



# FINANCE COMMITTEE AGENDA

**Tuesday, August 14, 2018**

**8:30 AM**

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

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**MEMBERS:** Council Member Cecilia Hupp and Council Member Marty Simonoff  
**ALTERNATE:** Mayor Glenn Parker

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 10, 2018 Meeting

### Attachment

[Minutes](#)

3. [Professional Services Agreements for On-Call As Needed Landscape Architect Services for Capital Improvement Projects](#)

### Attachments

[PSA - BMLA](#)

[PSA - Land Concern](#)

4. [Agreement with EV Connect for Installation of Electric Charging Stations at Superblock I Parking Structure](#)

### Attachment

[Agreement](#)

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

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## DISCUSSION

### 5. Schedule Next Meeting: August 28, 2018

cc: Mayor Pro Tem Christine Marick  
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

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**FINANCE COMMITTEE COMMUNICATION**

**FROM:** Bill Gallardo

**DATE:** 08/14/2018

**SUBJECT:** Approval of Minutes of July 10, 2018 Meeting

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**Attachment**

07-10-18 FC Minutes

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## FINANCE COMMITTEE MINUTES

**Tuesday, July 10, 2018**

**8:30 AM**

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

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### CALL TO ORDER / ROLL CALL

ATTENDEES: Council Member Cecilia Hupp, Council Member Marty Simonoff, Chris Emeterio, David Crabtree, Wolfgang Knabe, Tony Olmos, Cindy Russell, Steve Kooyman, Ron Krause, and Neil Groom

1. Matters from the Audience – *None*

### CONSENT

2. Approval of Minutes of June 12, 2018 Meeting – *Receive and file.*
3. Agreement with UniFirst Corporation for Public Works Uniforms and Related Services – *Recommended for City Council approval.*
4. Enhancements to Brea Superblock I Parking Structure (P3), Project 7903 – *The Committee discussed item and recommended the removal of the Video Camera Installation and Solar Panel Installation item from the enhancement improvement list; and staff to coordinate with the Brea Downtown Business Owners regarding their commitment to pay for the installation, monitoring, and maintenance of the Video Cameras. Committee recommends the City Council approve to proceed with item as modified with the remaining enhancement improvements.*
5. Cooperative Agreement, Project Baseline Agreement and Funding Summary between the City of Brea and the State of California Department of Transportation (Caltrans) for the SR 57/Lambert Road Interchange Improvement Project (CIP 7251) - Construction – *Recommended for City Council approval.*
6. Purchase of Reserve Fire Truck - 1998 American LaFrance 105' Aerial Ladder – *Recommended for City Council approval.*
7. Purchasing Activity under Special City Council Authorization Period Ending June 30, 2018 – *Recommended for City Council approval.*
8. Annual Vehicles and Equipment Purchase Plan for Fiscal Year 2018-19 – *Recommended for City Council approval.*
9. Software/Hardware Maintenance Support and Online Subscription Service Agreements – *Recommended for City Council approval.*

## **DISCUSSION**

10. Schedule Next Meeting: Tuesday, July 31, 2018

Meeting adjourned: 8:45 AM

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

## City of Brea

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### FINANCE COMMITTEE COMMUNICATION

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**TO:** Finance Committee Members

**FROM:** Bill Gallardo

**DATE:** 08/14/2018

**SUBJECT:** Professional Services Agreements for As-Needed Landscape Architect Services for Capital Improvement Projects

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### **RECOMMENDATION**

1. Approve Professional Services Agreement with Land Concern in the amount not-to-exceed \$75,000 per year;
2. Approve Professional Services Agreement with BMLA in the amount not-to-exceed 75,000 per year; and
3. Authorize City Manager to execute up to two (2) one year extensions for each of these agreements

### **BACKGROUND/DISCUSSION**

The City of Brea is proposing to install approximately \$800,000 worth of landscape improvements at various locations. These Capital Improvement Projects include renovation and turf removal at City facilities, medians and greenbelts.

On June 7, 2018, staff issued a Request for Proposal (RFP) to seven firms. The intent of the RFP was to select firms that can provide landscape architectural design and construction inspection services for various projects over the next three years and provide a separate fee proposal for design services for the medians on Lambert Road, parkways on north Associated Road and medians on south Associated Road. The recommended action in this staff report only pertains to the as-needed landscape architectural and construction inspection services. Any agreements resulting from the separate proposals for the mentioned median and parkway improvement projects will be handled separately under a future City Council agenda item.

Since the City administers several design projects simultaneously, it intends on retaining two as-needed firms that would be available to provide these services. The exact projects to be assigned, along with the scope of services to be performed will be determined on a case by case basis by Park Division staff. On June 28, 2018, proposals were received from the following six firms:

1. Brightview Design Group
2. Land Concern
3. Nuvis
4. RJM
5. BMLA
6. David Evans and Associates Inc.

The proposals were reviewed and evaluated based on the firms' relevant experience, qualifications, scope of services provided and cost effectiveness. Based on the above criteria, Nuvis, Land Concern, RJM, and BMLA were selected as the top four firms (not necessarily ranked in order). Of the four, Land Concern and BMLA are staff's recommendation for contracts. All four firms have extensive experience with the requested design services. Their hourly rates are all comparable and competitive.

### **SUMMARY/FISCAL IMPACT**

The proposed contracts are for a one-year term, with provisions for two one-year extensions. The total fee per consultant for all assignments to be authorized during a single year would be limited to a "not to exceed fee" of \$75,000 for each firm and a "not to exceed" amount of \$225,000 over the term of the three years. Since the consultant fees are paid from corresponding CIP project accounts, an appropriation of funds for these consultant contracts is not required. There is no General Fund impact.

### **RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Bill Bowlus, Public Works Superintendent

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

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### **Attachments**

PSA - BMLA

PSA - Land Concern

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## PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018 between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and **BMLA Landscape Architecture** (hereinafter referred to as “CONSULTANT”).

### A. Recitals

(i) CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to landscape design services preparing construction documents for various capital improvement projects on an “as-needed (on-call)” basis (“Tasks” hereafter), a full, true and correct copy of which is attached hereto as Exhibit “A” and by this reference made a part hereof.

(ii) CONSULTANT has now submitted its proposal for the performance of such services, a full, true and correct copy of which proposal is attached hereto as Exhibit “B” and by this reference made a part hereof.

(iii) CITY desires to retain CONSULTANT to perform professional services necessary to render advice and assistance to CITY, City’s Planning Commission, City Council and staff to complete said Tasks.

(iv) CONSULTANT represents that it is qualified to perform such services and is willing to perform such professional services as hereinafter defined.

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

### B. Agreement

1. Definitions: The following definitions shall apply to the following terms, except where the context of this Agreement otherwise requires:

(a) Tasks: Provide professional services as described in Exhibit “A” hereto including, but not limited to, the preparation of plans, specifications, reports, and documents, presentation, both oral and in writing, of such plans, maps, reports and documents to CITY as required.



(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be for a one-year term with provisions for two-one year extensions with the total term not exceeding three (3) years.

(c) Completion of Tasks: The date of completion of all assigned Tasks, including any and all procedures, development plans, maps, plan documents, technical reports, meetings and oral presentations regarding the completion of Tasks as set forth in Exhibits “A” hereto.

2. CONSULTANT agrees as follows:

(a) CONSULTANT shall forthwith undertake and complete the assigned Tasks in accordance with Exhibits “A” hereto and all in accordance with Federal, State and CITY statutes, regulations, ordinances and guidelines, all to the reasonable satisfaction of CITY.

(b) CONSULTANT shall supply copies of all plans, specifications, reports and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

(c) CONSULTANT shall, at CONSULTANT’s sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONSULTANT, CONSULTANT hereby warrants that such persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no subcontractor shall be retained by CONSULTANT except as may otherwise be set forth in Exhibit “B” and upon the prior written approval of CITY.

3. CITY agrees as follows:

(a) To pay CONSULTANT pursuant to the provisions of Exhibit "B" Services required hereunder. Said sum(s) shall cover the costs of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants and subcontractors to CONSULTANT, except as may otherwise be set forth in Exhibit "B". Payment to CONSULTANT, by CITY, shall be made in accordance with the schedule set forth below.

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of seventy five thousand dollars and zero cents (\$75,000.00) annually. The costs associated with the Tasks performed for private development projects are not part of the not-to-exceed amount.

(c) CONSULTANT agrees that, in no event, shall CITY be required to pay to CONSULTANT any sum in excess of 95% of the maximum payable hereunder prior to receipt by CITY of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to CITY. Final payment shall be made not later than 60 days after presentation of final documents and acceptance thereof by CITY.

(d) Additional services: Payments for additional services requested, in writing, by CITY, and not included in CONSULTANT's proposal as set forth in Exhibit "A" hereof, shall be paid on a reimbursement basis in accordance with the fee schedule set forth in said Exhibit "B". Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITY within a reasonable time after said invoices are received by CITY.

4. CITY agrees to provide to CONSULTANT:

(a) Information and assistance as set forth in Exhibit "A" hereto.

(b) Photographically reproducible copies of maps and other information, if available, which CONSULTANT considers necessary in order to complete the Tasks.

(c) Such information as is generally available from CITY files applicable to the Tasks.

(d) Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONSULTANT's responsibility to make all initial contact with respect to the gathering of such information.

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

6. Termination: This Agreement may be terminated by CITY upon the giving of a written "Notice of Termination" to CONSULTANT at least fifteen (15) days prior to the date of termination specified in said Notice. CONSULTANT shall not be compensated for any work performed after receipt of the Notice of Termination. CONSULTANT shall provide to CITY any and all documents, whether in draft or final form, prepared by CONSULTANT as of the date of termination. CONSULTANT may not terminate this Agreement except for cause.

7. Notices and Designated Representatives: Any and all notices, demands, invoices and written communications between the parties hereto shall be addressed as set forth in this section 7. The below named individuals, furthermore, shall be those persons primarily responsible for the performance by the parties under this Agreement:

CITY REPRESENTATIVE

Bill Bowlus  
Public Works Superintendent  
1 Civic Center Circle  
Brea, CA 92821

CONSULTANT REPRESENTATIVE

Baxter Miller, President  
BMLA Landscape Architecture  
310 North Joy Street  
Corona, CA 92879

Any such notices, demands, invoices and written communications, by mail, shall be deemed to have been received by the addressee forty-eight (48) hours after deposit thereof in the United States mail, postage prepaid and properly addressed as set forth above.

8. Insurance: The CONSULTANT shall not commence work under this contract until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONSULTANT

allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. The CONSULTANT shall take out and maintain at all times during the life of this contract the following policies of insurance:

(a) Compensation insurance: Before beginning work, the CONSULTANT shall furnish to the CITY a certificate of insurance as proof that it has taken out full compensation insurance for all persons whom the CONSULTANT may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract. Further, such policy of insurance shall provide that the insurer waives all rights of subrogation against CITY and its elected officials, officers, employees and agents.

In accordance with the provisions of Section 3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONSULTANT, by executing this Agreement, certifies as follows:

“I am aware of the provisions of Section 3700 of the labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of work of this contract.”

(b) For all operations of the CONSULTANT or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

(1) Commercial General Liability (occurrence) - for bodily injury, death and property damage for products/completed operations and any and all other activities undertaken by the CONSULTANT in the performance of this Agreement - - or - -:

(2) (Alternative to Commercial General Liability) - Comprehensive, broad form General Public Liability (occurrence) - for bodily injury, death and property damage arising out of any activities undertaken by CONSULTANT in the performance of this Agreement.

(3) Comprehensive Automobile Liability (occurrence) - for bodily injury, death and property damage insuring against all liability arising out of the use of any vehicle.

(4) Professional Errors and Omissions Liability - insuring against all liability arising out of professional errors and/or omissions, providing protection of at least two million dollars and zero cents (\$2,000,000.00) for errors and/or omissions (“malpractice”) of CONSULTANT in the performance of this Agreement . Such policy may be subject to a deductible or retention in an amount acceptable to CITY and shall further be subject to the provisions of subsections (2) and (6) of Section c, below. If a “claims made” policy is provided, such policy shall be maintained in effect from the date of performance of work or services on CITY’s behalf until three (3) years after the date the work or services are accepted as completed. Coverage for the post-completion period may be provided by renewal or replacement of the policy for each of the three (3) years or by a three (3) year extended reporting period endorsement which reinstates all limits for the extended reported period. If any such policy and/or policies have a retroactive date, that date shall be no later than the date of first performance of work or services on behalf of CITY. Renewal or replacement policies shall not allow for any advancement of such retroactive date. Each such policy or policies shall include a standard “notice of circumstances” provision.

(5) Other required insurance, endorsements or exclusions as required by the Request for Proposal.

(6) The policies of insurance required in this Section 8(b) shall have no less than the following limits of coverage:

- (i) \$2,000,000 (Two Million Dollars) for bodily injury or death;
- (ii) \$2,000,000 (Two Million Dollars) for property damage;
- (iii) The total of the limits specified in subsections (i) and (ii), above, where a combined single limit is provided.

(c) The policies of insurance required in subsections (1), (2) and (3) of Section 8(b), above shall:

(1) Be subject to no deductible amount unless otherwise provided, or approved in writing by CITY;

(2) Be issued by an insurance company approved in writing by CITY, which is admitted and licensed to do business in the State of California and which is rated A VII or better according to the most recent A.M. Best Co. Rating Guide;

(3) Name as additional insureds the CITY, its elected officials, officers, employees, attorneys and agents, and any other parties, including subcontractors, specified by CITY to be included;

(4) Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;

(5) Specify that it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(6) Contain a clause substantially in the following words:

“It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by CITY of written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter.”

(7) Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided;

(8) Specify that the insurer waives all rights of subrogation against any of the named additional insureds; and

(9) Specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.

(10) Otherwise be in form satisfactory to CITY.

(d) Prior to commencing performance under this Agreement, the CONSULTANT shall furnish the CITY with original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the CITY before CONSULTANT commences performance. If performance of this Agreement shall extend beyond one (1) year,

CONSULTANT shall provide CITY with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.

9. Indemnification: Other than in the performance of professional services and to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold CITY, its employees, agents and officials harmless from and against their tort liability, (including liability for claims, suits, actions, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney's fees incurred by CITY, court costs, interest or defense costs including expert witness fees), where the same arise out of, in whole or in part, the performance of the Agreement by CONSULTANT (or any individual or entity that CONSULTANT shall bear the legal liability thereof) and which result in bodily injury or property damage to any individual or entity, including the employees or officials of CONSULTANT.

In addition to the foregoing, CONSULTANT shall indemnify, defend and hold harmless CITY and its officials and employees from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent the same are caused by the professional negligence of CONSULTANT (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services pursuant to this Agreement.

10. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by CONSULTANT without the prior written consent of CITY.

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in public hearing form to the reasonable satisfaction of CITY, within the time set forth herein, or as may be extended by written consent of the parties hereto, CONSULTANT shall pay to CITY, as liquidated damages and not as a penalty, the sum of       N/A       dollars (\$000.00) per day for each day CONSULTANT is in default, which sum represents a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable losses that might result from such a default in performance by CONSULTANT, and due to the difficulty which would otherwise occur in establishing actual damages resulting from such default, unless said default is caused by CITY or by acts of God, acts of the public enemy, fire, floods, epidemics, or quarantine restrictions.

12. Independent Contractor: The parties hereto agree that CONSULTANT and its employers, officers and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of CITY.

13. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

15. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above:

CONSULTANT

\_\_\_\_\_

\_\_\_\_\_

(two signatures required if corporation)

CITY

\_\_\_\_\_

Mayor

Attest: \_\_\_\_\_



**SECTION V**  
**SCOPE OF SERVICES**

**SECTION V – SCOPE OF SERVICES****I. DESCRIPTION OF PROJECT**

This RFP is to contract with a consultant(s) to provide landscape design services for the median located on Lambert Road between the 57 freeway and Kraemer Boulevard, south Associated Road from Imperial Highway to Birch Street and the parkways on North Associated Road. Additionally, the City is seeking design services for the Wildcatters Dog Park located near the south west corner of Valencia Avenue and Santa Fe Road. Below is a brief description of the projects with exhibits of the locations provided in Appendix A.

In addition to the design services the City is requesting if any offeror(s) have the ability to provide inspection services for landscape construction projects?

***Individual quotes for each project or service are required on the included bid schedule on page 35.***

**1. Medians on Lambert Road**

This project is located on Lambert Road east of the 57 Freeway to Kraemer Boulevard and approximately 22,750 square feet. The project will remove existing turf and plant material, retro-fit irrigation systems and install new low water use plant material

**2. Parkways on North Associated**

This project is located on the east side of north Associated Road south of Lambert Road to N. Sleepy Hollow Lane and is approximately 8,950 square feet. The project will remove the existing turf, retro-fit irrigation systems and install new low water use plant material that complements the new Homeowners Association slope planting behind the sidewalk.

**3. Medians on South Associated Road**

This project is located on south Associated Road north of Imperial Highway to Birch Street and is approximately 24,500 square feet. The project will remove existing turf and plant material, retro-fit irrigation systems and install new low water use plant material

**II. Scope**

The scope of work for projects 1, 2 and 3 will include, but not limited to;

- Provide a simple plan of a preliminary concept design for a median and parkway with suggested low water use plant materials called out for each planting area including another sheet with small colored pictures of each plant. Specifically, for project 2, the sketch should complement the new Homeowners Association planting on the slope but it is not necessary to match it.
- Provide Construction Drawings which shall include at a minimum  
**(No record drawings for these locations but scaled maps as attached are available)**
  - Drawings at 60% and 100%
    - Site Plan
    - Planting Plan with details
    - Irrigation Plan with details and water use calculations as required

**Note: Irrigation systems will be retro-fits installing new valves and drip or spray systems from existing valve locations at all project sites**

- Meetings
- Construction documents
- Provide construction support

**4. Wildcatters Dog Park Surfacing Improvements**  
**(The City can provide record drawings)**

***This project will install a combination of decomposed granite and synthetic turf, shade, possible mounding, drainage and adjust the current irrigation systems to match the new design.***

Based on the attached concept plans:

- Assist the City finalizing a formal concept plan
- Provide Construction Drawings, which shall include at a minimum
  - Drawings at 60% and 100%
    - Site Plan
    - Grading/Drainage
    - Planting Plan with details
    - Irrigation Plan Adjustments with details
  - Meetings

- Provide compliant water use calculations for City of Brea water efficient landscape ordinance in the construction documents
- Construction documents
- Provide construction support

**5. Landscape Project Inspection Service**

**Note: This is not a mandatory proposal response item if the offeror doesn't provide the service. If you do respond please provide the title of the person that would do the inspections and hourly rate.**

The City of Brea is in year two of a multi-year facility improvement plan of landscaping at City facilities, greenbelts and medians for aesthetics and water conservation. The City of Brea is anticipating these capital improvements ranging in the \$300,000 to 500,000 per fiscal year. These facility improvement projects fall within the City's Capital Improvement Program (CIP).

This service would be used in an "on-call" manner for the improvement projects. We believe the service would require between two and four hours per day for items like but not limited to:

1. Morning and afternoon site visits
2. Photographing the construction progress.
3. Assisting with any discrepancies in the field that could lead to potential change orders.
4. File daily reports with pictures on the web based Virtual Project Management (VPM) system.
5. Ensure projects are constructed per plan
6. Conduct field construction employee interviews to comply with Equal Employment Opportunity Law. Interviews to be reported to the City on a regular basis.
7. Observe construction safety, public safety and convenience, and report discovered problems to the City.

Pre-contractual expenses are defined as expenses incurred by Offeror in:

1. Preparing its proposal in response to this RFP;
2. Submitting that proposal to the City;
3. Negotiating with the City any matter related to this proposal; or
4. Any other expenses incurred by Offeror prior to date of award, if any, of the Agreement.

**G. JOINT OFFERS**

Where two or more Offerors desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. City intends to contract with a single firm and not with multiple firms doing business as a joint venture.

**H. PROTEST PROCEDURES**

Any protests filed by an Offeror in connection with this RFP must be submitted in writing via certified mail to the following:

**Bill Bowlus  
Public Works Superintendent  
Public Works Department - Park Division  
City of Brea  
1 Civic Center Circle  
Brea, CA 92821-5732**

**I. FEE PROPOSAL**

Provide pricing for the five items on the bid schedule and a schedule of hourly rates that will be charged to perform similar services in different locations as specified in Section V. If the offeror uses outside consultants for engineers or irrigation design, please include those rates on a separate sheet. The City proposes to issue a contract for a period of one (1) year with the City having the option to extend under the same terms and conditions for a maximum of three (3) one (1) year options. The total fee to the consultant(s) for all assignments authorized shall not exceed a maximum of \$225,000 over a 3-year period (at City's discretion, remaining balance may be carried over from one year to the next).

The consultant(s) shall enter into an agreement with the City based upon the contents of the RFP and the consultant's proposal. The City's standard form of agreement is included in Section IV. The consultant shall carefully review the agreement, especially with regard to the indemnity and insurance provisions, and include with the proposal a description of any exceptions, technical or

## HOURLY RATES

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Principal	\$200
VP of Operations	\$200
Director of Production	\$150
Senior Project Manager	\$125
Project Manager	\$100
Landscape Designer II	\$ 85
Landscape Designer I	\$ 75
Researcher	\$ 75
Clerical	\$ 45

Expenses, such as reproduction of drawings, costs of postage and delivery shall be billed at cost as a reimbursable expense.

Auto travel shall be charged at the current allowable IRS mileage rate.



City of Corona LMD Turf Replacement on Foothill Boulevard

## STATUS OF PAST AND PRESENT CONTRACTS

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BMLA has NO past or present contracts within the past five years that have or will end in termination, settlement, or in any legal action.

## PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018 between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and Land Concern (hereinafter referred to as “CONSULTANT”).

### A. Recitals

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1. Definitions: The following definitions shall apply to the following terms, except where the context of this Agreement otherwise requires:

(a) Tasks: Provide professional services as described in Exhibit “A” hereto including, but not limited to, the preparation of plans, specifications, reports, and documents, presentation, both oral and in writing, of such plans, maps, reports and documents to CITY as required.

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be for a one-year term with provisions for two-one year extensions with the total term not exceeding three (3) years.

(c) Completion of Tasks: The date of completion of all assigned Tasks, including any and all procedures, development plans, maps, plan documents, technical reports, meetings and oral presentations regarding the completion of Tasks as set forth in Exhibits “A” hereto.

2. CONSULTANT agrees as follows:

(a) CONSULTANT shall forthwith undertake and complete the assigned Tasks in accordance with Exhibits “A” hereto and all in accordance with Federal, State and CITY statutes, regulations, ordinances and guidelines, all to the reasonable satisfaction of CITY.

(b) CONSULTANT shall supply copies of all plans, specifications, reports and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

(c) CONSULTANT shall, at CONSULTANT’s sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONSULTANT, CONSULTANT hereby warrants that such persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no subcontractor shall be retained by CONSULTANT except as may otherwise be set forth in Exhibit “B” and upon the prior written approval of CITY.



3. CITY agrees as follows:

(a) To pay CONSULTANT pursuant to the provisions of Exhibit "B" Services required hereunder. Said sum(s) shall cover the costs of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants and subcontractors to CONSULTANT, except as may otherwise be set forth in Exhibit "B". Payment to CONSULTANT, by CITY, shall be made in accordance with the schedule set forth below.

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of seventy five thousand dollars and zero cents (\$75,000.00) annually. The costs associated with the Tasks performed for private development projects are not part of the not-to-exceed amount.

(c) CONSULTANT agrees that, in no event, shall CITY be required to pay to CONSULTANT any sum in excess of 95% of the maximum payable hereunder prior to receipt by CITY of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to CITY. Final payment shall be made not later than 60 days after presentation of final documents and acceptance thereof by CITY.

(d) Additional services: Payments for additional services requested, in writing, by CITY, and not included in CONSULTANT's proposal as set forth in Exhibit "A" hereof, shall be paid on a reimbursement basis in accordance with the fee schedule set forth in said Exhibit "B". Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITY within a reasonable time after said invoices are received by CITY.

4. CITY agrees to provide to CONSULTANT:

(a) Information and assistance as set forth in Exhibit "A" hereto.

(b) Photographically reproducible copies of maps and other information, if available, which CONSULTANT considers necessary in order to complete the Tasks.

(c) Such information as is generally available from CITY files applicable to the Tasks.

(d) Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONSULTANT's responsibility to make all initial contact with respect to the gathering of such information.

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

6. Termination: This Agreement may be terminated by CITY upon the giving of a written "Notice of Termination" to CONSULTANT at least fifteen (15) days prior to the date of termination specified in said Notice. CONSULTANT shall not be compensated for any work performed after receipt of the Notice of Termination. CONSULTANT shall provide to CITY any and all documents, whether in draft or final form, prepared by CONSULTANT as of the date of termination. CONSULTANT may not terminate this Agreement except for cause.

7. Notices and Designated Representatives: Any and all notices, demands, invoices and written communications between the parties hereto shall be addressed as set forth in this section 7. The below named individuals, furthermore, shall be those persons primarily responsible for the performance by the parties under this Agreement:

CITY REPRESENTATIVE

Bill Bowlus  
Public Works Superintendent  
1 Civic Center Circle  
Brea, CA 92821

CONSULTANT REPRESENTATIVE

Michael Sweeney, Principal  
Land Concern  
1750 East Deere Avenue  
Santa Ana, CA 92705

Any such notices, demands, invoices and written communications, by mail, shall be deemed to have been received by the addressee forty-eight (48) hours after deposit thereof in the United States mail, postage prepaid and properly addressed as set forth above.

8. Insurance: The CONSULTANT shall not commence work under this contract until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONSULTANT

allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. The CONSULTANT shall take out and maintain at all times during the life of this contract the following policies of insurance:

(a) Compensation insurance: Before beginning work, the CONSULTANT shall furnish to the CITY a certificate of insurance as proof that it has taken out full compensation insurance for all persons whom the CONSULTANT may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract. Further, such policy of insurance shall provide that the insurer waives all rights of subrogation against CITY and its elected officials, officers, employees and agents.

In accordance with the provisions of Section 3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONSULTANT, by executing this Agreement, certifies as follows:

“I am aware of the provisions of Section 3700 of the labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of work of this contract.”

(b) For all operations of the CONSULTANT or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

(1) Commercial General Liability (occurrence) - for bodily injury, death and property damage for products/completed operations and any and all other activities undertaken by the CONSULTANT in the performance of this Agreement - - or - -:

(2) (Alternative to Commercial General Liability) - Comprehensive, broad form General Public Liability (occurrence) - for bodily injury, death and property damage arising out of any activities undertaken by CONSULTANT in the performance of this Agreement.

(3) Comprehensive Automobile Liability (occurrence) - for bodily injury, death and property damage insuring against all liability arising out of the use of any vehicle.

(4) Professional Errors and Omissions Liability - insuring against all liability arising out of professional errors and/or omissions, providing protection of at least two million dollars and zero cents (\$2,000,000.00) for errors and/or omissions (“malpractice”) of CONSULTANT in the performance of this Agreement . Such policy may be subject to a deductible or retention in an amount acceptable to CITY and shall further be subject to the provisions of subsections (2) and (6) of Section c, below. If a “claims made” policy is provided, such policy shall be maintained in effect from the date of performance of work or services on CITY’s behalf until three (3) years after the date the work or services are accepted as completed. Coverage for the post-completion period may be provided by renewal or replacement of the policy for each of the three (3) years or by a three (3) year extended reporting period endorsement which reinstates all limits for the extended reported period. If any such policy and/or policies have a retroactive date, that date shall be no later than the date of first performance of work or services on behalf of CITY. Renewal or replacement policies shall not allow for any advancement of such retroactive date. Each such policy or policies shall include a standard “notice of circumstances” provision.

(5) Other required insurance, endorsements or exclusions as required by the Request for Proposal.

(6) The policies of insurance required in this Section 8(b) shall have no less than the following limits of coverage:

- (i) \$2,000,000 (Two Million Dollars) for bodily injury or death;
- (ii) \$2,000,000 (Two Million Dollars) for property damage;
- (iii) The total of the limits specified in subsections (i) and (ii), above, where a combined single limit is provided.

(c) The policies of insurance required in subsections (1), (2) and (3) of Section 8(b), above shall:

(1) Be subject to no deductible amount unless otherwise provided, or approved in writing by CITY;

(2) Be issued by an insurance company approved in writing by CITY, which is admitted and licensed to do business in the State of California and which is rated A VII or better according to the most recent A.M. Best Co. Rating Guide;

(3) Name as additional insureds the CITY, its elected officials, officers, employees, attorneys and agents, and any other parties, including subcontractors, specified by CITY to be included;

(4) Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;

(5) Specify that it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(6) Contain a clause substantially in the following words:

“It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by CITY of written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter.”

(7) Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided;

(8) Specify that the insurer waives all rights of subrogation against any of the named additional insureds; and

(9) Specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.

(10) Otherwise be in form satisfactory to CITY.

(d) Prior to commencing performance under this Agreement, the CONSULTANT shall furnish the CITY with original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the CITY before CONSULTANT commences performance. If performance of this Agreement shall extend beyond one (1) year,

CONSULTANT shall provide CITY with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.

9. Indemnification: Other than in the performance of professional services and to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold CITY, its employees, agents and officials harmless from and against their tort liability, (including liability for claims, suits, actions, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney's fees incurred by CITY, court costs, interest or defense costs including expert witness fees), where the same arise out of, in whole or in part, the performance of the Agreement by CONSULTANT (or any individual or entity that CONSULTANT shall bear the legal liability thereof) and which result in bodily injury or property damage to any individual or entity, including the employees or officials of CONSULTANT.

In addition to the foregoing, CONSULTANT shall indemnify, defend and hold harmless CITY and its officials and employees from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent the same are caused by the professional negligence of CONSULTANT (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services pursuant to this Agreement.

10. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by CONSULTANT without the prior written consent of CITY.

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in public hearing form to the reasonable satisfaction of CITY, within the time set forth herein, or as may be extended by written consent of the parties hereto, CONSULTANT shall pay to CITY, as liquidated damages and not as a penalty, the sum of       N/A       dollars (\$000.00) per day for each day CONSULTANT is in default, which sum represents a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable losses that might result from such a default in performance by CONSULTANT, and due to the difficulty which would otherwise occur in establishing actual damages resulting from such default, unless said default is caused by CITY or by acts of God, acts of the public enemy, fire, floods, epidemics, or quarantine restrictions.

12. Independent Contractor: The parties hereto agree that CONSULTANT and its employers, officers and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of CITY.

13. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

15. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above:

CONSULTANT

\_\_\_\_\_

\_\_\_\_\_

(two signatures required if corporation)

CITY

\_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

**SECTION V**  
**SCOPE OF SERVICES**



**SECTION V – SCOPE OF SERVICES****I. DESCRIPTION OF PROJECT**

This RFP is to contract with a consultant(s) to provide landscape design services for the median located on Lambert Road between the 57 freeway and Kraemer Boulevard, south Associated Road from Imperial Highway to Birch Street and the parkways on North Associated Road. Additionally, the City is seeking design services for the Wildcatters Dog Park located near the south west corner of Valencia Avenue and Santa Fe Road. Below is a brief description of the projects with exhibits of the locations provided in Appendix A.

In addition to the design services the City is requesting if any offeror(s) have the ability to provide inspection services for landscape construction projects?

***Individual quotes for each project or service are required on the included bid schedule on page 35.***

**1. Medians on Lambert Road**

This project is located on Lambert Road east of the 57 Freeway to Kraemer Boulevard and approximately 22,750 square feet. The project will remove existing turf and plant material, retro-fit irrigation systems and install new low water use plant material

**2. Parkways on North Associated**

This project is located on the east side of north Associated Road south of Lambert Road to N. Sleepy Hollow Lane and is approximately 8,950 square feet. The project will remove the existing turf, retro-fit irrigation systems and install new low water use plant material that complements the new Homeowners Association slope planting behind the sidewalk.

**3. Medians on South Associated Road**

This project is located on south Associated Road north of Imperial Highway to Birch Street and is approximately 24,500 square feet. The project will remove existing turf and plant material, retro-fit irrigation systems and install new low water use plant material

## II. Scope

The scope of work for projects 1, 2 and 3 will include, but not limited to;

- Provide a simple plan of a preliminary concept design for a median and parkway with suggested low water use plant materials called out for each planting area including another sheet with small colored pictures of each plant. Specifically, for project 2, the sketch should complement the new Homeowners Association planting on the slope but it is not necessary to match it.
- Provide Construction Drawings which shall include at a minimum  
**(No record drawings for these locations but scaled maps as attached are available)**
  - Drawings at 60% and 100%
    - Site Plan
    - Planting Plan with details
    - Irrigation Plan with details and water use calculations as required

**Note: Irrigation systems will be retro-fits installing new valves and drip or spray systems from existing valve locations at all project sites**

- Meetings
- Construction documents
- Provide construction support

## 4. Wildcatters Dog Park Surfacing Improvements (The City can provide record drawings)

***This project will install a combination of decomposed granite and synthetic turf, shade, possible mounding, drainage and adjust the current irrigation systems to match the new design.***

Based on the attached concept plans:

- Assist the City finalizing a formal concept plan
- Provide Construction Drawings, which shall include at a minimum
  - Drawings at 60% and 100%
    - Site Plan
    - Grading/Drainage
    - Planting Plan with details
    - Irrigation Plan Adjustments with details
  - Meetings

- Provide compliant water use calculations for City of Brea water efficient landscape ordinance in the construction documents
- Construction documents
- Provide construction support

**5. Landscape Project Inspection Service**

**Note: This is not a mandatory proposal response item if the offeror doesn't provide the service. If you do respond please provide the title of the person that would do the inspections and hourly rate.**

The City of Brea is in year two of a multi-year facility improvement plan of landscaping at City facilities, greenbelts and medians for aesthetics and water conservation. The City of Brea is anticipating these capital improvements ranging in the \$300,000 to 500,000 per fiscal year. These facility improvement projects fall within the City's Capital Improvement Program (CIP).

This service would be used in an "on-call" manner for the improvement projects. We believe the service would require between two and four hours per day for items like but not limited to:

1. Morning and afternoon site visits
2. Photographing the construction progress.
3. Assisting with any discrepancies in the field that could lead to potential change orders.
4. File daily reports with pictures on the web based Virtual Project Management (VPM) system.
5. Ensure projects are constructed per plan
6. Conduct field construction employee interviews to comply with Equal Employment Opportunity Law. Interviews to be reported to the City on a regular basis.
7. Observe construction safety, public safety and convenience, and report discovered problems to the City.

Pre-contractual expenses are defined as expenses incurred by Offeror in:

1. Preparing its proposal in response to this RFP;
2. Submitting that proposal to the City;
3. Negotiating with the City any matter related to this proposal; or
4. Any other expenses incurred by Offeror prior to date of award, if any, of the Agreement.

**G. JOINT OFFERS**

Where two or more Offerors desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. City intends to contract with a single firm and not with multiple firms doing business as a joint venture.

**H. PROTEST PROCEDURES**

Any protests filed by an Offeror in connection with this RFP must be submitted in writing via certified mail to the following:

**Bill Bowlus  
Public Works Superintendent  
Public Works Department - Park Division  
City of Brea  
1 Civic Center Circle  
Brea, CA 92821-5732**

**I. FEE PROPOSAL**

Provide pricing for the five items on the bid schedule and a schedule of hourly rates that will be charged to perform similar services in different locations as specified in Section V. If the offeror uses outside consultants for engineers or irrigation design, please include those rates on a separate sheet. The City proposes to issue a contract for a period of one (1) year with the City having the option to extend under the same terms and conditions for a maximum of three (3) one (1) year options. The total fee to the consultant(s) for all assignments authorized shall not exceed a maximum of \$225,000 over a 3-year period (at City's discretion, remaining balance may be carried over from one year to the next).

The consultant(s) shall enter into an agreement with the City based upon the contents of the RFP and the consultant's proposal. The City's standard form of agreement is included in Section IV. The consultant shall carefully review the agreement, especially with regard to the indemnity and insurance provisions, and include with the proposal a description of any exceptions, technical or

## Exhibit B

### O. HOURLY FEE SCHEDULE

Principal	\$150.00/hr.
Senior Associate	\$110.00/hr.
Associate	\$95.00/hr.
Landscape Architect	\$90.00/hr.
Project Manager	\$85.00/hr.
Assistance Project Manager	\$70.00/hr.
Landscape Designer	\$60.00/hr.

### P. CONTROL OF COST AND SCHEDULES

During the conceptual and production phase of a project, Land Concern monitors project progress through consistent weekly in-office team meetings to discuss current project status and future project goals/schedules. Regular client updates and client/consultant progress meetings are routinely scheduled to maintain project status and communication. In addition, the Project Manager tracks a project's status through regular reviews of set goals and timelines, tracks submittals and approvals through government agency plan checks, and ensures government agency plan check revisions are executed and resubmitted in a timely manner.

Land Concern employs customized office AutoCAD standards and thoroughly reviews all plans in-house to assure quality control.

Land Concern utilizes many techniques throughout the project process to assure the project is on time and within budget. Land Concern initiates client review and approval of schematic and conceptual designs and develops a cost estimate through peer review and input from Landscape and General Contractors for current industry pricing for each project. Land Concern ensures the design stays within the project budget as the design is implemented into construction drawings and, if necessary, will "value engineer" construction documents. Land Concern regularly coordinates with suppliers and vendors for accurate product availability and cost for each project.

During the construction phase, Land Concern uses Newforma Project Center to facilitate coordination, documents field conditions and changes through accurate field notes and project journals, issues construction bulletins to effectively document and communicate all construction changes or revisions in a timely manner. By the use of these tools and organization skills, Land Concern is able to track projects from the schematic phase through construction completion with budget efficiency.

## City of Brea

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### FINANCE COMMITTEE COMMUNICATION

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**TO:** Finance Committee Members

**FROM:** Bill Gallardo

**DATE:** 08/14/2018

**SUBJECT:** Agreement with EV Connect for Installation of Electric Charging Stations at Superblock I Parking Structure

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### **RECOMMENDATION**

Approve agreement and authorize City Manager to execute agreement.

### **BACKGROUND/DISCUSSION**

"Electrify America", a Volkswagen subsidiary created as part of the German automaker's \$2 billion settlements with California Air Resources Board (CARB) and the U.S. Environmental Protection Agency (EPA) over its use of emission test cheating devices in its diesel vehicles, is expanding its charging station deployment to workplaces and apartments. The program is designed to install 2,800 charging stations at workplaces and apartments. EV Connect is one of the partners that was chosen by Electrify America to accomplish this undertaking. All the charging stations are to be installed by June 2019. The program provides the infrastructure and installations for up to four dual port (eight charging ports, \$4,200 per port, so \$33,600 per site) electric vehicle charging stations. The program also includes the EV Connect Software Management subscription, parts and labor warranty coverage at no cost until December 31, 2026.

In order to implement this program, the City must enter into an agreement with EV Connect. The agreement sets the terms and conditions as noted in the attachment. In summary, the agreement specifies the following major points:

- Provides and installs four dual port electric charging stations;
- Provides for operation, maintenance, and monitoring of the stations throughout the term of the agreement;
- Reverts ownership of all equipment to the City upon expiration of the agreement; and
- Provides an option to charge a mutually agreed upon fee for use of electric charging stations. If a fee is charged:
  - 10% transaction fee (\$0.50 minimum)
  - Remaining fee revenues split evenly between the City and EV Connect for term of the agreement

After expiration of the agreement on December 31, 2026, the City can choose to continue contracting with EV Connect for operation, maintenance, and monitoring services or can decide to perform these duties in-house.

**SUMMARY/FISCAL IMPACT**

Funding for this project is provided by Electrify America through EV Connect. In order to utilize the funds, the City is to enter into an agreement with EV Connect to provide and install four dual port electric chargers along with all the necessary appurtanences and provide operation, maintenance, and monitoring services through December 31, 2026 at no cost to the City. After expiration of the agreement, the equipment becomes City property and the City may then choose to contract with EV Connect for operation, maintenance and monitoring services or can decide to perform these duties in-house.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Tony Olmos, Public Works Director

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**Attachment**

EV Connect Agreement

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## Electric Vehicle Charge Station Site Host Agreement

This Electric Vehicle Charge Station Site Host Agreement ("Agreement") regarding electric vehicle supply equipment (EVSE) is effective as of the date the last party signs this Agreement (the "Effective Date") between:

EV Connect, Inc. (a California Corporation) ("EV Connect"):  
615 North Nash Street  
Suite 203  
El Segundo, CA 90245  
(888) 780-0062

-and-

Charging Site Host:	City of Brea
Address:	1 Civic Center Circle
City, State, Zip Code:	Brea, CA 92821
Contact Name:	Tony Olmos
Telephone Number(s):	714-990-7698
Email:	Tonyo@cityofbrea.net

Please list on Attachment A the site location(s) and denote any known special instructions.

EV Connect and the Charging Site Host (either individually "Party" or collectively "Parties") agree as follows:

### 1. Term of Agreement

This Agreement shall commence on the Effective Date and shall continue through the end of required reporting as discussed in Paragraph 4, (the "Term"). This Agreement may be terminated early in accordance with the Termination section of this Agreement.

### 2. Terms and Definitions

The definitions for the following terms which are used throughout this Agreement are as follows:

Network	EVSE Network
Sponsor	Electrify America
EVSE	Electric Vehicle Supply Equipment
The Project	Electrify America Workplace/MUD program
Station Utilization Reporting	Station utilization reports are available to the Charging Site Host via EV Connect's Site Host Portal and will be provided to Electrify America via an Application Programming Interface (API).
Site	Location where the EVSE will be used





### 3. EV Connect Goods and Services

In consideration of Charging Site Host's participation in The Project and for allowing the collection of the Data, as described below, EV Connect agrees to provide the following goods and services:

1. Provide 4 dual port wall mount Level II (240 VAC) charge stations (EVSEs) for Charging Site Host use;
2. Provide installation of EVSEs through subcontractors;
3. Provide an EV charging management platform/network to manage all aspects of the charging experience;
4. Provide training on how to use the EV Charging management platform; and
5. Provide on-going warranty support and repair through subcontractors, for the Term of the Agreement

### 4. EVSE Data

Charging Site Host acknowledges that Sponsor has provided funding for The Project through the term of this Agreement. In consideration of the Goods and Services provided, and as part of this project, Charging Site Host acknowledges and agrees to allow EV Connect reasonable access to the EVSE at the Site and existing sources of electrical energy that power the EVSE in order for EV Connect to collect and transmit EVSE Data regarding both private and public use of the EVSE during the Term of this Agreement. This obligation to provide power and to allow access, data collection and transmission shall commence upon the Effective Date, and shall end on December 31, 2026. In addition, Charging Site Host further acknowledges that the data provided by the EVSE at the Site is the property of the Sponsor.

### 5. Charging Site Host's Representations, Warranties and Commitments

Charging Site Host covenants to EV Connect that the Charging Site Host:

- a) Upon reasonable notice, will allow EV Connect and its contractors reasonable access to the EVSE in order for EV Connect to collect, use, maintain and distribute the data to EV Connect and The Project partners and participants;
- b) Will provide and maintain the supply of electric power, at Charging Site Host's cost, to the EVSE for the duration of the Term of this Agreement;
- c) Is not required to make the EVSEs available to the general public, but may do so at its discretion;
- d) Will set driver usage pricing for its own user groups (e.g., employees, residents), which may include "free-of-charge" usage to these groups. For EVSEs that Charging Site Host makes available to the general public, Charging Site Host may set driver usage pricing different from the pricing of its own user groups. See Section 3 of the attached Site Host Agreement Rider for how usage fees are to be calculated. Any revenues generated by the EVSE's pricing to the user groups or general public (less Transaction Fees, which are described in the Site Host Rider Agreement attachment herein) will be split with the EV Connect, with 50% going to the Charging Site Host and 50% going to EV Connect;
- e) Will not knowingly allow the EVSE to be maintained, opened, modified, reverse engineered, disassembled on the whole or any part thereof in any manner, or repaired by anyone other than EV Connect or its licensed contractors;
- f) Will not transfer, assign, encumber or pledge the EVSE;
- g) Assumes all responsibility in obtaining any required approvals from property owners, landlords and/or corporate offices; and is responsible for approval of the terms and execution of EVSE installation and EVSE siting provided by EV Connect;
- h) Will not uninstall the EVSE;



- i) Will make its EVSE reasonably available for electric vehicle educational and/or awareness programs sponsored by EV Connect and/or Sponsor; and
- j) Has no other internal or external funding committed or likely to be spent for the EVSE described in and through the term of this Agreement.
- k) Agrees that any non-usage based credits, benefits, rebates, refunds, or similar governmental incentives or the value thereof resulting from the installation of the Charging Stations belong to Electrify America. Site Host agrees to cooperate with Electrify America to pursue the same but is not required to bear any out-of-pocket costs in providing such cooperation.

## 6. Ownership

6.1 Charging Site Host will receive title to and ownership of the EVSE through the Term of this Agreement. All of the data, information, content, services and software displayed on, transmitted through, or used in connection with the use and operation of the EVSE, including, but not limited to, advertising, text, photographs, images, illustrations, video, HTML source and object code, software, data, Internet account access, and the like (collectively, the "Content") is owned by EV Connect and its affiliates, licensors, or suppliers. The "Content" is protected by copyright, trademark, and other intellectual property laws of the United States of America.

6.2 During the term of this Agreement, EV Connect grants to the Charging Site Host a non-exclusive and non-transferable license to use such software in the form in which it is embedded in the EVSE on the delivery date for use in conjunction with other parts of the EVSE on the condition that the EVSE shall be used for its intended purpose only. Nothing contained in this Section shall be construed as an assignment or transfer of any copyright, design right or other intellectual property rights in such software, all of which rights are owned by EV Connect.

6.3 Upon the cancellation or termination of this Agreement before the expiration of the term, Sponsor has the right to take possession and remove EVSEs from the Site, or upon entering into a subsequent written agreement with Charging Site Host, continue to operate the EVSE with or without management services from EV Connect. Upon the expiration of this Agreement, ownership and title of the EVSEs shall revert to the Charging Site Host, which shall then bear all responsibility for the installation, equipment, operation and maintenance.

## 7. Use of Mark/Advertising

EV Connect and Charging Site Host each hereby grant to the other, only during the Term of this Agreement, a nonexclusive, non-transferable, non-assignable license to use the name and marks owned by the Parties: (i) on the EVSEs installed at a Site; (ii) in relation to the advertising and promotion of the EVSEs, the services provided by the EVSEs, and any ancillary goods or services of EV Connect offered at the Sites; and (iii) in relation to advertising and promoting the business relationship between the Parties, including use on Websites, software/smart phone applications, or marketing materials.

## 8. Sponsor Rights and Limitations of Liability

The Charging Site Host hereby acknowledges that the Sponsor is an intended third-party beneficiary of this Agreement.

8.1 Charging Site Host agrees to allow Sponsor to use the data collected from such EVSEs installed at their Site for the purpose of publicizing The Project under which the charging stations were granted.

8.2 Charging Site Host acknowledges that Sponsor has provided funding for the EVSEs, installation, network services, and ongoing warranty/maintenance of the EVSEs. Charging Site Host acknowledges and agrees that Sponsor shall have no liability to Charging Site Host relating to the installation and operation of the charging stations or otherwise relating to the Agreement, and that all such liability and responsibility shall be between Charging Site Host and EV Connect.

8.3 Charging Site Host shall, at its sole cost and expense, throughout the term of this Agreement, maintain insurance in the following types and amounts: Commercial general liability insurance for bodily injury liability, including death and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster. All such insurance shall be evidenced by insurance policies, each of which will: (i) name or be endorsed to cover Sponsor and EV Connect as additional insureds; (ii) provide that such policy may not be cancelled or modified until at least 30 days after receipt by Sponsor of written notice thereof; and be reasonably satisfactory to Sponsor.

8.4 Indemnification. To the fullest extent permitted by law, the Charging Site Host shall defend, indemnify and hold harmless EV Connect, Sponsor, its agents and employees from and against any and all claims, actions, damages, losses, expense and costs of every nature and kind, including attorneys' fees up and through any and all appeals, incurred by or asserted or imposed against EV Connect or Sponsor resulting from, arising out of negligence or misconduct of the Charging Site Host or any of its subcontractor's performance of this Agreement, except to the extent caused by the negligence or willful misconduct of EV Connect or Sponsor. To the fullest extent permitted by law, EV Connect and Sponsor shall defend, indemnify and hold harmless Charging Site Host, its agents and employees from and against any and all claims, actions, damages, losses, expense and costs of every nature and kind, including attorneys' fees up and through any and all appeals, incurred by or asserted or imposed against Charging Site Host resulting from, arising out of negligence or misconduct of EV Connect, Sponsor or any of its subcontractor's performance of this Agreement, except to the extent caused by the negligence or willful misconduct of Charging Site Host. The obligation of the Charging Site Host under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage. All money expended by EV Connect or Sponsor as a result of such claims, actions, damages, losses, expenses and costs, together with interest at a rate not to exceed the maximum interest rate permitted by law, shall be immediately and without notice due and payable by the Charging Site Host to EV Connect or Sponsor as the case may be. The Charging Site Host shall require this same indemnification clause from any and all contractors and others who work on the Project.

## 9. Termination of this Agreement

9.1 Without Cause: This Agreement may be terminated by EV Connect in writing to the Charging Site Host, without cause, at any time and for any reason, including the termination of The Project or a reduction in The Project funding, whereupon the Parties shall be fully released from their respective duties, rights, obligations and liabilities under this Agreement, except as provided below.

9.2 For Cause: This Agreement may be terminated in writing by either party for Cause if either party violates any term of this Agreement and fails to cure the same within thirty (30) days of receiving written notice of such default. Upon such termination of this Agreement for Cause, as its sole and exclusive remedy, Sponsor shall have the right, but not the obligation, to disable or remove (at its sole cost and expense) any or all of the EVSE installed at the Site and terminate services to Charging Site Host. Removal of EVSE includes site restoration to a safe and reasonable condition, but does not include the responsibility to restore the site to the same condition as prior to the installation of the EVSE. In the event that Sponsor does not elect to remove the EVSE within one hundred and eighty days (180) days following such termination, the EVSE shall be deemed abandoned by Sponsor and Charging Site Host shall possess all rights, title, and interest in and to the same.

Should the termination for Cause be solely the result of a violation of the terms of this Agreement by EV Connect which fails to cure the same within thirty (30) days of receiving written notice of such default, the Sponsor may assign all of the rights and obligations held by EV Connect in this Agreement to itself or an agent of Sponsor.

Should the termination for Cause be solely the result of a violation of the terms of this Agreement by the Charging Site Host which fails to cure the same within thirty (30) day of receiving written notice of such default, the Charging Site Host shall be solely responsible for reimbursing the Sponsor for the straight-line depreciated (over 10 years) installation costs associated with The Project.

## 10. Dispute Resolution

Except where necessary to seek injunctive relief to prevent or enjoin loss or harm to Intellectual Property, any dispute arising out of or relating to this Agreement shall be subject to mandatory confidential mediation for a period of up to thirty days, unless extended mutually by the Parties, by a neutral third-party mediator acceptable to both Parties. Any dispute not resolved by such



mediation, arising out of or relating to this Agreement shall be subject to final and binding arbitration under the then-current Commercial Arbitration Rules of the American Arbitration Association; provided that the arbitrator(s) shall be neutral and shall be chosen from a panel of arbitrators knowledgeable in the business of electronics manufacturing. The arbitration shall be held in Los Angeles, CA, unless otherwise mutually agreed by the Parties. The arbitrator(s) shall not have the power to award punitive or exemplary damages, or any damages which are disclaimed or waived in this Agreement. The decision and award of the arbitrator(s) shall be final and binding, and the award so rendered may be entered in any court having jurisdiction thereof. Where it is necessary for a Party to seek injunctive relief to prevent or enjoin immediate and irreparable loss or harm to Intellectual Property, EV Connect and Charging Site Host hereby irrevocably and unconditionally submit to the jurisdiction of the courts of the State of California or the United States District Court for the State of California and all courts competent to hear any appeal therefrom. Nothing contained herein shall be deemed to waive arbitration for any claim other than injunctive relief to the sole extent described herein.

#### 11. LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES STATED HEREIN FOR THE CHARGING SITE HOST, NO WARRANTY, CONDITION OR REPRESENTATION, EXPRESSED, IMPLIED, ORAL OR STATUTORY, IS PROVIDED TO THE CHARGING SITE HOST OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION OR REPRESENTATION: (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE; (B) THAT THE PRODUCTS WILL BE FREE FROM INFRINGEMENT OR VIOLATION OF ANY RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES; OR (C) THAT THE OPERATION OF ANY SOFTWARE SUPPLIED WILL BE UNINTERRUPTED OR ERROR FREE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE CHARGING SITE HOST'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER AND THE ONLY LIABILITY OF EV CONNECT IS EXPRESSLY LIMITED TO THE TERMS OF THE AGREEMENT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, OR ANY THIRD PARTY, FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, LOSS OF DATA, PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. FOR PURPOSES OF THIS PROVISION, THE PARTY INCLUDES THE PARTY'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, SUBCONTRACTORS AND SUPPLIERS.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY CLAIMS FOR DAMAGES BY EITHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ACTUAL RECOVERIES UNDER SUCH PARTY'S INSURANCE POLICIES.

#### 12. Notices

All notices given under this Agreement (each, a "Notice") shall be in writing and delivered to the addresses listed above of the parties as applicable, by one or more of the following methods, (i) given by certified mail, postage prepaid, return receipt requested, and is deemed given on the third (3rd) business day after the date of posting in a United States Post Office, (ii) given by a nationally recognized overnight courier and is deemed given one day after delivery to the overnight courier, or (iii) given by personal delivery and is deemed given upon receipt by the notified party. At any time, either party may designate in writing to the other party a different notice address.

#### 13. Changes

This Agreement cannot be modified or amended except by a written instrument signed by both of the Parties.

#### 14. Waiver

No waiver by either Party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision of this Agreement will constitute a waiver of any subsequent breach, default or violation of the same or other term, warranty, representation, agreement, covenant, condition or provision of this Agreement.

#### 15. Assignment

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors, and permitted assigns. This Agreement may be assigned by either party only with the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld or delayed, except the rights and obligations of either party may be assigned to another entity in connection with reorganization, merger, consolidation, acquisition, divestiture, or other restructuring. Any assignment which does not satisfy the requirement of the preceding sentence shall be null and void.



#### 16. Survival Of Obligations And Liabilities

Termination of this Agreement shall not relieve either party of any obligation under this Agreement which expressly or by implication survives termination of this Agreement including its obligations under the following section headings: Insurance, Limitation of Liability, Governing Law, and Dispute Resolution. The invalidity, illegality or unenforceability of any one or more provisions of this Agreement will not affect or impair the validity, legality or enforceability of the remaining provisions, which will remain in full force and effect.

#### 17. Entire Agreement, Relationship

This Agreement and the attached Rider contains the entire agreement and understanding between the parties relative to the subject matter herein, and supersedes any prior agreements and understandings between the parties relating to such subject matter, whether verbal or written. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same document. The parties agree that signatures transmitted by facsimile or e-mail (electronically scanned) shall be binding as if they were original signatures.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

EV Connect, Inc.

Charging Site Host

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



ATTACHMENT A  
Installation Addresses (Sites)

EVSE #1: \_\_\_\_\_ BTCPower Dual Port Wall Mount  
Installation Address: \_\_\_\_\_ 235 South Orange Ave  
City, State, Zip: \_\_\_\_\_ Brea, CA 92821  
Electrical Utility serving this location: \_\_\_\_\_ SCE

EVSE #2: \_\_\_\_\_ BTCPower Dual Port Wall Mount  
Installation Address: \_\_\_\_\_ 235 South Orange Ave  
City, State, Zip: \_\_\_\_\_ Brea, CA 92821  
Electrical Utility serving this location: \_\_\_\_\_ SCE

EVSE #3: \_\_\_\_\_ BTCPower Dual Port Wall Mount  
Installation Address: \_\_\_\_\_ 235 South Orange Ave  
City, State, Zip: \_\_\_\_\_ Brea, CA 92821  
Electrical Utility serving this location: \_\_\_\_\_ SCE

EVSE #4: \_\_\_\_\_ BTCPower Dual Port Wall Mount  
Installation Address: \_\_\_\_\_ 235 South Orange Ave  
City, State, Zip: \_\_\_\_\_ Brea, CA 92821  
Electrical Utility serving this location: \_\_\_\_\_ SCE

EVSE #5: \_\_\_\_\_  
Installation Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Electrical Utility serving this location: \_\_\_\_\_

Special Instructions, if applicable (e.g., cellular repeater installation required, etc.)

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### Site Host Agreement Rider

This Contract Rider (the "Rider") to EV Connect Electric Vehicle Charge Station Site Host Agreement (the "Agreement") referencing Electrify America is attached to and hereby incorporated into the Agreement in its entirety. Terms used in this Rider are defined in the Agreement, unless otherwise specifically described in this Rider.

This Site is part of a program made possible through an investment by Electrify America, LLC ("Sponsor"). The following terms are applicable:

1. Overview. Sponsor has provided funding for the electric vehicle service equipment (EVSEs), installation, network services, and ongoing warranty/maintenance of the EVSEs.
2. Provision of Equipment & Services. EV Connect agrees to:
  - a. Provide four dual port Level II (240 VAC) charge stations (EVSEs) for Charging Site Host use;
  - b. Provide installation of EVSEs through sub-contractors;
  - c. Provide an EV charging management platform/network to manage all aspects of the charging experience;
  - d. Provide training on how to use the EV Connect's management platform; and
  - e. Provide on-going warranty support and repair through sub-contractors, for the Term of the Agreement
3. User Fees.
  - a. Usage fees are optional for employee or resident use of charging stations, and are determined by the Charging Site Host.
  - b. If there is no usage fee charged to employees or residents of the Charging Site Host and if charging is open to public access, then users who are not employees or residents of the property may be charged a usage fee ("Public Charging Fee") for accessing and using the EV charging station.
  - c. The Public Charging Fee, if applicable, is to be mutually agreed between the Charging Site Host and EV Connect and must at least cover the cost of electricity and is comparable to usage fees of nearby public charging infrastructure. 50% of the Public Charging Fee (less the Transaction Fee described below, and any sales tax or other government levies on EV charging usage) will be retained and paid to EV Connect.
  - d. In addition, Charging Site Host shall pay EV Connect a Transaction Fee of 10% with a minimum of \$0.50 per transaction for all EV charging transactions with a usage fee. Payment of which will be set off against usage fees collected by EV Connect, or in case of insufficient usage fees, billed separately.
4. Charging Site Host Representation & Warranty. Charging Site Host represents and warrants that no internal or external funding sources, other than pursuant to the Agreement, were considered, committed or likely in order to obtain the equipment and services to be provided under this Agreement.
5. Incentive Ownership. Charging Site Host agrees that any non-usage based credits, benefits, rebates, refunds, or similar governmental incentives, or the value thereof, resulting from the installation and operation of the EVSEs belong to Sponsor, and Charging Site Host further agrees to cooperate with a request to pursue the same, provided that Charging Site Host shall not be required to bear any out-of-pocket costs in providing such cooperation.