



FINANCE COMMITTEE AGENDA

Tuesday, August 8, 2017

8:30 AM

Executive Conference Room, Level Three
Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California

MEMBERS: Council Member Christine Marick and Council Member Marty Simonoff
ALTERNATE: Mayor Cecilia Hupp

Materials related to an item on this agenda submitted to the Finance Committee after distribution of the agenda packet are available for public inspection in the third floor lobby of the Civic and Cultural Center at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

CALL TO ORDER / ROLL CALL

1. Matters from the Audience

CONSENT

2. Approval of Minutes of July 25 Meeting

Attachments

Minutes

3. Amendment No. 1 to Professional Services Agreement with EEC Environmental in the Additional Amount of \$25,000

Attachments

PSA Amendment and Proposal

4. Software/Hardware Maintenance Support and Online Subscription Service Agreements
5. Tracks at Brea Segment 2 and Segment 3 Restroom, Project 7873 - Additional Project Construction Contingency

NOTE: This agenda is subject to amendments up to 72 hours prior to the meeting date.

6. State Route 57 Replacement Planting Project along Aurora Avenue Between Greenbriar Lane and Eucalyptus Street

Attachments

Map

Agreement

Resolution

7. Consideration of Amendment No. 1 to Professional Services Agreement with Kimley–Horn and Associates, Inc. for the Preparation of an Environmental Assessment for the Hines/Brea Place Mixed–Use Development Application

Attachments

PSA Contract

Exhibit A

DISCUSSION

8. Schedule Next Meeting: August 29, 2017

cc: Mayor Pro Tem Glenn Parker
Council Member Steven Vargas

Special Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (714) 990-7757. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

City of Brea

FINANCE COMMITTEE COMMUNICATION

DATE: 08/08/2017

SUBJECT: Approval of Minutes of July 25 Meeting

Attachments

Minutes



FINANCE COMMITTEE MINUTES

Tuesday, July 25, 2017

8:30 AM

Executive Conference Room, Level Three

Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California

CALL TO ORDER / ROLL CALL

ATTENDEES: Mayor Celicia Hupp, Council Member Marty Simonoff, Chris Emeterio, Cindy Russell, Kathie DeRobbio, Jennifer Lilley, Faith Madrazo, Eric Aulls, Alicia Brenner, Keri Bullock, Marie Dao, and Neil Groom.

1. Matters from the Audience – *None*

CONSENT

2. Approval of Minutes of June 27, 2017 Meeting – *Receive and File.*
3. Agreement with Brea Olinda Unified School District for Building Utilities and Services – *The Committee discussed the agreement and directed staff to go back to the school district to discuss revising methodology of cost recovery from prior year actuals to current year budget with a year-end true-up. Not Recommended for City Council approval at this time.*
4. Professional Services Agreement to Provide Utility Cost Recovery and Reduction Services – *The Committee discussed and staff clarified that this agreement is separate from the Solar Energy Project and its associated savings. Council member Simonoff requested information regarding the savings from the Solar Energy Project and the corresponding bond payments. Recommended for City Council approval.*
5. Rental of Digital Mailing System Equipment – *The Committee discussed this item and directed staff to include annual budget savings within the staff report. Recommended for City Council approval.*

DISCUSSION

6. Schedule Next Meeting: August 8, 2017

Meeting adjourned: 8:42 AM

cc: Mayor Pro Tem Glenn Parker
Council Member Christine Marick
Council Member Steven Vargas

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 08/08/2017

SUBJECT: Amendment No. 1 to Professional Services Agreement with EEC Environmental in the Additional Amount of \$25,000

RECOMMENDATION

Approve Amendment No. 1 to Professional Services Agreement (PSA) with EEC Environmental for Computerized Maintenance Management System (CMMS) enhancement and support for an additional year, in the additional amount of \$25,000.

BACKGROUND/DISCUSSION

EEC has been providing CMMS services to the City of Brea since 2014. EEC was selected after bidding out data migration services to migrate data from the Public Works FoxPro database system to the new Cityworks software platform which the City had purchased. Subsequently, the City engaged EEC to assist with as-needed implementation services to augment IT support for Cityworks.

EEC's involvement was a critical step toward successfully configuring the Cityworks program, providing integration with the GIS system managed by the City's IT Division, and providing support and training to Public Works staff at all levels. The responsiveness and flexibility of EEC staff in the past several years has been unparalleled. They have been part of the Cityworks "core implementation team" consisting of Public Works staff, IT staff, and EEC staff. In such role, they have helped the City's Public Works Department accomplish a number of important project milestones, including, but not limited to: configuration and implementation of the Water Division, Streets Division, Parks Division, and Building Division; and conducting trainings for users pertaining to Cityworks. Moreover, the City's IT Division has also utilized EEC's services to augment its capacity in digitizing GIS assets necessary to "build" the Cityworks infrastructure.

In addition, EEC has provided many value-added services that other vendors simply don't offer at the price that the City has contracted with them to do so. For the FY 2017-2018 term under consideration, EEC has agreed to honor their original contract rate schedule from 2016.

In FY 2017-2018, in addition to ongoing support and training of end-users (management and/or field crews), EEC will also be focusing on helping staff to streamline data entry through possible workflow improvements, or exploration of mobile apps or other mobile capabilities.

EEC's demonstrated track record of providing exemplary services has been a key factor to successful Cityworks implementation so far. Therefore, staff recommends amending the agreement for an additional year (the new term will be August 30, 2017 to August 30, 2018), and amending the existing PSA with EEC for the aforementioned work in the additional amount of \$25,000 (Exhibit A proposal is attached).

SUMMARY/FISCAL IMPACT

If approved, the total amount of the original PSA (\$13,000) plus Amendment No. 1 (\$25,000) will be \$38,000. The additional funds of \$25,000 were previously appropriated as part of the FY 2017-2018 operating budget approved in June 2017. The source of funds is the General Fund (110). The project scope as outlined in the proposal attached is expected to be completed within budget.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Gillian Lobo, Senior Management Analyst

Concurrence: Tony Olmos, Public Works Director

Attachments

PSA Amendment and Proposal

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT

This First Amendment to Professional Services Agreement is made and entered into this 30th day of August 2017, by and between **EEC Environmental** ("CONSULTANT") and the **CITY OF BREA** (hereinafter called the "CITY").

I. Parties Intention: Amendment.

CITY and CONSULTANT have previously entered into an agreement for professional services dated **August 30, 2016** ("Contract") with respect to **Providing Computerized Maintenance Management System (CMMS) Enhancement and Support to the City of Brea**.

The parties hereto desire to enter into an amendment to **increase the maximum amount payable by \$25,000 dollars for additional enhancement and support services as set forth in Exhibit A.**

NOW, THEREFORE, it is agreed by and between CITY and CONSULTANT as follows: The agreement is hereby modified to reflect an amendment to the maximum amount payable from **\$13,000** dollars to **\$38,000** dollars.

The term of this Amendment shall commence upon the effective date and shall continue for One (1) year unless and until terminated herein. Notwithstanding the foregoing, the individual services to be performed under this Agreement by CONSULTANT shall be completed on or before the deadlines set forth in Exhibit A.

II. Amendment and Authority.

The CITY and CONSULTANT, by their signature hereunder hereby agree to amend the Contract as set forth in Section 1 above. Each Person executing this First Amendment warrants they are authorized to execute this First Amendment and to thereby bind their principal.

CITY OF BREA
A California municipal corporation

Cecilia Hupp, Mayor

Attest: Lillian Harris-Neal, City Clerk

CONSULTANT

John Shaffer, EEC Environmental

Two Signatures required if Corporation



Corporate Office
Tel: (714) 667-2300
Fax: (714) 667-2310
One City Boulevard West, Suite 1800
Orange, California 92868
www.eecenvironmental.com

EXHIBIT A

July 7, 2017

Ms. Gillian Lobo
City of Brea
545 Berry Street
Brea, California 92821

Subject: Proposal to Provide CMMS Support Services to the City of Brea for Fiscal Year 2017-2018

Dear Ms. Lobo:

Pursuant to your request, EEC is pleased to present this proposal to the City of Brea (City) to provide additional enhancements and support services for the City's computerized maintenance management system (CMMS) for the current fiscal year (July 2017 to June 2018). Based on discussions with the City, EEC understands that the City is seeking a qualified consultant to assist on an as-needed basis with implementation, support, and training services for the City's CMMS, Cityworks. EEC is qualified to provide these services due to its experience, partnerships, proximity, and familiarity with the City.

- EEC has provided similar or identical services to many satisfied public agencies throughout California, including the Yorba Linda Water District, City of Sacramento, Costa Mesa Sanitary District, City of Santa Ana, and Indio Water Authority.
- EEC has close partnerships with Azteca Systems (Cityworks), the City's CMMS software provider, and Esri (ArcGIS), the City's GIS software provider.
- EEC is located in Orange, just 15 minutes from the City's offices and can provide both remote and on-site support at a moment's notice.
- EEC has recently provided data migration services to the City's Public Works Department, importing 18 years' worth of historical maintenance records into Cityworks. EEC has also recently assisted the City in the configuration of Cityworks for several divisions with the Public Works Department. Therefore, EEC is already familiar with the City's I.T. infrastructure and will be able to support both users and administrators of Cityworks immediately upon commencing this scope of work.

The proposed services will greatly enhance the City's CMMS by augmenting the City's in-house staff with expert consulting, implementation, support, and training resources. These resources will be especially useful for the City in the immediate future when new users of the City's CMMS will need extra support.

SCOPE OF WORK

EEC will provide CMMS support services as requested by the City. EEC will only perform services as requested by the City and will inform the City of all labor and materials required to perform each task. Requested services are expected to include, but are not limited to, the following:

- System Implementation
 - Administering databases
 - Analyzing and recommending workflows
 - Adjusting Cityworks configurations as needed
 - Working with the City to develop reports, dashboards, and metrics
- Ongoing Support
 - Developing health checks and providing regular (weekly to monthly) check-ins with users
 - Assisting with data entry as needed and exploring workflow improvements
 - Answering end-user support calls
 - Troubleshooting technical issues
 - Planning, executing, and supporting system upgrades
 - Developing technical documentation
 - Providing City staff with consulting support in development of reports and key performance indicators
 - Maintaining and backing up the Cityworks database and web application
- Training
 - Leading classroom-style training for end users as needed
 - Leading small-group workshops for specific workflows
 - Developing new training materials and user guides as well as updating existing documents
 - Training administrators on technical maintenance of the system
- New Functionality
 - Integration of CCTV data into Cityworks
 - Implementation of mobile apps or other mobile capabilities, including field crew training

All work will be done within a not-to-exceed budget outlined below.

ESTIMATED COST

Assumptions

1. The City will provide EEC with on-site and off-site access to systems pertinent to this project and will install and maintain any necessary remote-access software.
2. The City will provide any necessary computer resources (e.g., workstations, monitors, software licenses) for work that must be performed on-site.

Cost

CMMS Enhancements and Support (Fiscal Year 2017-2018)	\$25,000
Total	\$25,000

EEC will provide the services described above on a time-and-materials basis with a not-to-exceed cost of \$25,000 for one fiscal year. This work will be conducted pursuant to EEC's standard terms and conditions and, as a courtesy to the City, the 2016 fee schedule rather than the most current fee schedule (Attachment 1, *EEC 2016 Fee Schedule*; Attachment 2, *EEC Standard Terms & Conditions*). Monthly progress invoices will be submitted for payment, which will be due and payable in net thirty (30) days. The proposed cost is valid for thirty (30) days after the proposal date. If additional work is requested or, due to extenuating circumstances, required outside of the aforementioned scope of work, EEC will notify the City for approval prior to proceeding. The additional work will be billed on a time-and-materials basis according to EEC's 2016 fee schedule with net thirty (30) days payment terms.

Thank you for the opportunity to provide technology services to the City. EEC will begin work efforts upon receipt of authorization to proceed. Should there be any questions regarding the contents of this proposal, please contact me at (714) 667-2300 or elue@eecenvironmental.com.

Sincerely,

EEC Environmental



Evan Lue
Senior GIS Specialist

- Attachments: 1. EEC 2016 Fee Schedule
 2. EEC Standard Terms & Conditions

ACCEPTANCE

If the proposed scope of work, cost of services, and payment terms stated herein meet with your approval, please acknowledge acceptance of same and initiate authorization to proceed and grant site access by signing and faxing a copy of this document to (714) 667-2310 or scanning and e-mailing a signed copy to elue@eecenvironmental.com.

Print Name _____ Print Title _____

Signature _____ Date _____



2016 Fee Schedule

PERSONNEL CHARGES

The charge for all time required for the performance of the Scope of Work, including office, field and travel time, will be billed at the hourly rate according to the labor classifications set forth below:

Labor Classification	Hourly Rate
Jr. Staff Engineer/Geologist/Scientist	\$105
Staff Engineer/Geologist/Scientist	\$120
Sr Staff Engineer/Geologist/Scientist	\$135
Project Engineer/Geologist/Scientist - I	\$160
Project Engineer/Geologist/Scientist - II	\$170
Sr Project Engineer/Geologist/Scientist - I	\$185
Sr Project Engineer/Geologist/Scientist - II	\$205
Principal Geologist	\$230
Principal	\$230
Project Assistant	\$95
Technician	\$95
Drafter	\$115
Sr Technician	\$115
Compliance Inspector	\$110
Technician GIS/Technology	\$95
Analyst GIS/Technology	\$105
Sr Analyst GIS/Technology	\$115
Specialist GIS/Technology	\$125
Sr Specialist GIS/Technology	\$135
Supervisor GIS/Technology	\$150
Director/GIS Technology	\$165
Construction Technician	\$80
Construction Field Supervisor	\$100
Construction Manager	\$105
Sr Construction Manager	\$130
Technical Editor	\$100

Emergency response will be charged at a rate of 1.5 times the standard hourly rate.

When EEC Staff appear as expert witnesses at court trials, mediation, arbitration hearings and depositions, their time will be charged at 2.0 times the standard rate. All time spent preparing for such trials, hearings, and depositions, will be charged at the standard hourly rate.

Travel

Vehicles used on project assignments will be charged at \$50 per day. Mileage is billed at the current rate established by the Internal Revenue Service plus mark up. Per Diem is billed at a unit cost of \$50 per day. Airfare, lodging, rental cars and associated expenses are billed at cost plus 15%.

Field Equipment

Field Equipment is billed at standard unit costs. Rate schedules are available upon request.

Subcontractors and Reimbursables

The costs of subcontractors, materials, equipment rental and costs incurred will be charged at cost plus 15%.

Other Project Charges

The cost of additional report reproduction and special project accounting will be billed as appropriate. Plotting plans are charged by size, black and white or color, and by the number of copies supplied.

Shipping and Postage

Shipping charges include couriers and the postage necessary will be charged at cost plus 15%.

Interest Charges

Interest on late payments will be charged at the rate of 1.5% per month.

Payment Terms

Net 30 days apply to all work performed and invoiced unless superseded by a specific executed contract.

EEC ENVIRONMENTAL Standard Terms and Conditions

1. **TERM OF AGREEMENT:** The term of this Agreement shall commence on the above date and shall continue in effect until the project is completed or terminated by either party having given seven (7) days written notice to the other party.
2. **SERVICES TO CLIENT:** EEC shall render consulting or construction services, as agreed. If, in the course of the project, work beyond the scope of the proposal is requested, or if unforeseen conditions arise, EEC will notify CLIENT of the change in scope of the project and, if CLIENT agrees to such changes in writing, EEC shall undertake the additional work. Unless otherwise negotiated, additional work shall be billed according to EEC's Current Fee Schedule.
3. **PAYMENT:** EEC shall submit monthly progress invoices to CLIENT. CLIENT agrees to pay EEC within thirty (30) days of the date of the invoice. Overdue payments will be charged interest at the rate of 1.5% monthly (18% annually) until payment and interest is paid in full.
4. **SUSPENSION OF WORK:** In the event all or any portion of the work prepared or partially prepared by EEC be suspended, abandoned, or terminated, CLIENT shall pay EEC only for the work performed.
5. **EEC'S RESPONSIBILITIES:** EEC shall be solely responsible for: a) completion of the project in accordance with the proposal; b) direct supervision of EEC's employees and subcontractor's on project site; c) prompt notification to CLIENT of any dangerous, adverse, or unusual conditions encountered at the site; d) obtaining and maintaining proper licenses for EEC's work; e) damage to the property due to EEC's or its subcontractor's negligence; f) compliance with laws and regulations pertaining to EEC's employees' wages, hours, fair employment practices, worker's compensation insurance, and similar employer responsibilities. EEC understands that access to the site shall only be during normal working hours.
6. **CLIENT'S RESPONSIBILITIES:** CLIENT shall be solely responsible for: a) maintaining overall supervision of the project beyond the immediate scope of EEC's work; b) all applicable permits beyond the scope of EEC's work; c) making available to EEC all of CLIENT'S information regarding existing and proposed conditions of the site including, but not be limited to: plot plans and as-built drawings. CLIENT will immediately transmit to EEC any new information which becomes available or any change in plans; d) providing reasonable access to the site for all necessary equipment and personnel during normal working hours;
7. **INDEMNIFICATION:** CLIENT agrees to indemnify, defend and hold EEC harmless from and against all claims or actions, based upon or arising out of injuries to persons or property, caused by the errors, omissions or negligence of CLIENT or its agents, subcontracts or employees in performance of services hereunder.

EEC agrees to indemnify, defend and hold CLIENT and its members, shareholders, partners, directors, affiliates, agents, officers, employees, assignees, tenants, transferees and nominees harmless from and against any and all claims, damages, demands, liens, claims or liens, losses, actions, or liability of any kind or nature whatsoever, which they may sustain, incur, or be

subjected to, or which may be imposed on them, including, without limit, reasonable attorney's fees and litigation costs to the extent arising directly or indirectly, in whole or in part out of, or in connection with: (a) any acts, errors or omissions or willful misconduct of EEC or its personnel in performing the services and work hereunder, including, without limit, damage to any property or injury to or death of any person(s); (b) acts, non-performance or breach by EEC's personnel or material duties, obligations or representations under this Agreement; and (c) acts, non-performance or breach by EEC of material duties, obligations or requirements under the Access and Indemnity Agreement by and between EEC and CLIENT and incorporated herein by reference.

8. INDEPENDENT AGENT: Each party shall be an independent agent with respect to all work under this Agreement, and shall not be deemed to be the servants, employees, or agents of the other.
9. INSURANCE: EEC shall provide insurance at a minimum in accordance with the following for the duration of the project. EEC shall name CLIENT as additional insured. EEC shall provide CLIENT with a copy of EEC's certificate of insurance prior to commencement of the services and work herein, listing CLIENT as additional insured as follows: (a) worker's compensation per the statutory limits; (b) employer's liability of \$1,000,000 per occurrence; (c) commercial liability, including contractual liability, property damage, bodily injury and death of \$2,000,000 per occurrence, \$2,000,000 annual aggregate; (d) automobile liability of \$1,000,000 combined single limit; and (e) professional errors and omissions of at least \$1,000,000 per claim.
10. AMENDMENT: This Agreement may be amended by mutual consent of the parties in writing to be attached hereto and incorporated herein, executed by EEC and CLIENT's representative.
11. CONFIDENTIALITY: All CLIENT information will be considered confidential and will only be released upon written approval from CLIENT.
12. ENTIRE AGREEMENT: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matter of this Agreement and is the entire understanding and agreement related thereto.
13. GOVERNING LAW: The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California.
14. LEGAL CONSTRUCTION: In the event provisions contained in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
15. ATTORNEY FEES: Should it be necessary for either party to initiate legal proceedings to enforce any term or condition of this Agreement, the prevailing party shall be entitled to all costs and expenses, including reasonable attorneys' and consultants' fees incurred in such proceedings. For purposes of this Agreement, the term "attorneys fees" shall include the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplication and other expenses, air freight charges and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney.

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 08/08/2017

SUBJECT: Software/Hardware Maintenance Support and Online Subscription Service Agreements

RECOMMENDATION

Authorize the Purchasing Agent to sign renewal agreements with various support services providers for the life of the computer software or hardware and for online subscription services.

BACKGROUND/DISCUSSION

To help ensure the functionality of Brea's network infrastructure, servers, and personal computers, the City uses computer hardware/software maintenance and support agreements as well as online vendor-hosted software services for required updates, technical support, and software customizations. Additionally, the City has online vendor-hosted software services for certain programs which are under an annual subscription service.

These hardware/software maintenance and support agreements are typically proprietary to the companies that provide the particular software application or hardware device. Some of these support and online subscription services may be available through cooperative agreements while very few are obtained through solicitation of competitive offers. For those support providers obtained through competitive bidding, it is common to continue to stay with the same vendor for the duration of the City's use of the program.

The total of these agreements is approximately \$730,000 annually which is included in the City's adopted budget each year. The majority of these agreements are within the Purchasing Agent's authority to approve on an annual basis. However, currently there are five such agreements that are over the Purchasing Agent's authority to approve of \$25,000; they include the following:

- ActiveNet, an online vendor-hosted software subscription for Community Services registrations and activities;
- Hexagon/Spillman for the CAD/RMS software for the police dispatch and record management system;
- County of Orange for the 800 Mhz public safety radio backbone system;
- ROI Networks for the telephone system; and,
- Superion for the City's financial software.

The proprietary agreements and subscription services are typically based on a fixed annual

increase from the vendor and not subject to negotiation. For those agreements that may be acquired through cooperative agreement and/or competitive bidding from time to time, the Purchasing Agent in conjunction with the Information Technology division and/or user department seek whichever means offers the best available pricing solution for Brea. Therefore, it is recommended that the Purchasing Agent be authorized to approve the annual renewal agreements without having to return to City Council for approval on those agreements which exceed \$25,000.

Any award recommendations of new software systems and the initial software support agreements that exceed the formal procurement threshold will continue to be presented to City Council for review and consideration. This authorization request is only for renewal of existing software/hardware maintenance support and online service agreements.

SUMMARY/FISCAL IMPACT

The City Council adopted Fiscal Year 2017-18 Budget includes sufficient funding available for these purchases. There is no additional fiscal impact to the City based on this action. Amounts for these purchases are subject to available budget appropriations for each fiscal year in which they occur.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Neil Groom, Procurement and Contracts Administrator

Concurrence: Cindy Russell, Administrative Services Director

Randy Hornsby, IT Manager

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 08/08/2017

SUBJECT: Tracks at Brea Segment 2 and Segment 3 Restroom, Project 7873 - Additional Project Construction Contingency

RECOMMENDATION

1. Increase Project Construction Contingency from \$245,543 (10%) to \$791,154 (32%) of the Construction Contract Price to cover current approved Change Orders issued to date that do not exceed the 10% contingency amount as well as the anticipated pending Change Order work as identified in the preceding table; and
2. Authorize the Public Works Director or his designee to issue Contract Change Orders up to a “not to exceed” amount of 32% of the Construction Contract Price.

BACKGROUND/DISCUSSION

On December 06, 2016, City Council awarded a contract to Lucas Builders, Inc. (LBI) in the amount of \$2,455,433.02 and approved a construction contingency of 10% of the Contract Price (\$245,543) for the Tracks at Brea Segment 2 and Segment 3 Restroom, Project 7873 (Project). LBI's bid amount was \$600,356 less than the second low bidder for the Project.

The Project converts abandoned railroad rights-of-way, flood control channels and City property into a safe and convenient recreation corridor for pedestrians and bicyclists. As a result of over 100 years of railroad use, segments of the trail route that were once railroad rights-of-way are contaminated with arsenic, which was commonly used as a weed suppressant along the tracks. In order to properly address the contaminated soil within the tracks, a Soil Remediation Action Plan (SRAP) was developed and approved by the Orange County Health Care Agency (OCHCA). Prior to bidding, the amount of soil to be disposed and imported were estimated based on soil testing and analysis as part of the SRAP. However, the SRAP also requires that additional soil testing be performed during construction to verify that the soil proposed to remain on the tracks conforms to OCHCA requirements.

The Project construction including soil remediation, rough grading, import and trail construction started in February 2017. The Project was originally anticipated to be completed by August 2017. However, during construction, the City's geotechnical consultant identified additional contaminated soil that requires disposal per SRAP and OCHCA guidelines. Based on the added soil test results, an additional net increase cost to the bid quantities for soil export and import of \$478,585 is needed to complete the required soil remedial work to comply with OCHCA. Furthermore, Staff is estimating a need for other change orders and miscellaneous unforeseen conditions in an amount of approximately \$67,026 that will exceed the 10% Contract Contingency. Therefore, due to the extra soil remediation requirements and

other Contract Change Orders, Staff is requesting that the Contract Contingency be increased from 10% (\$245,543) to 32% (\$791,154) in order to continue with the construction Contract with LBI.

Below is a list of the current Contract bid quantity cost overages and pending Change Orders:

	Description	Amount
1.	Additional net soil to export (contaminated soil) and net import (clean soil).	\$478,585
2.	Drinking fountain changes.	\$7,323
3.	Repairs to unknown storm drain line running along the trail.	\$11,942
4.	Changing the handrail to a guardrail at the west stair railing.	\$7,705
5.	Southern California Edison connection to irrigation and future lighting.	*\$104,399
6.	Modification to the west stairway to avoid storm drain line.	*\$60,000
7.	Modification to the stairway to provide proper drainage.	*\$30,000
8.	Over excavation needed for the restroom building.	*\$40,000
9.	Allowance for future change orders.	*\$51,200
	Total	\$791,154

*Estimated amount

Additionally, based on the extra and unforeseen work described herein, the new anticipated project completion is October 2017.

SUMMARY/FISCAL IMPACT

The total approved budget for the Project is \$3,964,093 with grant funding coming from a combination of Environmental Protection Agency (EPA) (\$153,614), Active Transportation Program (ATP) (\$2,577,000), Urban Greening (\$815,849), and Land and Water Conservation Fund (LWCF) (\$417,630). Staff is requesting City Council consider increasing the Contract Contingency from 10% (\$245,543) to 32% (\$791,154) and to authorize the Public Works Director or his designee to issue Contract Change Orders in an amount "not to exceed" 32% of the original Contract amount. This contingency increase with Change Order authority will cover the cost of current approved Change Orders issued to date that do not exceed the 10% contingency amount as well as the anticipated pending Change Order work as identified in the preceding table. There is no General Fund impact from this action. Please see the breakdown of the construction and construction engineering budget on the following page:

Project Expenditure	Budget
Construction Contract	\$2,455,433
Previously Approved Contingency (10%)	\$245,543
<i>Additional Contingency Amount Requested</i>	<i>\$545,611</i>
Total Requested Contingency (32%)	\$791,154
Sub-Total	\$3,246,587
Construction Engineering	\$405,146
Environmental-Geotechnical Inspection Services	\$312,360
Total Approved Budget	\$3,964,093

The Project encountered unforeseen conditions including additional soil remediation above the bid quantities and rough grading work. This resulted in extra costs for the additional export of contaminated soil and import of clean soil in accordance with SRAP and OCHCA requirements. Therefore, Staff is requesting City Council consider increasing the Construction contingency from 10% to 32% (\$791,154) of the Contract price and to authorize the Public Works Director or his designee to issue Change Orders in the amount "not-to-exceed" 32% (\$791,154) of the Contract price. If approved, the total revised Contract amount is estimated to be \$3,246,587 with all Change Orders issued to date under the 10% contingency and as estimated up to the requested 32% contingency amount.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Raymond Contreras, Assistant Engineer

Concurrence: Steve Kooyman, P.E., City Engineer

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 08/08/2017

SUBJECT: State Route 57 Replacement Planting Project along Aurora Avenue Between Greenbriar Lane and Eucalyptus Street

RECOMMENDATION

1. Authorize City Manager to execute the Cooperative Agreement between the City and the Orange County Transportation Authority ("OCTA") upon review and acceptance as to form by the City Attorney for the State Route 57 Replacement Planting Project along Aurora Avenue Between Greenbriar Lane and Eucalyptus Street, Project 7945 (\$110,000); and
2. Adopt a Resolution to Amend the Fiscal Year 2017-2018 Capital Improvement Program Budget, Approve funds from OCTA (Measure M2 Funds) in the amount of \$110,000, and Appropriate said funds to the Capital Improvement Program Fund (510) for Project 7945, State Route 57 Replacement Planting Project along Aurora Avenue Between Greenbriar Lane and Eucalyptus Street.

BACKGROUND/DISCUSSION

In November 2014, the California State Transportation Department ("Caltrans") completed the State Route 57 Northbound Widening Project from Yorba Linda Blvd. to Lambert Rd. (Project EA 12-0F0321). Subsequently, as part of the overall Project work for this corridor, Caltrans, in coordination with the Orange County Transportation Authority (OCTA), embarked on the completion of the Landscape portion of Project with the development of the Plans and Specifications. In December 2015, the SR 57 Northbound Widening Landscape Plans and Specifications were approximately 95% complete. However, on January 17, 2014, prior to the completion of the widening project, Governor Brown proclaimed a State of Emergency throughout the State due to severe drought conditions with the issuance of an Executive Order. This action precluded OCTA and Caltrans' ability to complete the 100% plans and specifications and implement the landscaping along the State Route 57 highway system until November 2016.

The State Route 57 Widening Landscape Project ("SR 57 Landscape Project") plans included replanting and irrigation work along the west side of Aurora Avenue between Greenbriar Lane and Eucalyptus Street within the Glenbrook Subdivision (see Vicinity Map). This area of the SR 57 Landscape Project is within the City owned right-of-way along Aurora Avenue. City staff has been working with OCTA and Caltrans during the development of the SR 57 Landscape Project plans and specifications since the initiation of the design. Additionally, staff has been working with the Glenbrook Home Owners Association ("HOA") with respect to facilitating OCTA and Caltrans' ability to separate landscape work

along Aurora Avenue from the overall SR 57 Landscape Project. In March 2017, OCTA agreed to separate out the Aurora Avenue portion of the SR 57 Landscape Project and provide the City the necessary funds through a Cooperative Agreement ("Agreement") to complete the work. On April 11, 2017, City and OCTA staff met with the HOA to discuss the Aurora Avenue landscaping and status of implementing the work through this Agreement.

As of July 2017, due to various review delays with Caltrans coupled with the Governor's Executive Order, the SR 57 Landscape Project Plans and Specifications have yet to be approved for bid. Therefore, in the interest of completing the City's portion of this work along Aurora Avenue outside the Caltrans SR 57 Landscape Project and process, OCTA has agreed to execute an Agreement with the City in the amount of \$110,000 to implement the work. (See attached Draft Cooperative Agreement). This draft Agreement has been reviewed by the City Engineer and City Attorneys' office, which was resubmitted back to OCTA for final acceptance as to form and execution. Once OCTA provides the final Agreement, the City Engineer and City Attorneys' office will review for final acceptance and provide a recommendation for signature by the City Manager. Therefore, staff is recommending the City Council authorize the City Manager to execute the Agreement upon City Attorneys' acceptance as to form.

Furthermore, this separate project was not included within the adopted 2017 Capital Improvement Program ("CIP") due to the timing of the OCTA decision and development of the CIP. The Project is in conformance with the General Plan Policies CD 14.2, and CR 11.4, 11.5, and 12.2. Therefore, Staff is requesting the City Council consider a Resolution amending the CIP Budget Resolution No. 2017-041 to include the State Route 57 Replacement Planting Project Along Aurora Avenue Between Greenbriar Lane and Eucalyptus Street, Project 7945, in the amount of \$110,000 (see attached Resolution). The source of the funds will be from OCTA's Measure M2 as included as part of the Agreement.

SUMMARY/FISCAL IMPACT

OCTA has agreed to separate out the landscape work along Aurora Avenue in the City from the overall SR 57 Landscape Project as administered and implemented by Caltrans. An Agreement that approves funding in the amount of \$110,000 from Measure M2 funds from OCTA to the City has been provided to complete the work. Therefore, Staff recommends City Council consider authorizing the City Manager to execute the Agreement upon review and acceptance as to form by the City Attorney. Additionally, in order to implement the work under the CIP, Staff recommends City Council adopt a Resolution amending CIP Resolution No. 2017-041 to include Project 7945 in the amount of \$110,000.

The Agreement provides a cost breakdown within Exhibit A which shows the following expenditures:

Expenditure	Estimated Cost
Prepare PS&E	\$15,000
Advertise, Award, and Administer Construction Contract	\$5,000
Replacement Planting Construction	\$80,000
10% Contingency	\$10,000
Total	\$110,000

The Project funding will be from OCTA's Measure M2 funds via the Agreement in the amount of \$110,000. Therefore, there will be no General Fund Impact from this action.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Steve Kooyman, P.E., City Engineer

Concurrence: Tony Olmos, P.E., Public Works Director

Attachments

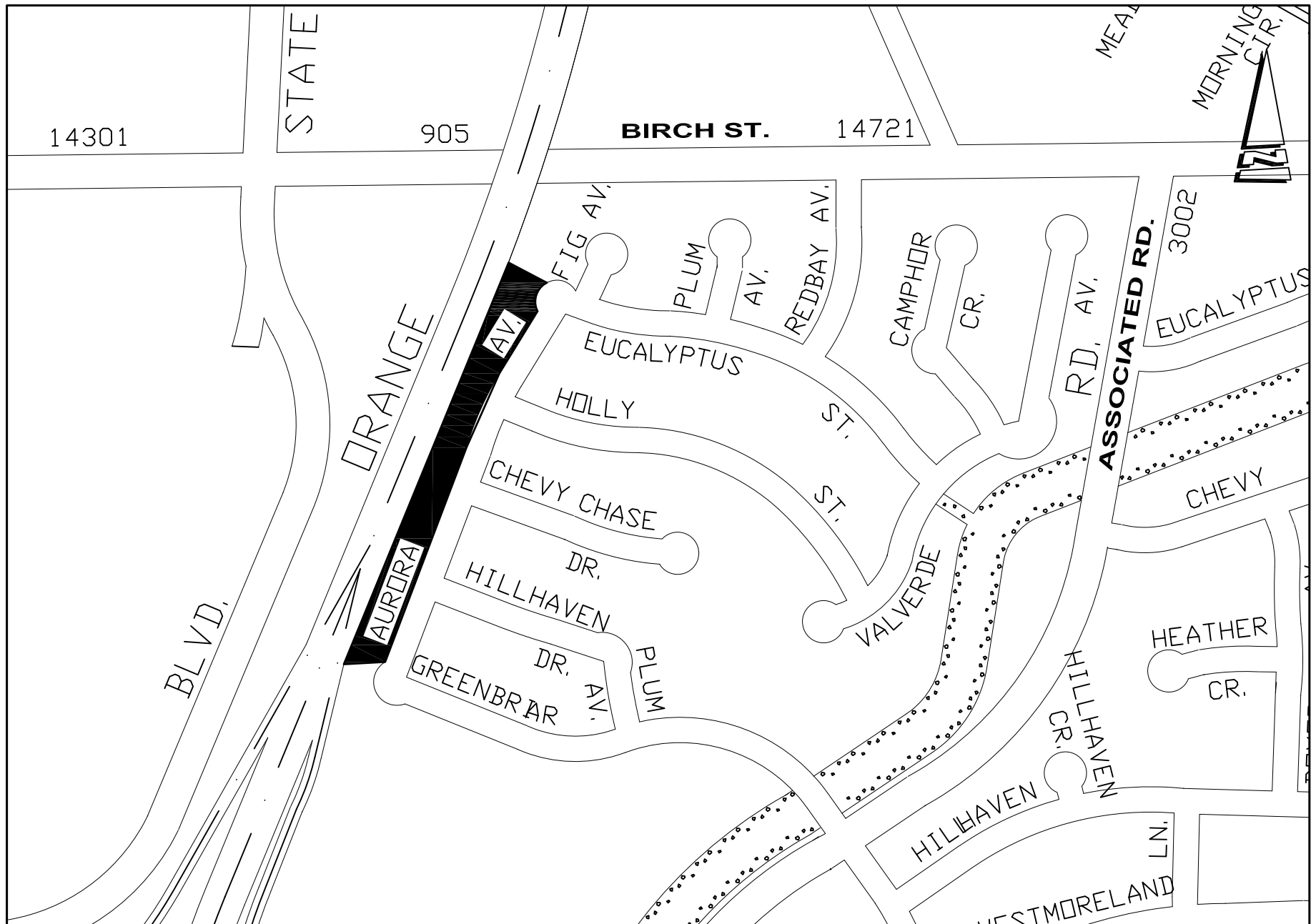
Map

Agreement

Resolution

PROJECT 7XXX

STATE ROUTE 57 REPLACEMENT PLANTING PROJECT
ALONG AURORA AVE. BETWEEN GREENBRIAR LN. AND EUCALYPTUS ST.



VICINITY MAP

NOT TO SCALE

AGREEMENT NO. C-X-XXXX

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF BREA

FOR

STATE ROUTE 57 REPLACEMENT PLANTING PROJECT ALONG AURORA AVENUE BETWEEN
GREENBRIAR LANE AND EUCALYPTUS STREET

THIS COOPERATIVE AGREEMENT is effective this 15th day of August, 2017 ("Effective Date"), by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and the City of Brea **Error! No text of specified style in document.**, 1 Civic Center Circle, Brea, California 92821, a municipal corporation (hereinafter referred to as "CITY"). The Parties are each individually known as "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, AUTHORITY, in cooperation and partnership with the CITY, is proposing to implement replacement planting adjacent to the State Route 57 Freeway (SR-57) along Aurora Avenue between Greenbriar Lane and Eucalyptus Street (herein referred to as "PROJECT"); and

WHEREAS, PROJECT will add replacement planting and irrigation facilities within the CITY Right of Way along Aurora Avenue.; and

WHEREAS, AUTHORITY has requested and CITY has agreed to furnish PROJECT plans, specifications and estimates, and advertise, award, and administer the construction contract; and

WHEREAS, this Cooperative Agreement defines the specific terms, conditions and funding responsibilities between AUTHORITY and CITY for completion of final design and construction for PROJECT; and

WHEREAS, the CITY Council approved this Agreement on the ____ day of _____, 2017; and

NOW, THEREFORE, it is mutually understood and agreed by AUTHORITY and CITY as follows:

ARTICLE 1. COMPLETE AGREEMENT

A. This Agreement, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of this Agreement between AUTHORITY and CITY and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions.

B. AUTHORITY's failure to insist in any one or more instances upon CITY's performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's right to such performance or to future performance of such terms or conditions and CITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized representative of AUTHORITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

C. CITY's failure to insist on any instances upon AUTHORITY's performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of CITY's right to such performance or to future performance of such terms or conditions and AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon CITY except when specifically confirmed in writing by an authorized representative of CITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. SCOPE OF AGREEMENT

This Agreement specifies the roles and responsibilities of the Parties as they pertain to the subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any other supplemental agreements that may be required to facilitate purposes thereof. The services required to be performed by CITY to complete the PROJECT are more fully set forth in the Scope of Services attached hereto as Exhibit "A" and incorporated by reference herein ("SERVICES").

ARTICLE 3. RESPONSIBILITIES OF AUTHORITY

AUTHORITY shall have the following responsibilities for PROJECT:

A. To provide the Project Manager or designee as its single point of contact to coordinate with CITY for all SERVICES under this Agreement.

B. To monitor all PROJECT activities to ensure that the approved PROJECT schedule, quality, and budget goals are met.

C. To monitor and review all SERVICES to ensure that all work performed is in compliance with obligations of the AUTHORITY under and grant, agreement, regulation, law, or other requirements.

D. To provide timely notice to CITY of any obligation of AUTHORITY under any grant, agreement, regulation, law, or other requirements governing AUTHORITY and affecting the work and to reimburse CITY for all costs incurred in furnishing any reports, studies, information, or other documentation as needed by AUTHORITY to meet its obligations.

E. To fund the SERVICES at its sole cost and expense, up to the not-to-exceed amount specified in Article 5. Should CITY not complete the SERVICES, or should CITY breach any provision of this Agreement, CITY will return to AUTHORITY all unspent monies funded as part of the Agreement within sixty (60) days of AUTHORITY's written demand.

F. To agree to pay CITY a not-to-exceed amount as specified in Article 5 for all work performed pursuant to Exhibit A, and the following provisions:

1. At the completion of SERVICES, only actual costs up to the not-to-exceed amount will be paid to CITY for all work.

2. To review changes to the SERVICES costs within seven (7) business days and provide CITY with written approval comments and/or objections in writing. As AUTHORITY is responsible for advance approval of all SERVICES costs, and payment of all SERVICES costs, CITY is not authorized to exceed the not-to-exceed amount without prior AUTHORITY written approval.

3. Notwithstanding the amount of any estimate for services by CITY, the AUTHORITY agrees to reimburse CITY for only approved SERVICES incurred by CITY up to the not to exceed amount in connection with the SERVICES including, but not limited to, actual costs of engineering and engineering review services, which shall include direct and indirect overhead costs

1 associated therewith.

2 G. To reimburse CITY, within 30 days of receipt of an acceptable invoice, for furnishing
3 materials and replacement planting construction costs for the PROJECT. The total amount for these
4 materials and replacement planting construction costs shall not exceed Ninety Thousand Dollars
5 (\$90,000.00). This amount will not be exceeded without prior written amendment to this Agreement.

6 H. To reimburse CITY, within 30 days of receipt of an acceptable invoice, for actual costs,
7 including staff overhead, for the following as-needed services; engineering services; police enforcement
8 and support; maintenance inspection and coordination; and public outreach support. The total amount
9 for these services shall not exceed Twenty Thousand Dollars (\$20,000.00). This amount will not be
10 exceeded without the prior written amendment to this Agreement.

11 **ARTICLE 4. RESPONSIBILITIES OF CITY**

12 CITY agrees to the following responsibilities

13 A. To designate a Project Manager as the point of contact and to manage the SERVICES
14 through completion.

15 B. To provide SERVICES through final completion at AUTHORITY's cost, up to the not-to-
16 exceed amount as specified in Article 5 in accordance with Exhibit A..

17 C. To provide timely review and responses to all requests and to not unreasonably withhold
18 approval of any requests.

19 D. To enter into agreements for any services associated with the PROJECT. CITY shall be
20 responsible for payment to consultants and/or contractors for services rendered. CITY may then seek
21 reimbursement from AUTHORITY as part of this Agreement. CITY shall be responsible for reviewing
22 consultant and/or contractor invoices for accuracy, reasonableness, terms, and completeness.

23 E. If CITY uses CITY labor to accomplish PROJECT or services under PROJECT, CITY may
24 utilize their current approved CITY's fiscal year budget overhead rate when seeking reimbursement from
25 AUTHORITY.

26 F. To submit an invoice to AUTHORITY for one hundred percent (100%) of total estimated costs
associated with the PROJECT within thirty (30) days of the execution of this Agreement. Following the

1 completion of PROJECT, CITY shall submit the final invoice to AUTHORITY detailing PROJECT
2 expenses incurred beginning with the Effective Date. CITY must submit this invoice for all work
3 performed, and in duplicate, to AUTHORITY's Accounts Payable office. Each CITY invoice shall include
4 the following information:

- 5 1. Agreement Number C-X-XXXX;
- 6 2. The time period covered by the invoice
- 7 3. Progress Report, which includes a detailed description of the services performed;
- 8 4. Itemized expenses including support documentation incurred during the billing period.
- 9 5. Invoice Certification signed by an authorized representative of CITY;

Certification statement shall be as follows:

10 "I hereby certify that invoice(s) dated _____ for the period covering _____ to
11 _____ are true, complete and correct statements of reimbursable costs and
12 progress. The backup information included with the invoices is true, complete and
13 correct in all material aspects. All payments due and owing to subcontractors and
14 suppliers have been made. Timely payments will be made to subcontractors and
15 suppliers from proceeds of the payment covered by the certification. The invoices
16 do not include any amounts which (Insert Name of the firm) intends to withhold or
17 retain from a subcontractor or supplier unless so identified on the invoices."

- 18 6. Such other information as requested by AUTHORITY.

19 G. To submit to AUTHORITY's review and approval of changes to the SERVICES cost within
20 seven (7) days of identifying the change.

21 H. To notify AUTHORITY in writing when seventy-five (75%) of the deposited funds have been
22 exhausted and include an estimate of what, if any, additional funds are estimated to be needed to
23 complete the SERVICES contemplated under this Agreement.

24 I. Within ninety (90) days from completion of SERVICES, CITY will return to the AUTHORITY
25 any unused funds along with a final progress report, including final expenditures.

26 J. To agree to perform SERVICES in accordance with the times as set forth in schedules
approved in writing.

1 K. To review and approve in writing the construction phasing plan and work windows necessary
2 to complete the SERVICES.

3
4 **ARTICLE 5. MAXIMUM OBLIGATION**

5 Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CITY agree
6 that AUTHORITY's maximum cumulative payment obligation hereunder (including CITY'S direct and
7 indirect costs) shall be One Hundred Ten Thousand Dollars (\$110,000.00), unless agreed to in writing by
8 both Parties.

9 **ARTICLE 6. AUDIT AND INSPECTION**

10 CITY shall maintain a complete set of records in accordance with generally accepted accounting
11 principles. Upon reasonable notice, CITY shall permit the authorized representatives of AUTHORITY to
12 inspect and audit all work, materials, payroll, books, accounts and other data and records of CITY for a
13 period of four (4) years after final payment, or until any on-going audit is completed. For purposes of
14 audits, the date of completion of this Agreement shall be the date of AUTHORITY's payment of CITY's
15 final billing (so noted on the invoice) under this Agreement. AUTHORITY shall have the right to reproduce
16 any such books, records and accounts. The above provision with respect to audits shall extend to and/or
17 be included in contracts with CITY's contractor.

18 **ARTICLE 7. INDEMNIFICATION**

19 A. CITY shall indemnify and hold harmless AUTHORITY, its officers, directors, employees and
20 agents from and against any and all claims (including attorney's fees and reasonable expenses for
21 litigation or settlement) for any loss or damages, bodily injuries, including death, worker's compensation
22 subrogation claims, damage to property to the extent a trier of fact determines same is actually caused
23 by the negligent acts, omissions or willful misconduct of CITY, its officers, directors, employees or agents
24 in the performance of this Agreement.

25 B. AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,
26 employees and agents from and against any and all claims (including attorney's fees and reasonable

1 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's
2 compensation subrogation claims, damage to property to the extent actually caused by the negligent
3 acts, omissions or willful misconduct by AUTHORITY, its officers, directors, employees or agents in
4 connection with or arising out of the performance of this Agreement.

5 **ARTICLE 8. ADDITIONAL PROVISIONS:**

6 The AUTHORITY and CITY agree to the following mutual responsibilities:

7 A. Term of Agreement: This Agreement shall continue in full force and effect through
8 February 28, 2018, or until the time within which any and all stop notice claims can be timely filed with
9 respect to the PROJECT, whichever occurs last, unless terminated earlier by mutual written consent
10 by both Parties. The term of this Agreement may only be extended upon written agreement by both
11 Parties.

12 B. Termination: This Agreement is null and void if PROJECT is not awarded by CITY on
13 or before _____. In the event either Party defaults in the performance of their
14 obligations, under this Agreement or breaches any of the provisions of this Agreement, the non-
15 defaulting Party shall have the option to terminate this Agreement upon thirty (30) days' prior written
16 notice to the other Party.

17 C. Termination for Convenience: Either Party may terminate this Agreement by providing
18 thirty (30) days written notice of its intent to terminate for convenience to the terminating Party;

19 D. Compliance: AUTHORITY and CITY shall comply with all applicable federal, state, and
20 local laws, statutes, ordinances, and regulations of any governmental authority having jurisdiction over
21 the PROJECT.

22 E. Legal Authority: AUTHORITY and CITY warrant that they are duly authorized to
23 execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties
24 hereto are formally bound to the provisions of this Agreement.

25 F. Amendments: This Agreement may be amended in writing at any time by the mutual
26 consent of both Parties. No amendment shall have any force or effect unless executed in writing by
both Parties.

G. Severability: If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

H. Counterparts of Agreement: This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

I. Assignment: Neither this Agreement, nor any of the Parties rights, obligations, duties, nor authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

J. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.

K. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern hereunder.

L. Litigation Fees: Should litigation arise out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing Party.

M. Notices: Any notices, requests or demands made between the Parties pursuant to this Agreement are to be directed as followed:

To CITY:

City of Brea

1 Civic Center Circle

Brea, CA 92821

Email: SteveK@ci.brea.ca.us

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P. O. Box 14184

Orange, CA 92863-1584

Email: dpekru1@octa.net

1 N. Force Majeure: Either Party shall be excused from performing its obligations under this
2 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
3 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;
4 commandeering of material, products, plants or facilities by the federal, state or local government;
5 national fuel shortage; or a material act or omission by the other Party; when satisfactory evidence of
6 such cause is presented to the other Party, and provided further that such nonperformance is
7 unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.
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This Agreement shall be made effective _____ upon full execution by both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement No. C-X-XXXX to be executed on the date first written above.

CITY OF BREA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Bill Gallardo
City Manager

By: _____
Darrell Johnson
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
Lillian Harris-Neal
Clerk of the Council

By: _____
James M. Donich
General Counsel

APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

By: _____
James L. Markman
City Attorney

By: _____
James Beil, P.E.
Executive Director, Capital Programs

Dated: _____

Dated: _____

Exhibits:

Exhibit A Scope of Services

SCOPE OF SERVICES

State Route 57 Replacement Planting Project along Aurora Avenue between Greenbriar Lane and Eucalyptus Street

City of Brea (CITY) will provide all necessary services for the development and implementation of the replacement planting within the CITY right of way along Aurora Avenue between Greenbriar Lane and Eucalyptus Street displaced by the Northbound State Route 57 Widening Project (EA 12-0F0321). The following work shall will be required

1. Prepare Plans, Specifications and Estimate (PS&E)
2. Advertise, Bid, Award and Administer Construction Contract
3. Replacement Planting Construction
4. Submit monthly progress reports, to include monthly and cumulative cost expenditures (both labor and other direct costs, if any).

COST ESTIMATE FOR SERVICES

The following cost estimate assumes services will be required for approximately 6 months:

Description	Estimated Cost
Prepare PS&E	\$15,000
Advertise, Award, and Administer Construction Contract	\$5,000
Replacement Planting Construction	\$80,000
10% Contingency	\$10,000
Total	\$110,000

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BREA TO AMEND THE FISCAL YEAR 2017-18 OF THE CAPITAL IMPROVEMENT PROGRAM BUDGET, APPROVE FUNDS FROM THE ORANGE COUNTY TRANSPORTATION AUTHORITY (MEASURE M2 FUNDS), AND APPROPRIATE SAID FUNDS TO THE CAPITAL IMPROVEMENT PROGRAM FUND (510) FOR PROJECT 7945, STATE ROUTE 57 REPLACEMENT PLANTING PROJECT ALONG AURORA AVENUE BETWEEN GREENBRIAR LANE AND EUCALYPTUS STREET

A. RECITALS:

(i) The City Council has determined that it is in the best interest of the City of Brea to approve funds from the Orange County Transportation Authority (Measure M2 Funds) in the amount of \$110,000 through a Cooperative Agreement.

(ii) The City Council has determined that it is in the best interest of the City of Brea to appropriate the funds from the Orange County Transportation Authority (Measure M2 Funds), to the Capital Improvement Program Fund (510), for Project 7945 for the fiscal year 2017-18.

(iii) The Capital Improvement Program Budget, Resolution No. 2017-041, and subsequent amendments, did not appropriate funds for this unanticipated adjustment.

B. RESOLUTION:

NOW, THEREFORE, be it found, determined and resolved by the City Council of the City of Brea that Capital Improvement Program Budget, Resolution No. 2017-041, as heretofore amended, be further amended to:

1. Approve funding from the Orange County Transportation Authority (Measure M2 Funds) through a Cooperative Agreement in the amount of \$110,000; and
2. Appropriate an additional \$110,000 to the Capital Improvement Program Fund (510) for Project 7945, State Route 57 Replacement Planting Project along Aurora Avenue Between Greenbriar Lane and Eucalyptus Street.

APPROVED AND ADOPTED this 15th day of August, 2017.

Mayor

ATTEST: _____
City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council of the City of Brea, held on the 15th day of August, 2017, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAINED: COUNCIL MEMBERS:

Dated: _____

City Clerk

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 08/08/2017

SUBJECT: Amendment No. 1 to Professional Services Agreement with Kimley–Horn and Associates, Inc. for the Preparation of an Environmental Assessment for the Hines/Brea Place Mixed–Use Development Application

RECOMMENDATION

Approve Amendment No. 1 to the Professional Services Agreement with Kimley–Horn and Associates, Inc.

BACKGROUND/DISCUSSION

On March 1, 2016, the City Council approved a Professional Services Agreement (PSA) with Kimley–Horn and Associates, Inc. for \$59,981.00 to prepare the environmental assessment for the Hines/Brea Place application. The scope of work and deliverables were completed on time and on schedule. However, given the project's complexity and changes to the plan in response to input from the Community, staff and the Commission, an amendment to the original PSA is necessary.

The Amendment includes additional services for the evaluation and review of revised plans, meeting attendance and representation above the initial amount agreed upon and additional technical report review and evaluation. The project exceeded the initial scope of work. It is important to note the additional work is as a result of the changes to the project and not a lack of understanding or lack of proper scoping by the consultant. The work requested in the Amendment is outside the initial scope of work and is for time, effort and materials that could not have been anticipated at the time the initial PSA was approved.

Kimley–Horn and Associates, Inc. has provided a separate proposal (attached) which outlines the outstanding cost of services for a not to exceed of \$35,000.00.

All costs associated with this PSA are paid by the applicant. The applicant's account is current and the original funds to pay the initial PSA have been exhausted. The remaining funds are available to pay out the additional work required to complete this project.

SUMMARY/FISCAL IMPACT

The applicant will fund the additional \$35,000.00 for the environmental assessment of the approved mixed–use development. There is no impact to the General Fund.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Star Haro, Associate Planner

Concurrence: David M. Crabtree, AICP, Community Development Director

Jennifer A. Lilley, AICP, City Planner

Attachments

PSA Contract

Exhibit A

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT

This Amendment No. 1 to Professional Services Agreement is made and entered into this 15th day of August, 2017 by and between **Kimley-Horn and Associates, Inc.** ("CONSULTANT") and the **CITY OF BREa** ("CITY").

A. Recitals.

(i) **On or about March 1, 2016**, CITY and CONSULTANT entered into an agreement for professional services, whereby CONSULTANT to prepare an environmental assessment for a mixed-use development project submitted by Hines for the proposed Brea Place project ("Agreement," hereinafter).

(ii) **On or about August 15, 2017**, CITY and CONSULTANT entered into an amendment for the professional services agreement, in order to cover the additional and necessary environmental services included in the additional evaluation and review of revised plans, multiple meeting attendance and representation, and additional technical report review and evaluation.

(iii) The parties hereto desire to amend Agreement, whereby CONSULTANT will be paid to cover the additional review tasks and preparation and attendance of Brea Planning Commission hearings related to the proposed Brea Place project, thus increasing the contract amount from \$59,981 to \$94,981 ("Amendment No. 1," hereinafter).

B. Amendment.

NOW, THEREFORE, it is agreed by and between CITY and CONSULTANT as follows:

1. Notwithstanding any other provision therein, the term of the Agreement is hereby increased from \$59,981 to \$94,981. Except as amended by this Amendment No. 1, all other terms and conditions of the Agreement remain unchanged.

2. The persons executing this Amendment No. 1 warrant that they are authorized to execute this First Amendment and that this Amendment is binding on the parties hereto.

NOW, WHEREFORE, the parties have executed this Amendment No. 1 as of the date first set forth above.

CITY OF BREA
A California municipal corporation
1 Civic Center Circle
Brea, CA 92821

CONSULTANT
Kimley-Horn and Associates, Inc.
765 The City Drive, Suite 200
Orange, CA 92868

Cecilia Hupp
Mayor

Principal

Attest:

City Clerk



May 31, 2017

Jennifer Lilley, AICP
City Planner
City of Brea Planning Division
1 Civic Center Circle
Brea, CA 92821

Ms. Lilley;

Thank you for the opportunity to continue to work with the City of Brea on the Brea Place Project. As a part of the City's Project Team for the Brea Place Project, Kimley-Horn has been assisting the City in the preparation of California Environmental Quality Act (CEQA) documentation and as-needed planning assistance for the project. At this time, we are requesting a budget augment associated with tasks completed at the direction of the City as well as the anticipated tasks associated with completion of the work efforts for the proposed project.

Tasks would include but are not limited to the following: project meetings and public hearings including preparation and travel; new analysis for the CEQA documentation associated with additional document review as well as several changes to the description of the project and receipt of revised technical reports; ongoing project management; and review of supporting staff reports, conditions of approval, etc. All tasks would be performed at the direction of City staff and will be billed monthly on a time and materials basis at the hourly rates provided as an attachment to this letter. Please feel free to contact us if you have any questions or require additional information.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "Dana C. Privitt".

By: Dana C. Privitt, AICP
Associate

Hourly Rate Schedule
Rates Effective through June 30, 2017

	Hourly Billing Rate
Principal/Sr. Technical Advisor	\$295 - \$330
Sr. Professional	\$255 - \$295
Professional	\$175 –\$240
Analyst	\$110 –\$150
Sr. Designer	\$135 – \$155
Designer	\$90 – \$130
Clerical/Project Support	\$90 - \$135

Expenses

Direct Expense are billed at cost plus 15%

Mileage will be billed at the Federal Rate

Subconsultants are billed at cost plus 15%

Office Expenses are 5%