ongoing assistance, as needed, to interpret and respond to general questions or concerns regarding the Bond documents;
15. Provide follow-up work, such as interpretation of documents and responses to general questions relating to the Bonds;
16. Preparing the record or transcript of the Bonds proceedings and delivering at least three (3) complete sets of transcripts in a timely manner, not later than four months after bond closing; and
17. Such other actions and advice as requested by the County relating to the foregoing.

ATTACHMENT B**COMPENSATION/PAYMENT**

- 1. Compensation:** This is a Contract between the County and Contractor for Bond and Disclosure Counsel Services as set forth in Attachment A, "Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C of the County Contract Terms and Conditions.**

Compensation of Contractor under this Contract shall be a fixed fee of \$105,000 for services associated with both Bond and Disclosure Counsel services as provided in Attachment A, Scope of Work for the refunding of the Airport Revenue Bonds.

	Fee
Airport Revenue Bonds Refunding	\$105,000

- 2. Payment Schedule:** Compensation of Contractor under this Contract is contingent upon and payable from funds made available by the delivery of and receipt of payment for such issue of the Bonds. All County shall pay Contractor at the fixed rate for the bond issuance.
- 3. Price Increase/Decreases:** No price increases will be permitted during the first period of the price agreement. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
- 4. Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
- 5. Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
- 6. Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

7. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor’s letterhead for services rendered. Each invoice shall be reviewed by County staff prior to payment to ensure that the billing is consistent with the following information:
 - a. Contractor’s name and address
 - b. Contractor’s remittance address, if different from 1 above
 - c. Contractor’s Taxpayer ID Number
 - d. Name of County Agency/Department
 - e. Delivery/service address
 - f. Master Agreement (MA) or Purchase Order (PO) number
 - g. Agency/Department’s Account Number
 - h. Date of invoice
 - i. Product/service description, quantity, and prices
 - j. Sales tax, if applicable
 - k. Freight/delivery charges, if applicable
 - l. Total

The County’s Contract Administrator, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Invoices and support documentation are to be forwarded to:

County of Orange
County Executive Office
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
Attn: Public Finance Director

OR

E-mailed to PFACctg@ocgov.com

ATTACHMENT C

STAFFING PLAN

1. **Primary Staff to perform Contract duties**

Name	Classification/Title
Michael K. Reppe	Partner
Michael G. Thomas	Partner
Albert R. Reyes	Partner
Ryan T. Jardine	Partner
Pardis O. Farrokhyar	Associate
Larry L. Carlile	Partner
Matthias M. Edrich	Partner

2. **Alternate staff** (for use only if primary staff are not available)

Name	Classification/Title
N/A	

Substitution or addition of Contractor's key personnel in any given category or classification shall be allowed only with prior written approval of the County Project Manager.

The Contractor may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/class required. Assignment of additional key personnel shall be subject to County Project Manager approval. County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.

Contract Summary Form

Frasca & Associates LLC

Contract #017-18006MA

Subcontractors

This contract does not include subcontractors or pass through to other providers.

Contract Operating Expenses

A fixed rate fee for municipal advisory services for the proposed financing of \$105,000. The contract is a two-year term commencing upon executive of all necessary signatures and continue for two years from that date, renewable for one additional one-year term.

Travel-related expenses may be reimbursed at the discretion of the County and must be negotiated with the Public Finance Director prior to engagement of services.

Contract Summary Form

Kutak Rock LLP

Contract #017-18004BC

Subcontractors

This contract does not include subcontractors or pass through to other providers.

Contract Operating Expenses

A fixed rate fee for bond and disclosure counsel services for the proposed financing of \$105,000. The contract is a two-year term commencing upon executive of all necessary signatures and continue for two years from that date, renewable for one additional one-year term.

RISK ASSESSMENT OR MODIFICATION OF INSURANCE TERMS

Use this form to request a Risk Assessment and determine Proper Insurance Requirements when developing an RFP-RFB, RFI or Contract/Agreement

DATE SUBMITTED: _____

TO: CEO/Risk Management/600 W. Santa Ana Blvd., Suite 105 Fax: 714-285-5599
 or e-mail this form to RiskMgmtInsurance@ocgov.com with Scope of Work and Contract/Agreement Insurance Provisions. **If this is a renewal, attach prior Risk Management Approval(s).**

FROM: Susie Ortiz
 County Employee (Contact For Questions)

CEO/Public Finance
 County Department

susana.ortiz@ocgov.com
 County E-Mail Address

714-834-3662
 Phone # (inc. area code) Fax # (inc. area code)

Note: The above action is advisory to departments as to risk assessment and protection. Any change in a current contract/agreement requires formal modification unless contract/agreement specifically delegates to County Risk Manager authority to modify insurance requirements.

CONTRACT TYPE: Commodities Public Works Service Human Services

Consultant Svcs. Fixed Asset A & E Other _____

Vendor Name: Kutak Rock LLP Contract ID/RFP I.D. Number: 017-18004BC

Bid: YES NO Contract Amount: \$105,000

Insurance Type To Be Reviewed for Waiver or Modification of Terms

- | | | |
|--|--|---|
| <input type="checkbox"/> Commercial General Liability | <input type="checkbox"/> Workers' Compensation | <input type="checkbox"/> Property Insurance |
| <input type="checkbox"/> Commercial Auto Liability | <input type="checkbox"/> Employer's Liability | <input type="checkbox"/> Sexual Misconduct |
| <input type="checkbox"/> Contractual Liability | <input type="checkbox"/> Other _____ | <input checked="" type="checkbox"/> Indemnification |
| <input type="checkbox"/> Professional Liability (Errors & Omissions) | <input type="checkbox"/> Limitation of Liability | |

Request and Justification: (add another page if necessary)

Limiting indemnification to negligence, errors and mistakes is required by the proposed contractor and is standard for these legal services.

To Be Completed By CEO/Risk Management

Approved Denied Approved as Modified

Comments: Attorneys are held to a higher standard for liability due to the professional nature of their work.

Shonda M. M... ..
 Manager/CEO/Risk Management

12/21/18
 Date