



FINANCE COMMITTEE AGENDA

Tuesday, June 9, 2020

8:30 AM

Teleconference Dial-in Number: (714) 671-3685

Participant Code: 130-326-44

Direct Dial Extension: 1113

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

This meeting is being conducted consistent with Governor Newsom's Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The Finance Committee Meeting will be held on June 9, 2020 at 8:30 AM via a teleconference call and the public is welcome to participate. The Dial-in Number is (714) 671-3685 and the Participant Code is 130-326-44. The agenda packet can be viewed on the City of Brea website at <https://www.ci.brea.ca.us/509/Meeting-Agendas-Minutes>. Hard copies of the agenda packet are available via USPS with proper notice by calling (714) 990-7676.

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 & Cultural Center at 1 Civic Center Circle, Brea, CA 92821 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 Action Minutes for May 26, 2020 Meeting

Attachments

05-26-2020 Minutes

DISCUSSION

3. Professional Services Agreement with HF&H Consultants, LLC for Solid Waste SB 1383 Contracting Assistance in the Amount Not-to-Exceed \$30,000

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

Attachments

Exhibit A - Proposal
Agreement

4. Interim Contract with Western Golf Properties for Birch Hills Golf Course and Funding for the Maintenance, Operations and Other Related Costs

Attachments

Interim Contract - WGP

5. Extend Landscape Maintenance Contracts for Six Months in Maintenance Districts 1, 3, 5 and 6
6. Consideration of First Amendment to the Communications Facility Lease Agreement with Los Angeles Standard Metropolitan Statistical Area (SMSA) Limited Partnership, dba Verizon Wireless at the Downtown Parking Structure

Attachments

A. Communications Facility Lease
B. First Amendment to Communications Facility Lease
C. Memorandum of First Amendment to Lease

7. Approve the Agreement with Fuscoe Engineering, Inc. to Provide NPDES Stormwater Management Services

Attachments

Agreement

8. 3rd Floor Remodel - COVID-19 Update - Verbal Update: Jenn Colacion
9. Fire Services - FY 2020-21 Budget Decision Package Review - Verbal Update
10. Schedule Next Meeting: June 9, 2020

cc: Mayor Pro Tem Steven Vargas
Council Member Glenn Parker

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

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: Approval of Action Minutes for May 26, 2020 Meeting

Attachments

05-26-2020 Minutes



FINANCE COMMITTEE MINUTES

**Tuesday, May 26, 2020
8:30 AM**

Teleconference Dial-in Number: (714) 671-3685

Participant Code: 706-668-78

Direct Dial Extension: 1113

This meeting was conducted consistent with Governor Newsom's Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The Finance Committee Meeting was held via a teleconference call at which time the public was welcome to participate.

CALL TO ORDER / ROLL CALL

ATTENDEES: Council Member Cecilia Hupp, Council Member Christine Marick, Tony Olmos, Cindy Russell, Rudy Correa, Faith Madrazo and Alicia Brenner.

1. Matters from the Audience – *None*.

CONSENT

2. Approval of Minutes of May 12, 2020 Meeting – *Approved*.

DISCUSSION

3. Lease Agreement between the City of Brea and the Tomlinson Families for use of California Domestic Water Company Stock – *Recommended for City Council Approval*.
4. Schedule Next Meeting: Tuesday, June 9, 2020

Meeting adjourned: 8:31 a.m.

cc: Mayor Marty Simonoff
Mayor Pro Tem Steven Vargas
Council Member Glenn Parker

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: Professional Services Agreement with HF&H Consultants, LLC for Solid Waste
SB 1383 Contracting Assistance in the Amount Not-to-Exceed \$30,000

RECOMMENDATION

Approve Professional Services Agreement (PSA) with HF&H Consultants, LLC to provide solid waste SB 1383 contracting assistance in the amount not-to-exceed \$30,000.

BACKGROUND/DISCUSSION

The City of Brea has an exclusive franchise agreement with Republic Services to provide solid waste and recycling services in the City. In the past three years, the City has undertaken numerous efforts to be in compliance with current state regulations such as AB 341 (Mandatory Commercial Recycling), AB 1826 (Mandatory Organic Commercial Recycling), and AB 1594 (Green Material used as Alternative Daily Cover). The City's franchise agreement has also been amended to codify these regulations and their resulting rate changes, where applicable.

In September 2016, Governor Brown signed into law SB 1383, establishing methane emissions reduction targets for short-lived climate pollutants (SLCP) in various sectors of California's economy. SB 1383 establishes a target to achieve a 50 percent reduction in statewide disposal of organic waste from 2014 levels by 2020 and a 75 percent reduction by 2025. The law grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets by requiring residential organics recycling and establishes an additional target that not less than 20 percent of currently disposable edible food is recovered for human consumption by 2025.

City of Brea staff has been in communication with other Republic cities on a possible joint effort to analyze and ultimately negotiate contract terms with Republic for implementation of SB1383 mandates. The cities of Garden Grove, Fullerton, Yorba Linda, Placentia and Brea (Cities) agreed to seek a sole-source proposal from HF&H given HF&H's prior work with North Orange County cities on AB1826. HF&H Project Manager, Laith Ezzet, has over 30 years of experience in the waste management industry. He has assisted over 100 public agencies in solid waste matters, and negotiated agreements with total values in excess of \$2 billion. Mr. Ezzet is considered one of the top industry experts in his field within Southern California, and was highly praised for his work by other North Orange County cities currently contracting with HF&H. Mr. Ezzet also assisted the City of Anaheim in implementing mandatory commercial organics recycling, one of the first cities in the North Orange County area to do so, and has served as a guest speaker at numerous events on organics

recycling.

As a result, HF&H provided the attached proposal for Solid Waste SB 1383 Contracting Assistance (Exhibit A). The contractor's complete scope of work is detailed therein. Given the variation in the Cities' refuse contracts and their current state of organics compliance, staff from the Cities agreed to consider moving forward on Tasks A & B only and consider Task C once Tasks A & B have been completed.

A summary of the contractor's proposed scope of work is as follows:

- **Task A: Contract Profile** – This would involve the contractor comparing the terms of the City's individual franchise agreement to their inventory of the most modern franchise agreement and developing a document detailing the findings. It would also include both an individual meeting with the City, as well as a group meeting of all the cities choosing to engage the contractor to discuss a shared profile.
- **Task B: Gap Analysis** – Under this item, the contractor would examine what requirements would be needed of the City in order to be in compliance with all SB 1383 provisions; then, they would identify compliance areas the City was already meeting versus compliance areas in which the City was lacking. It was noted by the contractor that not everything can be delegated to the hauler, but that some functions would require City responsibility, resources, etc.
- **Task C: Contract Negotiations (*For informational purposes only at this time; not part of current contract authorization request*)** - The North Orange County cities group varied in terms of some wishing to completely update their franchise agreements versus others that simply wished to incorporate SB 1383 as an amendment to the existing franchise agreement. It was decided that this decision could be decided at a later date, independent of Tasks A and B.

The final cost of this effort will be dependent on the number of cities engaging with HF&H on the combined Tasks A & B above. The contractor has provided a sliding scale reflecting a discounted cost dependent on how many cities are willing to participate in this effort (Exhibit A, page 7). If all five Cities agree to participate, the proposed fee for Tasks A & B would be \$25,000. At the time of this report, the cities of Garden Grove, Yorba Linda and Placentia have stated that they plan to move forward with an agreement for Tasks A & B in June/July either administratively or through City Council action.

SUMMARY/FISCAL IMPACT

There is no impact to the General Fund. Funding in the amount of \$30,000 will come from the enterprise fund for refuse-related expenditures, Fund 440 (Sanitation & Street Sweeping). This amount was not included in the FY 2019-20 Adopted Budget. If approved, Finance will include this item in the next round of quarterly budget adjustments.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Gillian Lobo, Senior Management Analyst

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

Exhibit A - Proposal
Agreement



ORANGE COUNTY REPUBLIC CITIES

Prepared by HF&H Consultants, LLC

SCOPE OF WORK AND FEE ESTIMATE FOR SOLID WASTE SB 1383 CONTRACTING ASSISTANCE

Background

On January 30th, 2020 a group of Orange County Cities (OC Cities) met in Anaheim and discussed their desire to negotiate simultaneously with Republic Services (Republic) in order to coordinate and leverage negotiations and achieve efficiencies in the contracting process related to achieve Senate Bill (SB) 1383 compliance. The OC Cities have some services in common, but there are many unique services and contract terms to each jurisdiction, with some having long-term or evergreen arrangements and others having shorter periods remaining. With respect to SB 1383 requirements, individual cities may make different program decisions based on in-house resources and policy objectives that vary among agencies.

The OC Cities now desire to enter into negotiations with Republic to modernize their contracts to include provisions for compliance with new and upcoming legislation, and other procedures desired to reach compliance with state of California mandates. The negotiations will need to address Senate Bill (SB) 1383, which will require every waste generator in the City to have an organics recycling program, and require implementation of other new programs such as contamination monitoring, recovery of edible food, and enhanced reporting to CalRecycle.

To navigate this challenge successfully, the City needs a partner for this project who:

1. **Knows SB 1383, but more importantly, knows the wide range of approaches others are employing so that you can fully understand your options.** HF&H is preparing the model franchise, ordinance, food recovery agreement, and purchasing policies for CalRecycle. In total, we have worked with over 70 communities throughout California to adapt compliance to a wide range of real world conditions. We can bring a broad range of examples for compliance and if we need to innovate new ones, we have the connections with CalRecycle to ensure that the solution is viable.
2. **Is intimately familiar with the local infrastructure and industry.** The team we would assign to work on your project is the same team that is currently working with you and other Orange County cities to support planning and implementation of SB 1383. Through that work, we have developed a highly nuanced understanding of the local conditions, industry participants, stakeholders, and potential regional synergies available. In addition, our proposed project director (Laith Ezzet) is also the project director for ongoing financial and planning assistance for Orange County Waste and Recycling, providing an even deeper insight into local facilities and operations.
3. **Has the processes, tools, and templates to get this planning process done quickly so that you can transition into implementation.** If the City is going to achieve its goal of getting the plan done on an accelerated timeline, it is critical that the consultant isn't wasting time researching and preparing. HF&H is ready with all of the processes, tools, and templates we need to effectively and quickly facilitate your project

Scope of Work

The specific tasks and assignments will be determined on a mutually-agreed upon basis depending on the City's needs. The project will be performed in two phases. Phase 1 would include planning for negotiations with completion of a contract profile, SB 1383 gap analysis and assisting with negotiations for an updated solid waste agreement with Republic. The City can choose to complete tasks A and B independently of task C. The specific scope of work for Optional Phase 2 will be determined after completion of Phase 1 and may include assistance with updating the City's Municipal Code, drafting new ordinances required in SB 1383, edible food recovery program assistance, and other SB 1383 implementation activities.

PHASE 1: PLANNING AND NEGOTIATIONS

A. Contract Profile

This initial project phase will consist of comparing key terms in the existing agreement to those in a modern, state-of-the-art agreement. Our analysis will include key terms related to the provision of residential, commercial and roll-off box services, rate adjustment provisions, recycling requirements, regulatory compliance with AB 341, AB 1826, and SB 1382, performance standards, reporting requirements, indemnifications, complimentary services provided at no additional charge, and other key contract requirements.

We will prepare a written work product and meet once with City staff to review it. We will subsequently update the analysis based on the meeting with City staff.

Deliverable for Part A

Our final work product will be a matrix comparing the key contract terms and services provided in the City to industry standards based on our experience.

B. SB 1383 Compliance Gap Analysis

Task 1. Engagement Initiation

HF&H will initiate the engagement by conducting a meeting with the City to confirm the needs and desires of the City with respect to SB 1383 compliance approaches. This will ensure that recommendations and options developed align with the City's overall desired strategy for achieving compliance. For example, if the City wishes to comply with legislation at the lowest rates possible, the recommended programs may look significantly different than a jurisdiction who would like to be on the forefront of redefining the state of the industry and developing new environmental programs.



Task 2. Request for Information

HF&H will prepare a request for information for data necessary to conduct the analysis. HF&H will facilitate a conference call with the City to discuss the request for information and agree on timelines for delivery of that information, along with HF&H's work products dependent on it. The RFI will include, but not be limited to:

- Franchise agreement with Republic
- Electronic Annual Reports
- Municipal code sections related to solid waste
- Purchasing policy
- City Organization Chart
- Tonnage reports submitted by the waste hauler
- Customer subscription levels (to be provided by waste hauler)
- City facility solid waste service levels
- Large events and venues
- Non-profits and third parties providing food recovery service

Task 3. Community Programs Review

The City will receive an analysis of the current organics collection programs for all regulatory requirements (including processing, food recovery, education, and outreach and reporting) and an assessment of their adequacy to support compliance with SB 1383 requirements. Furthermore, the City will benefit from our proven SB 1383 analysis tools, which have been reviewed by CalRecycle, including our compliance checklists and responsibility matrix. These proven tools efficiently assess compliance with SB 1383, identify gaps in programs, synthesize the data, and inform decisions about who to assign responsibility for the various compliance requirements. These tools have been used in more than 30 communities for current and continual compliance analysis and are helpful working documents for use in the Implementation Record required by SB 1383. If there are questions or concerns surrounding a program's compliance, HF&H will obtain clarification from CalRecycle's SB 1383 Manager, or other CalRecycle executives as necessary. The City will benefit from our strong working relationship with CalRecycle and our deep knowledge of compliance issues, which has been developed across multiple engagements with CalRecycle, including our current project of assisting CalRecycle with the development of tools for local government implementation of SB 1383.

Task 4. Internal Operations Review

While SB 1383 is a shared-responsibility bill providing opportunity for delegation of requirements to franchisees, there are numerous requirements that could not be reasonably delegated, such as procurement of recovered content paper, issuing fines, and amending of ordinances. HF&H will evaluate the City's internal operations in order to identify gaps in performance or service compared to SB 1383 requirements. This analysis will be primarily focused on requirements for service, purchasing, education, outreach, and reporting.

Task 5. Baseline Analysis Report and Meeting

Based on the information gathered and work performed in Subtasks 1 through 4, HF&H will draft a presentation and facilitate a meeting to articulate the extent to which current programs, internal operations, and infrastructure comply. HF&H will discuss the pros and cons of various compliance

pathways, and seek City direction on which programs they would like to consider. We will document the discussion and direction provided in annotated meeting notes.

Deliverable for Part B:

The City will receive a baseline conditions report in PowerPoint and a three hour meeting with HF&H to review current compliance status and potential solutions to be considered in subsequent tasks.

C. Contract Negotiations with Republic

Task 1. Initiate Project and Brief City Officials

HF&H staff will prepare for and facilitate a kick-off meeting with City staff to confirm the contracting objectives, and project schedule, and confirm the approach to the contract negotiations. The result of the meeting will be a document confirming the contracting strategy and project schedule.

If requested, HF&H will also prepare for and attend one meeting to provide a briefing to the City Management or other City Officials based on direction from City staff given at the kick-off meeting.

Task 2: Develop New Contract Provisions and Prepare Updated Agreement or Contract Amendment

There have been many changes to solid waste regulations and technologies since the previous solid waste agreement was approved. For example, mandatory commercial organics recycling regulations were phased in with AB 1826, and will be expanded under new regulations being finalized under Senate Bill 1383. New facilities to process organics waste are being developed or proposed throughout the Southern California region. As a result of these and other regulatory and industry developments, there are many areas of the existing Agreement that will need to be updated.

HF&H has been instrumental in defining the “state of the industry” throughout California, and we will assist the City in development of an updated franchise agreement that reflects modern best practices. HF&H will work closely with the City to identify and adapt the service specifications to industry trends and developments that have occurred since the current Agreement was developed. HF&H has an extensive library of franchise agreements throughout California to draw upon for examples of performance standards, service options, diversion requirements, and rate adjustment methodologies for the City’s consideration. HF&H has also been assisting CalRecycle in preparation of a model franchise agreement that incorporates the requirements of SB 1383 and is familiar with the necessary documentation to strive for compliance.

Based on the discussions and direction provided by City staff described above, we will prepare either an updated draft franchise agreement or contract amendment for the desired services

and contract terms. City staff, including the City Attorney, will subsequently review the draft agreement or contract amendment, and the City will be responsible for consolidating comments from the City's various reviewers into a single "redline" of the draft work product, which we will then use to prepare an updated draft work product.

Task 3: Negotiate Rates, Terms and Conditions of Desired Services

We recommend that the draft agreement be provided to Republic documenting the City's desired services and contract terms. Republic and the City can then negotiate rates that are consistent with the City's desired terms and conditions contained in the draft agreement developed in Task 2. The result of Republic's review of the agreement will likely be a series of points that they wish to address and proposed rates that may or may not be satisfactory. HF&H will then assist in negotiating reasonable rates. We will also work with City staff to guide the City through its determination of which service provider concerns are minor and which are valuable enough not to negotiate without a substantial offsetting gain for the City.

HF&H will assist the City by scheduling the necessary negotiation meetings and conference calls with all relevant parties from the City and Republic, creating meeting documents, and drafting meeting notes based on the discussions.

Task 4: Gather and Review Hauler Operating Data

Service statistics, such as the number of customers, container size and frequency of collection, can be used to determine the overall value of the contract at proposed rates. Typically, we determine and compare the overall compensation to the service provider under existing rates and using newly renegotiated rates in order to demonstrate the true overall financial impact to the rate payer. For example, a decrease in the rate for a common service level is more valuable than a decrease in a rate for a service that is seldom used. With the proper data, we can compare the overall proposed company compensation on a similar basis with other jurisdictions.

Task 5: Attend City Council Meeting

We have budgeted to attend one meeting of the City Council when the Council considers the new agreement for award.

OPTIONAL PHASE 2: ADDITIONAL SB 1383 ASSISTANCE

Upon completion of the Phase 1 tasks, HF&H can prepare a new scope based on City direction related to additional SB 1383 assistance. These tasks may include:

- Updating the City's Municipal Code to reflect the negotiated terms of the new franchise agreement;

- Drafting new ordinances required under SB 1383;
- Provide reporting assistance;
- Development and/or review of outreach materials;
- Edible food recovery program assistance; and,
- Other SB 1383 implementation activities.

COST PROPOSAL

We will provide the requested services based on time and materials. The estimated base cost is \$120,000 for Phase 1 of the project. If the City would like to complete tasks A and B before executing task C, the project cost would be \$30,000. We have broken the budget out by sub-project below:

Work Item	Total Cost
A. Contract Profile	\$15,000
B. SB 1383 Compliance Gap Analysis	<u>\$15,000</u>
Subtotal for Tasks A and B	\$30,000
C. Negotiations with Republic	<u>\$90,000</u>
Phase 1 Total	\$120,000

The cost per city to complete only tasks A and B would be reduced based on the number of cities that join the project and can be seen in the following table:

Number of Cities	1	2	3	4	5
Project Cost per City	\$30,000	\$28,750	\$27,500	\$26,250	\$25,000

Similarly, the total project cost per city would be reduced based on the number of cities that join the project and can be seen in the following table for all three sub-projects:

Number of Cities	1	2	3	4	5
Project Cost per City	\$120,000	\$115,000	\$110,000	\$105,000	\$100,000

Our actual costs may be higher or lower than this amount, depending on the level of support requested, and we will notify you in writing if a budget amendment is required. We will bill you once per month based on the number of hours worked, multiplied by our hourly billing rates, plus out-of-pocket expenses incurred. Payment is due within 30 days. Hourly rates through December 31st, 2020 are as follows and will be adjusted each January 1st by 2.5%:

<u>Position</u>	<u>Rate</u>
Senior Vice President	\$295
Senior Manager	\$265 to \$275
Senior Associate/Project Manager	\$179 to \$249
Associate Analyst	\$155 to \$175
Assistant Analyst	\$139 to \$149
Administrative Staff	\$99 to \$109

Expenses will be billed as follows:

Mileage	\$0.50 per mile (or as adjusted by IRS allowance)
Outside document reproduction/couriers/postage	Actual

Public conveyances and parking
All other out-of-pocket expenses

Actual
Actual

SCHEDULE

CalRecycle is finalizing rule development for SB 1383 and the final package is anticipated in June or July 2020. We would start the engagement around the time the time that the rules are finalized, with the goal of completing the negotiations under Phase 1 by July 1, 2021, assuming timely agreement is reached with the waste hauler. The City could then use the period prior to January 1, 2022 to update ordinances and other perform other pre-implementation activities.

STAFFING

Laith Ezzet, Senior Vice President, will be the Project Director and he will be assisted by other HF&H staff with the appropriate skills for the assigned tasks.

CITY OF BREa
HF&H Workplan for SB 1383 Contracting Assistance - Phase 1

TASK	DESCRIPTION	Sr. Vice President	Sr. Project Manager	Project Manager/ Senior Associate	Assistant Analyst	Total Hours/ Fees ⁽¹⁾
A. Prepare Contract Profile						
	Prepare Contract Profile Hours	18	-	42	8	68
	Prepare Contract Profile Consulting Fees	\$ 5,310	\$ -	\$ 8,358	\$ 1,160	\$ 14,828
	Prepare Contract Profile Expenses					\$ 172
	Total Prepare Contract Profile					\$ 15,000
B. SB 1383 Compliance Gap Analysis						
	SB 1383 Compliance Gap Analysis Hours	10	-	20	34	64
	SB 1383 Compliance Gap Analysis Consulting Fees	\$ 4,720	\$ -	\$ 5,174	\$ 4,930	\$ 14,824
	SB 1383 Compliance Gap Analysis Expenses					\$ 176
	Total SB 1383 Compliance Gap Analysis					\$ 15,000
Total Tasks A and B Hours		34	-	68	42	144
Hourly Rates		\$ 295	\$ 270	\$ 199	\$ 145	
Total Consulting Fees for Tasks A and B		\$ 10,030	\$ -	\$ 13,532	\$ 6,090	\$ 29,652
Total Tasks A and B Expenses						\$ 348
Total Expenses for Tasks A and B						\$ 30,000
C. Contract Negotiations with Republic						
1	Initiate Project and Brief City Officials	12	-	12	-	24
2	Develop New Contract Provisions and Prepare Updated Agreement	24	32	64	8	128
3	Negotiate Rates, Terms and Conditions of Desired Services	80	-	80	8	168
4	Gather and Review Hauler Operating Data	8	-	36	6	50
5	Attend City Council Meeting	0	-	0	-	0
	Contract Negotiations with Republic Hours	130	32	198	22	382
	Contract Negotiations with Republic Consulting Fees	\$ 38,350	\$ 8,640	\$ 39,402	\$ 3,190	\$ 89,582
	Contract Negotiations with Republic Expenses					\$ 418
	Total Contract Negotiations with Republic					\$ 90,000
Total Hours		164	32	266	64	526
Hourly Rates		\$ 295	\$ 270	\$ 199	\$ 145	
Total Fees		\$ 48,380	\$ 8,640	\$ 52,934	\$ 9,280	\$ 119,234
Total Expenses						\$ 766
Total Fees and Expenses						\$ 120,000

(1) Hours may be shifted among tasks.

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 16th day of June 2020, between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and HF&H Consultants, LLC. (hereinafter referred to as “CONSULTANT”),

A. Recitals

(i) CITY has heretofore solicited proposals pertaining to the performance of professional services with respect to Solid Waste SB 1383 Contracting Assistance (“Project” hereafter).

(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 “A” 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 in preparation of Project.

(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) Project: The preparation of Solid Waste SB 1383 Contracting Assistance (Task A and Task B only) described in Exhibit “A” hereto including, but not limited to, the preparation of maps, surveys, reports, and documents, the presentation, both oral and in writing, of such plans, maps, surveys, reports and documents to CITY as required and attendance at any

and all work sessions, public hearings and other meetings conducted by CITY with respect to the project.

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the Project.

(c) Completion of Project: The date of completion of all phases of the Project, including any and all procedures, development plans, maps, surveys, plan documents, technical reports, meetings, oral presentations and attendance by CONSULTANT at public hearings regarding the adoption of Project as set forth in Exhibit “A” hereto.

2. CONSULTANT agrees as follows:

(a) CONSULTANT shall forthwith undertake and complete the Project in accordance with Exhibit “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 maps, surveys, reports, plans and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibit “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 upon the prior written approval of CITY.

3. CITY agrees as follows:

(a) To pay CONSULTANT a maximum sum of **thirty thousand dollars and zero cents (\$30,000.00)** for the performance of the services required hereunder, plus a contingency of zero (\$000.00). This sum shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants and subcontractors to CONSULTANT. Payment to CONSULTANT, by CITY, shall be made in accordance with the schedule set forth below. CITY must receive a written request from CONSULTANT to use any of the contingency amount prior to performing any work that is outside the Project scope as defined in Exhibit "A". It will be the CITY's sole discretion to authorize the use of the contingency funds and the CITY must give this authorization to CONSULTANT in writing prior to the commencement of said work. Any work performed outside the Project scope as defined in Exhibit "A" that has not received prior written approval by CITY is assumed to have been performed in support of said Project and included within the not-to-exceed contract amount.

(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 or lump sum amounts for individual tasks. Notwithstanding any provision herein or as incorporated by reference, in no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of the amount set forth in Section 3 (a).

(c) 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 "A". 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 Project.

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

(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 Written Product:

(a) Unless otherwise agreed upon in writing, all reports, documents, or other original written material, including any original images, photographs, video files, digital files, and/or other media created or developed for the CITY by CONSULTANT in the performance of this Agreement (collectively, "Written Product") shall be and remain the property of CITY without restriction or limitation upon its use or dissemination by CITY. All Written Product shall be considered to be "works made for hire", and all Written Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of CITY without restriction or limitation upon their use, duplication or dissemination by CITY. CONSULTANT shall not obtain or attempt to obtain copyright protection as to any of the Written Product.

(b) CONSULTANT hereby assigns to CITY all ownership and any and all intellectual property rights to the Written Product that are not otherwise vested in the CITY pursuant to subsection (a), above.

(c) CONSULTANT warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of all Written Product produced under this Agreement, and that CITY has full legal title to and the right to reproduce the Written Product. CONSULTANT shall defend, indemnify and hold CITY, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim or liability in any way related to a claim that CITY's use of any of the Written Product is violating federal, state or local laws, or any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in product or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Services and Written Product produced under this Agreement. In the event the use of any of the Written Product or other deliverables hereunder by CITY is held to constitute an infringement and the use of any of the same is enjoined, CONSULTANT, at its expense, shall: (a) secure for CITY the right to continue using the Written Product and other deliverables by suspension of any injunction, or by procuring a license or licenses for CITY; or (b) modify the Written Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. This covenant shall survive the termination of this Agreement.

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. In the event this Agreement is so terminated, CONSULTANT shall be paid on a pro-rata basis with respect to the percentage of the Project completed as of the date of termination. In no event, however, shall CONSULTANT receive more than the maximum specified in paragraph 3(a), above. CONSULTANT shall provide to CITY any and all documents, data, studies, surveys, drawings, maps, models, photographs and reports,

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

Tony Olmos
Public Works Director
City of Brea
1 Civic Center Circle
Brea, CA 92821

CONSULTANT REPRESENTATIVE

Laith Ezzet
Senior Vice President
HF&H Consultants, LLC
201 North Civic Drive, Suite 230
Walnut Creek, CA 94596-3880

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) Workers 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.

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

(3) Professional Errors and Omissions Liability (if required by the RFP) - insuring against all liability arising out of professional errors and/or omissions, providing protection of at least Two Million Dollars (\$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, and shall be subject to the requirements of subsections (1), (2), (5), (6), (7), and (9) of Section 8 (c).

(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) and (2) 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. Indemnity for Design Professional Services.

9.1 In connection with its design professional services, CONSULTANT shall hold harmless and indemnify CITY, and its elected officials, officers, employees, servants, designated volunteers, and those CITY agents serving as independent contractors in the role of CITY officials (collectively, "Indemnitees"), with respect to any and all claims, demands, damages, liabilities, losses, costs or expenses, including reimbursement of attorneys' fees and costs of defense (collectively, "Claims" hereinafter), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to in whole or in part to the negligence, recklessness, or willful misconduct of CONSULTANT or any of its officers, employees, subcontractors, or agents in the performance of its design professional services under this Agreement.

9.2 Other Indemnities. In connection with any and all claims, demands, damages, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense (collectively, "Damages" hereinafter) not covered by this Section 9.1, CONSULTANT shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, including but not limited to, Damages relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the acts or omissions of CONSULTANT or any of its officers, employees, subcontractors, or agents in the performance of this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the CITY, as determined by final arbitration or court decision or by the agreement of the parties. CONSULTANT shall defend Indemnitees in any action or actions filed in connection with any

such Damages with counsel of CITY's choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. CONSULTANT's duty to defend pursuant to this Section 9.2 shall apply independent of any prior, concurrent or subsequent misconduct, negligent acts, errors or omissions of Indemnitees.

10. Assignment and Subcontracting: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, nor shall any required performance be subcontracted, 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: CONSULTANT is retained by CITY only to the extent set forth in this Agreement, and the CONSULTANT's relationship to the CITY is that of an independent contractor. CONSULTANT shall be free to dispose of all portions of CONSULTANT's time and activities which CONSULTANT is not obligated to devote to the CITY in such a manner and to such persons, firms, or corporations as the CONSULTANT sees fit except as expressly provided in this Agreement. Neither the CITY nor any of its agents shall have

control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as set forth in this Agreement. CONSULTANT shall not have the status of an employee under this Agreement, or be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided for CITY's officers or employees. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of CITY or otherwise act on behalf of the CITY as an agent. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY. CONSULTANT agrees to pay all required taxes on amounts paid to CONSULTANT under this Agreement, and to indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. CONSULTANT shall fully comply with the workers' compensation law regarding CONSULTANT and CONSULTANT's employees. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with applicable workers' compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to CITY any reimbursement or indemnification arising under this Section.

13. Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action arising out this Agreement shall be the Superior Court of the County of Orange, California.

14. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party shall be entitled to recover attorneys' fees, experts' fees, and all other costs of litigation 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 the event of any inconsistency between this document and Exhibit A, the provisions of this document shall govern over Exhibit A.

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:

City Clerk

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: Interim Contract with Western Golf Properties for Birch Hills Golf Course and Funding for Maintenance, Operations and Other Related Costs

RECOMMENDATION

1. Award interim contract to Western Golf Properties LLC in the amount of \$825,180 for Birch Hills Golf Course; and
2. Include the projected revenues and expenditures for the Birch Hills Golf Course operations for Fiscal Year 2020-21 in the Golf Course Enterprise Fund (Fund 465).

BACKGROUND/DISCUSSION

In March of 2011, City Council approved a lease agreement with Imperial Golf to operate and maintain the 18-hole Birch Hills Golf Course. Per the agreement, the lease would become effective when the course was transferred to the City of Brea, which occurred in October of 2019. Shortly after the golf course transferred to the City, Imperial cited concerns regarding specific terms in their lease and requested for some concessions from the City. After discussion, Imperial and City decided to mutually terminate their lease and City would seek a new operator. The current lease will terminate on July 5, 2020.

Given the short turnaround time to take over the golf course operations and look for a permanent operator, staff is recommending that City Council approve moving forward with an interim operation and maintenance contract for the golf course from July 1, 2020 through December 31, 2020 while a permanent operator is selected for a longer term. Should the selection of the permanent operator extend past December 31, 2020, the interim contract will change to a month-to-month term until City terminates the contract.

During the interim period, the City will be operating the Birch Hills Golf Course using a contract operator as opposed to a lease agreement. This means the City will take in all the revenues generated (through the operator) and pay the operator a fixed fee for the maintenance and operations of the golf course. Additionally, the City will be responsible for other costs such as the cost of goods sold in the restaurant and pro-shop; water costs, Golf Course Specialist position and credit card processing charges.

Contract Operator

The initial interim period is expected to be six months. During this interim period, staff will issue a Request for Proposal (RFP) seeking a permanent operator for both the Birch Hills and Brea Creek courses. Western Golf Properties (WGP) currently operates Birch Hills as a sub-contractor to Imperial Golf and is currently the interim operator at Brea Creek for the City.

WGP has done a commendable job operating and maintaining both golf courses.

WGP provided a six month proposal for the interim operations at Birch Hills. WGP expressed their desire to work with the City and reduced their original proposal by \$21,000 over the 6 month period. The final proposed amount is \$137,530 per month. In addition to the six month term, other terms in the agreement include:

- Provide full maintenance and operation of the course;
- Provide all the maintenance equipment and golf carts for the operation; and
- Provide a daily accounting of all sales and provide all revenues to City

The full scope of work is available in Exhibit “A” of the agreement. Additionally, during the interim period, WGP has committed to improve the golf course by restoring grass on the driving range landing area by a phased slit seeding process. This phased process is necessary to be able to recover the range balls with the additional irrigation needed to establish the seed. The range should be green again by September 2020. Other additional maintenance activities will continue to be directed at the weeds in the roughs along the holes.

During the interim period, there are other golf course related costs that are not the responsibility of the contract operator. The following costs are estimated to be approximately \$311,068 for the six-month period:

- Cost of Goods Sold – Food and Beverage
- Cost of Goods Sold - Merchandise in the Pro-shop
- Credit Card Processing Fees
- Irrigation water
- Golf Course Specialist

Based on the information received, revenue estimates at the golf course for the six month period are \$1,240,415. Gross revenues include pre-pandemic food and beverage estimates and could vary based on clubhouse operations going forward.

The projected gross revenues less the contract operator cost and the other estimated costs are as follows:

Gross Revenues	\$1,240,415
Expenses:	
• Contract Operations	\$825,180
• Cost of Goods Sold	\$130,788
• Water	\$153,000
• Credit Card Fees	\$16,280
• Gof Course Specialist	\$11,000
Total Expenditures	\$1,136,248
Revenues Over Expenditures	\$104,167

SUMMARY/FISCAL IMPACT

The projected net revenues over expenditures from this interim operation are \$104,167 which will be included in the Golf Course Operations Fund (Fund 465) for Fiscal Year 2020-21. The lease agreement with Imperial Golf had a base rent amount of \$72,000, plus a projected \$79,000 in percentage rent for an estimated total of \$151,000 for the six month period from July 1 – December 31, 2020, which would have been budgeted in the General Fund.

An RFP will be issued for a permanent operator of the Birch Hills and Brea Creek Golf Courses. Staff recommends awarding a six month contract to Western Golf Properties for the maintenance and operations of the Birch Hills course in the amount of \$825,180.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Bill Bowlus, Public Works Superintendent
Faith Madrazo, Revenue & Budget Manager

Concurrence: Tony Olmos, P.E., Public Works Director
Cindy Russell, Administrative Services Director

Attachments

Interim Contract - WGP

MAINTENANCE AND OPERATIONS AGREEMENT

This Maintenance and Operations Agreement ("Agreement") is made and entered into as of the date executed by the City Clerk and the Mayor, by and between **Western Golf Properties LLC**, a California Limited Liability Company hereinafter referred to as the "Contractor", and the City of Brea, a municipal corporation, hereinafter referred to as "City".

WHEREAS, the City and Contractor enter this Agreement in order to set forth terms and conditions applicable to Contractor's performance of golf course maintenance and operations services at City's Birch Hills Golf Course as more fully described herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. **GENERAL SCOPE OF WORK:** Contractor shall furnish all necessary labor, tools, materials, appliances, and equipment necessary for the performance of maintenance and operations services at the Birch Hills Golf Course in the City of Brea, as hereinafter described (collectively, the "Services"). The Services shall be performed in accordance with any and all applicable laws, statutes, and regulations, the Scope of Services attached hereto as Exhibit "A", the general provisions, specifications and standards on file in the office of the Director of Public Works, and as directed by the Director of Public Works, for the period commencing July 6, 2020 and continuing through December 31, 2020. Thereafter, the parties may agree to continue the term of this Agreement on a month to month basis, or otherwise extend as provided herein.

a. The City and Contractor may agree to extend the term of this Agreement on a month to month basis. Should the Agreement be extended, the contract prices may be adjusted as provided for herein. Any price increase will require approval by the City Council.

b. At all times herein, Contractor shall possess any and all licenses and certifications required by law in order to lawfully perform the Services.

c. The Contractor shall maintain complete and accurate records with respect to purchases, expenses, receipts and other such information relating to the Services, as required by the City. The Contractor shall maintain adequate records on services provided in sufficient detail to permit an evaluation of the Services for not less than four (4) years. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. At all times during regular business hours, the Contractor shall provide access to such books and records to the City Representative, and shall give the Representative consent and right to examine and audit such books and records and to make transcripts as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement.

d. The City shall designate a representative having authority to respond to questions and perform administrative actions specifically authorized or required herein. Such representative of the City, and/or designee thereof, is referred to herein as "City's Representative".

2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY:

The aforesaid general provisions, specifications, and standards are incorporated herein by reference hereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, together with this written Agreement, shall constitute the contract between the parties. This Agreement is intended to require complete and fully performed golf course maintenance and operations services, and labor, equipment or materials necessary to satisfactorily perform the Services properly and in accordance with the law and lawful governmental regulations shall be performed by the Contractor whether set out specifically in this Agreement or not. In the event of any conflict or inconsistency between the provisions of this Agreement, the Scope of Work, Exhibit "A", and/or general provisions, specifications, and standards, the provisions of this Agreement, then the Scope of Work, and lastly the general provisions, specifications, and standards, shall control.

3. CONTRACTOR'S CUSTOMER CARE:

The Contractor, while fulfilling the terms of this Agreement, is performing as a representative of City and shall provide exceptional customer care. Any negative contact with staff, residents/citizens, businesses, visitors or other contractors shall be reported by Contractor immediately to City's Representative. Contractor's Representative and/or management and supervisory personnel shall intercede to resolve or mitigate the negative contact in conjunction with City staff.

4. INSURANCE: The Contractor shall not commence work until Contractor has obtained all insurance required hereunder in a company or companies acceptable to City nor shall the Contractor allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. The Contractor 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 Contractor shall furnish to the Director of Public Works a certificate of insurance as proof that it has taken out full compensation insurance for all persons whom it 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 Agreement.

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 its employees. Contractor, prior to commencing work, shall sign and file with the City a certification 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 worker's 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 CONTRACTOR 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 Contractor in the performance of this Agreement. :

(2) Automobile Liability

(occurrence) – for bodily injury, death and property damage insuring against all liability arising out of the use of any automobile.

(3) The policies of insurance required in this Section 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. Each such policy of insurance required in paragraph b 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 authorized subcontractors, specified by City to be included;

(4) Specify that it acts as primary insurance and that no insurance held or owned by any of 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 providing notice thereof."

(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 all 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. The insurance obligations under this Agreement shall be: (a) all the insurance coverage and/or limits carried by or available to the Contractor; or (b) the minimum insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.

(10) Otherwise be in form satisfactory to City.

d. Prior to commencing performance under this Agreement, the Contractor shall furnish the City with required certificate(s) and 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 Contractor commences performance. If performance of this Agreement shall extend beyond one (1) year, Contractor 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.

5. LABOR CODE COMPLIANCE: Contractor acknowledges that the work required in performing the Services is a “public work” as defined in Labor Code Sections 1720, et seq., and/or 1771. At all times during the term hereof, Contractor shall comply with all applicable provisions of the California Labor Code including those set forth in Exhibit “B” California Labor Code Compliance, attached hereto and incorporated by reference herein.

6. CONTRACTOR'S LIABILITY: The City of Brea and/or its elected officials, officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage arising out of Contractor's performance of the Services; or for any of the materials or other things used or employed in performing the Services; or for injury or damage to any person or persons, including employees of the Contractor or its subcontractors or the public; or for damage to the site of the Services or any adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the Services. The Contractor shall be responsible for any damage or injury to any and all persons or property resulting from Contractor's performance of the Services.

To the maximum extent permitted by law, Contractor will indemnify, defend and pay reasonable attorneys' fees, costs, expenses, and hold the City, its elected officials, officers, employees, agents, and volunteers (“Indemnitees”), harmless with respect to any and all actions, claims, damages to persons or property, penalties, obligations, and/or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization, arising out of or in connection with the Services including work, operations, and/or activities of the Contractor, Contractor's agents, employees, subcontractors, and/or invitees, whether or not there is concurrent passive or active negligence on the part of City, but excluding such actions, claims, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of any of the Indemnitees as established by agreement of the parties or final court decision, and in connection therewith:

a. The Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.

b. The Contractor will promptly pay any judgment rendered against any of the Indemnitees or the Contractor covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with the Services work, operations or activities of the Contractor hereunder, and the Contractor agrees to save and hold the Indemnitees harmless therefrom.

c. In the event any of the Indemnitees is made a party to any action or proceeding filed or prosecuted against the Contractor for damages or other claims arising out of or in connection with the work, operation, or activities of the Contractor hereunder, the Contractor agrees to pay any and all costs and expenses incurred by any of the Indemnitees in such action or proceeding together with reasonable attorneys' fees.

d. So much of the money due to the Contractor under and by virtue of this Agreement as shall be considered necessary by City may be retained by City until disposition has been made of such actions or claims for damage as aforesaid.

7. NON-DISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of Section 1735 of said Code.

8. CONTRACT PRICE AND PAYMENT: As full and complete compensation for Contractor's satisfactory performance of the Services, Contractor shall be paid the total, not to exceed amount of **\$137,530.00 (One Hundred Thirty Seven Thousand, Five Hundred and Thirty Dollars)** per month. Contractor shall submit monthly, detailed invoices describing all time spent performing the Services, including a detailed description thereof, for the previous month. City shall pay all undisputed invoices within fifteen (15) days of invoice receipt. City and Contractor shall attempt to resolve any disputed invoices promptly and in good faith.

Contractor will enter the City's merchant number into the point of sale system to capture credit card transactions. Daily receipts excluding holidays, weekends and closed Fridays will be dropped at the Finance Counter located on the 3rd floor of the Civic and Cultural Center located at 1 Civic Center Circle, Brea, CA 92821. In the event of one of the exclusions the receipts will be delivered the next open business day. Daily receipts should be separated into sales for credit cards, cash and check. The corresponding revenue should match greens and range fees, cart rentals, food and beverage and the pro shop. Multiple day drops need to be separated by day.

Contractor will provide a monthly detailed invoice of any sundry items and food and beverage sales. The City will reimburse the Contractor the purchase price of the items sold. Any inventory remaining at the term of the agreement is the Contractor's responsibility.

Additionally, the Contractor will provide a monthly detailed invoice of sales tax paid for reimbursement by the City.

Contractor will provide a monthly audit of advertising expenses and any unspent budgeted funds will be credited to the City.

The Contractor is responsible for the reassignment of the liquor license for the property. At the end of the term of the agreement the Contractor will reassign the license to the City's designee and the Contractor will be reimbursed for the initial reassignment cost.

9. LABOR AND MATERIALS BOND: Prior to commencing work hereunder, the Contractor shall provide a labor and materials bond in the amount of 100% of the contract price herein. The payment bond shall remain in force until expiration of the

time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and until the expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1771.2. The payment bond shall be substantially in the form of bond attached hereto as Exhibit "C".

10. CONTRACT EXTENSION NOTIFICATION: The City shall request extension of this Agreement past the term, in writing, at least thirty (30) days prior to the end of the term hereof.

11. NOTICES: All notices required or permitted hereunder shall be deemed delivered to the party to whom notice is sent upon personal delivery thereof at the addresses set forth upon which said notice is placed, postage pre-paid, in the United States mail and addressed as follows:

CONTRACTOR:

Robert Heath, CEO
Western Golf Properties LLC
1 Spectrum Pointe Drive, Suite 310
Lake Forest, CA 92630

CITY:

Bill Bowlus
City of Brea, Public Works
Superintendent
545 N Berry Street
Brea, CA 92821

12. SUPERVISOR DESIGNATION: Contractor shall provide to City's Director of Public Works, upon execution of this Agreement, the name of the individual employed by Contractor who is designated as the Contractor's primary representative for the supervision and prosecution of the Services ("Contractor's Representative"). Contractor's Representative shall be available, upon 30 minutes notice during normal business hours, to respond personally or by telephone to requests for information or instructions concerning the Services from City's authorized representatives.

13. CONTRACT PRICE ADJUSTMENT: Following expiration of the initial term hereof, and provided this Agreement is extended, the Base Sum per month is subject to a cost-of-living adjustment (Stepped Up Base). The cost-of-living adjustment shall be set at the beginning of the second period adjustment date in the following manner: The Consumer Price Index for all Urban Consumers (base year 1982-84 = 100) for the Los Angeles-Long Beach-Anaheim area published by the United States Department of Labor, Bureau of Statistics (Index) which is published for the month immediately preceding the adjustment date (Adjustment Index) shall be compared to the Index which was published for the date immediately preceding the beginning of the initial term hereof (Beginning Index). If the Adjustment Index has increased over the Beginning Index, the monthly payment shall be increased by the amount obtained by multiplying the Base Sum by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. Cost of living adjustment shall not to exceed 3% annually. Any increases will require City Council approval.

It is the intent of the City to provide non-potable well water to the Contractor for the length of the agreement.

14. TERMINATION: This Agreement may be terminated by City for any or no reason, upon the giving of a written "Notice of Termination" to Contractor at least sixty (60) days prior to the termination date specified in said notice. Contractor may terminate this Agreement only for cause.

15. INDEPENDENT CONTRACTOR. The Contractor is retained by the City only to the extent set forth in this Agreement, and the Contractor's relationship to the City is that of an independent contractor. The Contractor shall be free to dispose of all portions of the Contractor's time and activities that the Contractor is not obligated to devote to the City in such a manner, and to such persons, firms or corporations, as the Contractor sees fit except as expressly provided in this Agreement. Neither the City nor any of its agents shall have control over the conduct of the Contractor or any of the Contractor's employees, except as set forth in this Agreement. The Contractor shall not have the status of an employee under this Agreement, or be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided for the City's officers or employees. The Contractor shall have no power to incur any debt, obligation or liability on behalf of the City or otherwise act on behalf of the City as an agent. The Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. The Contractor shall pay all required taxes on amounts paid to the Contractor under this Agreement, and indemnify and hold the City harmless from any and all taxes, assessments, penalties and interest asserted against the City by reason of the independent contractor relationship created by this Agreement. The Contractor shall fully comply with applicable workers' compensation laws regarding the Contractor and the Contractor's employees. The Contractor shall indemnify and hold the City harmless from any failure of the Contractor to comply with applicable workers' compensation laws. The City may offset against the amount of any compensation due to the Contractor under this Agreement any amount due to the City from the Contractor as a result of the Contractor's failure to promptly pay to the City any reimbursement or indemnification arising under this Section.

16. STANDARD OF SKILL: The Contractor warrants that it possesses the professional skill and expertise necessary to perform the Services. The City relies upon the skill of the Contractor to do and perform the Services in a skillful, competent, and professional manner, and the Contractor shall perform the Services in such manner. The Contractor shall, at all times, meet or exceed any and all applicable professional standards of care. The acceptance of the Contractor's work by the City shall not operate as a release of the Contractor from such standard of care.

17. ASSIGNMENT AND SUBCONTRACTING: Contractor shall not assign, transfer or convey, in whole or in part, any interest in this Agreement, nor shall Contractor subcontract any obligation or required performance hereunder, without the

City's prior, written consent. Any attempt to assign or subcontract any interest or obligation herein without the City's prior consent shall be void for all purposes.

18. INTEGRATED AGREEMENT: This Agreement and all documents, specifications and Exhibits referenced herein, are hereby incorporated by reference as though forth herein. No representation or promise not expressly set forth herein, shall be binding or have any force or effect. This Agreement is supplemental to, and does not amend or otherwise affect, the August 21, 2019 Maintenance and Operations Agreement executed by the parties for City's Brea Creek Golf Course.

19. GOVERNING LAW AND VENUE: The provisions of this Agreement shall be construed under the laws of the State of California, without reference to choice of laws rules. Venue for any legal action shall be the Superior Court of the County of Orange, California.

20. TIME IS OF THE ESSENCE: Time is of the essence in every provision of this Agreement.

21. ATTORNEYS' FEES: In The event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the respective dates set forth below.

CONTRACTOR:
State of California Contractor's
License No.

Date: _____

By: _____
Signature Title

By: _____
Signature Title

(two corporate signatures required)

Contractor's Business Phone: _____
Emergency phone where Contractor can be reached at any
time: _____

CITY OF BREA, CALIFORNIA

By: _____
Mayor

By: _____
City Clerk

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Operator responsibilities for the maintenance and operations of the 18-hole Birch Hills Golf Course. Operator shall include all services for public golfing. Such services shall include, but not limited to;

- Provide excellent customer service
- Maintenance of the course and driving range including any industry standard agronomic practice to keep it in a healthy condition
- Compliance with NPDES
- Compliance with State and County DPR regulations
- Maintenance of the parking lot
- Operation and maintenance of the clubhouse
- Operating a pro shop
- Scheduling tee times
- Renting golf carts and clubs
- Taking in green fees and golf cart rental fees
- Rental of driving range balls
- Regulating play
- Enforcing golf course rules
- Providing utilities
- Providing golf lessons
- Selling of food and beverage

EXHIBIT B

CALIFORNIA LABOR CODE COMPLIANCE

1. Contractor acknowledges that this contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and the awarding public agency ("City"), and agrees to be bound by all the provisions thereof as though set forth in full herein.
2. This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

Copies may be obtained at cost at the City Clerk's office. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

3. In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)].
4. Pursuant to Labor Code Section 1776, Contractor shall maintain and make available an accurate record showing the name of each worker and hours worked each day and each week by each worker employed by Contractor performing services covered by this Agreement. Contractor and its subcontractors shall furnish electronic certified payroll records to the Labor Commissioner in accordance with Labor Code Section 1771.4. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The Contractor is responsible for compliance with Section 1776 by itself and all of its subcontractors. This Project is subject to compliance monitoring and enforcement by the DIR. The Contractor shall post job site notices, as prescribed by regulation.

5. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. The Contractor shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing Work on this Project, the Contractor shall provide the City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) Days after concluding Work, Contractor and each of its Subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Contract.
6. Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.
7. California Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby 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 the work of this contract.”

Date _

Signature _____

EXHIBIT C

Bond No. _____

PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of _____ (“Public Agency”), State of California, has awarded to

(Name and address of Contractor) (“Principal”)

a contract (the “Contract”) for the Work described as follows:

(Project name)

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of the Work, to file a good and sufficient payment Bond with the Public Agency to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

(“Surety”) a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the Public Agency and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of _____ Dollars (\$ _____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this Work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this Bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys’ fees, incurred by Public Agency in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the Specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____
“Principal”

“Surety”

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: Extend Landscape Maintenance Contracts for Six Months at Various City Facilities, the Gateway Center and in Maintenance Districts 1, 3, 5, 6 and 7

RECOMMENDATION

Authorize the City Manager to extend the current Landscape Maintenance Contracts for an additional six months for parks mowing, City facilities, medians and greenbelts, City reservoir sites, the Gateway Center and Maintenance Districts 1, 3, 5, 6 and 7.

BACKGROUND/DISCUSSION

Current Landscape Maintenance and Mowing Contracts at various City facilities, the Gateway Center and for Maintenance Districts 1, 3, 5, 6 and 7 with So Cal Land Maintenance, Inc. and Tropical Plaza Nursery, Inc. are set to expire on June 30, 2020. A one year extension for the Maintenance Districts was approved by City Council on July 1, 2019. At this time, staff is requesting a six month extension to allow time to finalize a joint Landscape Maintenance Services Request for Proposals (RFP) with the City of La Habra. Staff anticipates being able to award new contracts from the RFP before the end of the current calendar year.

Current six month contract prices along with a three percent requested CPI increase are shown in the table below. The CPI for the 2019 twelve month period was 3.1% which is the maximum increase based on our current agreement.

Contract	Current Six Month Contract	3% CPI Increase	New Six Month Contract
Parks Mowing	\$37,919	\$1,138	\$39,057
Landscape Maintenance at City Facilities, Medians, Greenbelts and Tracks	\$110,135	\$3,304	\$113,439
Landscape Maintenance at City Reservoir Sites	\$8,283	\$248	\$8,531
Landscape Maintenance at the Gateway Center	\$1,229	\$37.00	\$1,266
Landscape Maintenance in LLMD 1	\$7,142	\$214	\$7,356
Landscape Maintenance in LLMD 3	\$12,117	\$364	\$12,481
Landscape Maintenance in LLMD 5	\$14,549	\$437	\$14,986
Landscape Maintenance in LLMD 6	\$5,341	\$160	\$5,501
Landscape Maintenance in LLMD 7	\$6,411	\$192	\$6,603

The Contractors have successfully completed the requirements of the contract and staff recommends the six-month extension until the new RFP is completed.

SUMMARY/FISCAL IMPACT

Staff is requesting to extend the contracts an additional six months until a joint RFP can be finalized.

Funding is available in the following General Fund programs:

110-51-5141-4269

110-51-5143-4269

Funding is available in each of the District's budgets through individual assessments for the maintenance contracts and other operational costs. Funds 341, 343, 345, 346 and 347 will be used. Fund 880 will be used for the Gateway Center.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Bill Bowlus, Public Works Superintendent

Concurrence: Tony Olmos, Director of Public Works

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: Consideration of First Amendment to the Communications Facility Lease Agreement with Los Angeles Standard Metropolitan Statistical Area (SMSA) Limited Partnership, dba Verizon Wireless at the Downtown Parking Structure

RECOMMENDATION

Approve the First Amendment to the Communications Facility Lease Agreement with Los Angeles SMSA Limited Partnership, dba Verizon Wireless at the Downtown Parking Structure for two additional five-year extension options.

BACKGROUND/DISCUSSION

On December 17, 2002, the Brea Redevelopment Agency entered into a Communications Facility Lease Agreement with Verizon Wireless to lease space for the placement of wireless telecommunication antennas and supporting equipment. The equipment is located on top of the elevator tower at the Downtown Parking Structure located at 101 S. Brea Boulevard. The objective was to increase coverage and provide better cellular service in west Brea and the surrounding area.

Existing Lease Terms

Pursuant to the approved agreement, Verizon Wireless agreed to pay the City a monthly rent of \$2,000 starting in December 2002 with an additional one-time payment of \$15,000 at lease signing. Commencing with the second year of the lease, and continuing every year after that, the monthly rent amount increased by 3%. The lease had a term of ten years with two five-year extensions and is currently in the third year of the second five-year extension. The current lease rate is at \$3,305 a month and is set to increase to \$3,404 a month in January 2021 and \$3,507 in January 2022.

Proposal

In 2019, Los Angeles SMSA Limited Partnership, dba Verizon Wireless contacted City staff to propose an amendment to the Communications Facility Lease. The First Amendment to this Agreement proposes a start date of December 1, 2022, with rent picking up where it would be at \$3,612 a month with the 3% annual escalator remaining. The terms would give Verizon Wireless two five-year extension options and include an additional one-time payment of \$7,500. In negotiating the lease, staff reviewed lease rates with 12 other public agencies in the Southern California region and found that city leases ranged from \$1,500 a month to \$3,700 a month and had an average rate of approximately \$2,650 a month with 2 - 4% annual escalators. Total revenue to the City will be \$43,344 per year initially (plus a 3% growth rate). At the termination of the lease, Verizon must return the structure to its original

condition. Verizon would not be permitted to sublet use of the site without City consent and the right to negotiate an increase in rent accordingly.

SUMMARY/FISCAL IMPACT

The amendment to the lease would generate \$43,344 each year at commencement with 3% annual increases.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Linda Sok Tang, Management Analyst I

Concurrence: Tracy Steinkruger, Community Development Director

Attachments

- A. Communications Facility Lease
 - B. First Amendment to Communications Facility Lease
 - C. Memorandum of First Amendment to Lease
-

COMMUNICATIONS FACILITY LEASE

This Lease is made and entered into by and between the BREa REDEVELOPMENT AGENCY, a public entity (hereinafter referred to as "LANDLORD") and LOS ANGELES SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS by AirTouch Cellular, its general partner (hereinafter referred to as "TENANT"). The LANDLORD and TENANT are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. **Premises.** LANDLORD hereby leases to the TENANT and TENANT agrees to lease from LANDLORD a portion which consists of (i) the area above the elevator tower of the parking structure located on the Property (the "Tower Space"), and (ii) a 16' by 15.5' area of the 4th level southwest portion of the parking structure containing 248 square feet, and (iii) a 15' by 10.5' area of the 3rd level southeast portion of the parking structure containing approximately 157 square feet (the "Exterior Space") as shown in Exhibit "A" attached hereto and made a part hereof located at 101 S. Brea Boulevard, Orange County, State of California (the entirety of LANDLORD's property is referred to hereinafter as the "Property" and as more particularly described in Exhibit "A-1" attached hereto), together with the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day for the purpose of installation and maintenance of the demised premises, including utility wires, poles, conduits and pipes over, under or along an eight (8) foot wide right-of-way extending from the nearest public right-of-way, Brea Blvd., to the demised premises. The Tower Space, the Exterior Space and access are collectively referred to hereinafter as the "Premises".

LANDLORD also grants to the TENANT the right and sufficient space for the installation and maintenance of wires, cables, conduits and pipes generally as shown in Exhibit "A" running from the Tower Space to the Exterior Space and to install, maintain, replace and repair wires, cables, conduits and pipes from the Premises to the nearest appropriate utilities provider if LANDLORD is not providing adequate power and telephone access in the Premises. LANDLORD also hereby grants to TENANT the right to survey the Property and the Premises,

and said survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof and, with respect to the Exterior Space, shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by TENANT.

Notwithstanding any other provision of this Lease, LANDLORD shall be provided a copy of all of TENANT'S surveys and construction drawings and shall have the right to approve or disapprove the proposed location of any and all of TENANT's facilities, including but not limited to, conduits, cables, pipes, wiring, equipment boxes, and antennas, prior to the exercise of any rights by TENANT under this Lease. If LANDLORD does not provide its approval within thirty (30) days of receipt of all such surveys and drawings, TENANT may terminate this Lease as provided in Section 4.E.

2. **Term.**

A. The term of this Lease shall be for ten (10) years, subject to two five (5) year extensions, as provided in paragraph B below, commencing upon the effective date hereof, provided, however, that TENANT's obligations to pay rent hereunder shall not begin until TENANT commences construction of its facilities upon the Premises, which date shall not exceed sixty (60) days after the effective date hereof.

B. In the event that TENANT shall not be in default in the performance of any term or condition under this Lease (with all cure periods having lapsed), then upon the expiration of the original Lease term, or any prior renewal term(s), upon ninety (90) calendar days' prior written notice to LANDLORD, TENANT shall have the option to renew this Lease for two additional terms of five (5) years each. During any such renewal period, all of the terms and conditions of this Lease shall remain in full force and effect. Commencing with the first day of the second year of the initial term hereof, the rent for the Premises shall be increased in accordance with the provisions set forth in paragraph 3, below.

Said option(s) shall be exercised by personal delivery or by certified mail, postage prepaid, of such notice of exercise of option to LANDLORD at the address set forth

herein for notices. Such exercise of the option(s) granted hereunder shall automatically extend the term of this Lease upon the terms and conditions set forth herein, and no further writing need be executed by TENANT or LANDLORD. In the event that any option specified herein is not exercised as provided, within the time period provided, then said option and remaining options, if any, shall expire, and TENANT shall not have any right to renew said Lease.

C. Upon termination, both Parties shall be relieved of any further obligations under this Lease, although each shall continue to have available all remedies for any breach of this Lease occurring prior to the date of termination. Within sixty (60) days following the expiration or termination of this Lease, TENANT shall remove its personal property and fixtures and restore the Premises to its original condition, reasonable wear and tear excepted and further excepting aesthetic improvements made by TENANT to the Premises.

3. **Rent.** TENANT agrees to pay rent to LANDLORD, without prior notice or demand, in the sum of Two Thousand Dollars (\$2,000.00) per month, paid in advance on or before the first day of each month during the term of this Lease, or in such other increments as agreed to by the parties. Said rent shall be paid to LANDLORD, without deduction or offset, in lawful money of the United States of America, at 1 Civic Center Circle, Brea, California 92821, or at such other place as LANDLORD may designate, in writing. In addition, upon its execution hereof, TENANT shall pay LANDLORD a one-time administrative fee in the amount of Fifteen Thousand Dollars (\$15,000.00).

Commencing with the second year of the initial term hereof and annually thereafter, rent to be paid by TENANT shall be increased by three percent (3%) over the prior year's rent.

4. **Use.**

A. TENANT shall use the Premises for the sole purpose of constructing, maintaining, securing and operating a personal wireless service facility (as defined in Section 704 of the Telecommunications Act of 1996), including the installation of required utilities, antennas and related communications equipment, telephone equipment, electrical equipment, HVAC systems, , fire sprinkler systems, and antenna support structures,

subject to being "stealth" designed as may be required by LANDLORD, all as depicted in plans and specifications approved in advance by LANDLORD, attached hereto as Exhibit "A" collectively, and hereby incorporated by reference. Due to the proximity of the Premises to residences, and the potential for fuel spills, any use of a power generator on the Premises must be agreed to in writing, in advance, by LANDLORD. Subject to the provisions of this subsection A, all improvements shall be at TENANT's expense. Each such antenna or antenna support structure may be configured as required by TENANT, provided TENANT obtains all permits and approvals required by LANDLORD and/or any other public agency having jurisdiction over the matter. No additional equipment or antennas that would be visible to the public may be installed without LANDLORD's prior written consent.

B. TENANT and LANDLORD understand and agree that subject to LANDLORD's written consent pursuant to Section 17 hereof, LANDLORD may permit other communications providers to locate on TENANT's communications facilities for which TENANT and LANDLORD shall be entitled reasonable compensation by way of leases negotiated in good faith. Alternatively, and at LANDLORD's option, LANDLORD shall be entitled to increased rent payable to LANDLORD in an amount negotiated by the Parties.

C. If required to prevent unauthorized entry, TENANT shall install a security fence or other security devices satisfactory to LANDLORD, around the perimeter of the Premises. Construction of TENANT's communications facility shall be at TENANT's sole expense. TENANT will maintain the Premises in good condition, reasonable wear and tear excepted. Further, since TENANT shall have exclusive occupancy of the Premises, TENANT shall maintain the Premises free from hazards or risk to the public health, safety or welfare

D. At all times throughout the term of this Lease, TENANT's use of the Premises shall be in conformance with, and subject to all conditions contained in, any and all permits or approvals required by LANDLORD and/or any other agency having jurisdiction over TENANT's operations. Furthermore, TENANT shall comply with all requirements of the City of Brea's Development Services Department prior to commencement of construction. Those requirements are set forth in Exhibit "C" attached hereto (Plan Review # 02-05) and hereby incorporated by reference.

E. LANDLORD agrees that TENANT's ability to use the Premises is dependent upon TENANT's obtaining all necessary certificates, permits and/or other approvals which may be required from any federal, state or local authority. LANDLORD agrees to cooperate with TENANT as to TENANT's obtaining such certificates, permits or other approvals. In the event TENANT is unable to obtain any necessary certificate, permit or other approval (collectively the "Governmental Approvals") in order to operate its communications facility, or TENANT determines that such Governmental Approvals may not be obtained in a timely manner or any Governmental Approval issued to TENANT is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority, or if due to technological changes or any soils or geological conditions TENANT, in its sole discretion, determines that it will be unable to use the Premises for TENANT's intended purposes, or if LANDLORD does not, in advance, approve of the proposed location of all of TENANT's facilities and equipment pursuant to the provisions of Section 1 of this Lease, TENANT may terminate this Lease as provided herein, upon thirty (30) days prior written notice.

F. TENANT shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will cause cancellation of any insurance policy covering the Premises or part thereof or portion of its contents. TENANT agrees to pay any increase in the rate of fire or other insurance policy covering the Premises which is due to TENANT's leasing of the Premises. TENANT shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other parties or injure or annoy them or use or allow or permit the Premises to be used for any unlawful purpose. Nor shall TENANT cause, maintain or permit any nuisance in or about the Premises. TENANT shall not commit or suffer to be committed any waste in or upon the Premises.

G. TENANT agrees at all times to maintain its levels of electromagnetic radiation within all applicable standards established by the Federal Communications Commission and/or any other governmental authority having jurisdiction. TENANT agrees at all times to conduct its personal wireless service operations in such a manner so as to not cause interference with any of LANDLORD's existing communications operations. A failure to cure any such interference within fifteen (15) business days of the

City's providing written notice of such interference shall constitute a default hereunder. In the event any of TENANT's operations interfere with LANDLORD's police or fire emergency communications, LANDLORD may provide telephonic notice to TENANT of such interference and TENANT shall, within twenty-four (24) hours, cease all communications operations on the Premises, until the condition causing the interference is remedied to LANDLORD's satisfaction. LANDLORD agrees to include in any other telecommunication leases for lease of its Property within 500 feet of the Premises, a provision prohibiting radio interference to TENANT's operations hereunder.

H. Per Section 1 of this Lease, TENANT shall have full access to the Premises, twenty-four (24) hours per day, seven (7) days per week, provided, however, that at no time will TENANT's use interfere with LANDLORD's access to any area necessary for maintenance of the elevator and/or parking structure. TENANT agrees to coordinate its activities adjacent to and/or on the Premises with LANDLORD to avoid conflict with LANDLORD's maintenance activities. Furthermore, prior to using, obstructing or otherwise preventing use by others of any marked parking space in connection with any activities permitted by this Lease, TENANT shall notify LANDLORD's Parking Manager in advance, and shall identify any affected parking space and the expected duration of the obstruction. TENANT shall not obstruct any marked parking space for any amount of time without obtaining the LANDLORD'S prior consent which shall not be unreasonably withheld. Nothing herein shall be construed to allow TENANT to use any marked parking space on a continuous basis without LANDLORD's prior consent. One single parking space will be permanently utilized by TENANT within the Exterior Space for the purposes of locating equipment and is excluded by this provision 4H. If LANDLORD receives any noise complaints due to TENANT'S work, TENANT will make every effort to respond to the complaint within twenty-four (24) hours by either reducing the noise level to satisfy complainant, or provide a response satisfactory to LANDLORD why said complaint can not be satisfied.

5. **Compliance with Law.** TENANT shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law,

statute, ordinance or other governmental rule or regulation now in force or which may hereinafter be enacted or promulgated. Subject to TENANT's right to terminate as provided in Section 4.E, TENANT shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and other governmental rules, regulations or requirements now in force or which may hereinafter be enacted or promulgated, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by TENANT's improvements and acts. The judgment of a court of competent jurisdiction or the admission by TENANT in any action against TENANT, whether LANDLORD be a party thereto or not, that TENANT has violated any law, statute, ordinance or any other governmental rule or regulation shall be conclusive of that fact as between LANDLORD and TENANT.

6. **Alterations and Additions.** Other than as expressly required or permitted herein, TENANT shall not make or suffer to be made any alterations, additions or improvements in or to or about the Premises or any part thereof without the prior written consent of LANDLORD. Excepting only the approved installation of communications related equipment, any alterations, additions or improvements in, to or about the Premises, shall on the expiration of this Lease become a part of the realty and belong to LANDLORD and shall be surrendered with the Premises, unless otherwise agreed to by LANDLORD and TENANT. Any alterations, additions or improvements to the Premises desired by TENANT, other than those expressly required or permitted herein, shall require LANDLORD's prior written consent, and shall be made by TENANT at TENANT's sole cost and expense, and any contractor or person selected by TENANT to make the same must first be approved of, in writing, by LANDLORD.

7. **Physical Condition of Premises; Waiver.**

A. By taking possession of the Premises, TENANT shall be deemed to have accepted the Premises as being in good sanitary order, condition and repair. TENANT shall, at TENANT's sole cost and expense, keep the Premises and any part thereof in good condition and repair reasonable wear and tear excepted. LANDLORD shall have no obligation whatsoever to alter, improve or repair the Premises, or any part thereof, and the parties hereto affirm that LANDLORD has made no representations to TENANT respecting the condition of

the Premises except as specifically set forth herein. Before commencing any subsequent alterations to the Property, TENANT shall submit plans and specifications to the LANDLORD for the LANDLORD's written approval. In the event the LANDLORD does not either (i) object to the plans in writing or (ii) furnish the TENANT with written approval, within fifteen (15) days of the date of submission of the plans, LANDLORD will be deemed to have disapproved them. All work to be done by TENANT, as authorized by this Lease, shall be performed in accordance with the approved plans unless otherwise approved in writing by the LANDLORD.

B. LANDLORD shall not be liable for any failure to make any repairs, or to perform any maintenance except as specifically provided herein. Except as may otherwise be provided herein, there shall be no abatement of rent and no liability of LANDLORD by reason of any injury to or interference with TENANT's business arising from the LANDLORD or TENANT making of any repairs, alterations or improvements in or to any portion of the Premises or in or to any fixtures, appurtenances and equipment therein. TENANT hereby specifically waives the right to make repairs at LANDLORD's expense under any law, statute or ordinance now or hereafter in effect. Notwithstanding the foregoing, LANDLORD shall be responsible for any damage to TENANT's equipment or facilities caused by LANDLORD's activities.

C. TENANT shall accept possession of the Premises, in an "as is" physical condition with no warranty, express or implied, by LANDLORD as to the condition of the underlying soil, its geology, the presence of known or unknown faults, its suitability for the use intended by the TENANT, any onsite soils contamination or any similar matters. Prior to taking possession of the Premises, it shall be the sole responsibility and obligation of TENANT to investigate and correct any adverse soil, surface or subsurface conditions of the Premises, and to take such action as may be necessary to place the Premises in a condition entirely suitable for the use intended by TENANT and agreed to by LANDLORD as is set forth herein. Should such investigation reveal conditions rendering the Premises unusable for TENANT's intended purposes, as determined by TENANT in its sole discretion, then TENANT may terminate without further obligation as provided in Section 4.E.

Notwithstanding the foregoing, LANDLORD represents that to the best of its knowledge, no activities of LANDLORD have resulted in any soils contamination to the underlying real property. LANDLORD and TENANT each agree that they will not use, generate, store or dispose of any Hazardous Material on, under, about or within 500 feet of the Premises.

D. TENANT hereby specifically waives any rights TENANT may have against LANDLORD with regard to the condition of the Premises, including, but not limited to, soils, toxic or hazardous materials, fill material, compaction, geologic constraints and faults. Once TENANT has taken possession of the Premises, TENANT agrees to defend, indemnify and hold harmless LANDLORD from and against any and all claims, losses, liabilities, damages, demands, actions, judgments, causes of action, assessments, penalties, costs and expenses (including without limitation, the reasonable fees and disbursements of legal counsel, expert witnesses and accountants) and all foreseeable and unforeseeable consequential damages which might arise or be asserted against LANDLORD as a result of a claimed violation, actually or allegedly occurring as a result of any act or omission by TENANT, of any present and/or future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 through 9657, inclusive; Transportation of Hazardous Materials and Wastes (HMTA), 49 U.S.C. App. §§ 1801 through 1813, inclusive; the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 through 6992, inclusive; 40 C.F.R. Parts 260 through 271, inclusive; the California Hazardous Substance Account Act (HSAA), California Health and Safety Code §§ 25300 through 25395, inclusive; the California Hazardous Waste Control Act (HWCA), California Health and Safety Code §§ 25100 through 25249, inclusive; the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000 through 13999.16, inclusive; and the Underground Storage Tank Act (USTA), California Health and Safety Code §§ 24280 through 24299.7, inclusive, all as the same may be amended from time to time, relating to the environment or to any hazardous substance, activity or material connected with the condition of the Premises. This environmental indemnity shall survive the expiration or termination of this Lease as to

activities taking place or occurring on or about the Premises prior to such expiration or termination.

E. LANDLORD shall, upon request and at TENANT's cost, provide to TENANT copies of all reports, studies, surveys and other data and information on the Premises which is now available to LANDLORD. LANDLORD represents that it has no information disclosable pursuant to California Health and Safety Code § 25359.7(a).

8. **Claims Against Premises.** TENANT shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's liens arising from, or any claim for any work of construction, repair, restoration, replacement or improvement of or to the Premises or any other similar claim or demand howsoever the same may arise, but TENANT shall pay or cause to be paid any and all such claims or demands before any action is brought to enforce the same against the Premises. TENANT agrees to indemnify and hold LANDLORD and the Premises free and harmless of all liability for any and all such claims and demands, together with payment of LANDLORD's reasonable attorneys' fees and all costs and expenses in connection therewith.

9. **Utilities.** TENANT shall pay the cost of any and all electrical, gas or other utility services utilized by TENANT upon the Premises during the term hereof and shall have such utilities installed underground and maintained at TENANT's sole cost and expense, subject to plans and specifications approved in writing by LANDLORD. LANDLORD shall approve or disapprove of same within fourteen (14) days.

10. **Taxes.** TENANT shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof upon all of TENANT's possessory interest in and to the Premises, leasehold improvements, equipment, fixtures and personal property located in or about the Premises. TENANT agrees that, without prior demand or notice by LANDLORD, TENANT shall, not less than fifteen (15) days prior to the day upon which any such possessory interest or other such tax is due, provide LANDLORD with proof of payment of such tax.

11. **Holding Over.** If TENANT remains in possession of the Premises or any part thereof after the expiration of the term hereof, with the express written consent of LANDLORD, such occupancy shall be a tenancy from month-to-month.

12. **Entry by LANDLORD.** TENANT hereby agrees that representatives of the LANDLORD, as designated by LANDLORD's Executive Director, shall, during normal business hours, have the right to enter the Premises with a representative of TENANT to inspect and determine if same complies with each and every term and condition of this Lease and with all applicable City, County, State and Federal laws, rules, ordinances and regulations relating to building occupancy and the conduct of TENANT's business, provided LANDLORD gives TENANT no less than forty-eight (48) hours prior written notice. TENANT hereby waives any claim for damages or for any injury or inconvenience to or interference with TENANT's business, any loss of occupancy or quiet enjoyment of the Premises, and any loss occasioned thereby. LANDLORD shall at all times have and retain a key with which to unlock, only in the event of emergency or for maintenance purposes as provided below, any entrances to any perimeter enclosures (fencing, etc.) surrounding TENANT's facilities. It is expressly agreed that LANDLORD shall not have a key to TENANT's facilities, except as provided above, and TENANT expressly waives any and all damages which might occur to TENANT's facilities including, but not limited to, damages arising from fire, vandalism, explosion or earthquake, as a result thereof. LANDLORD shall be authorized to enter the Premises when necessary in its sole discretion to perform maintenance activities on or to any of LANDLORD's personal or real property upon 48 hours prior telephonic or faxed notice to TENANT. LANDLORD shall be responsible for all damage, if any, caused to any of TENANT's property or facilities as a result of LANDLORD's entry. Any entry to the Premises obtained by LANDLORD, as provided above, shall not, under any circumstances, be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of TENANT from the Premises or any portion thereof.

13. **Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by TENANT:

A. Vacating or abandonment of the Premises by TENANT;

B. The failure by TENANT to make any payment of rent or any other payment required to be made by TENANT hereunder, as and when due, where such failure shall continue for a period of fifteen (15) days after mailed written notice thereof by LANDLORD to TENANT, return receipt requested;

C. A failure by TENANT to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by TENANT, other than as described in subparagraph 13.B., above, where such failure shall continue for a period of thirty (30) days after mailed written notice thereof by LANDLORD to TENANT, return receipt requested; provided, however, that if the nature of the default involved does not consist of radio interference, and is such that more than thirty (30) days are reasonably required for its cure, then TENANT shall not be deemed to be in default if TENANT commences such cure within such thirty (30) day period and thereafter diligently prosecutes said cure to completion; or

D. The making by TENANT of any general assignment or general arrangement for the benefit of creditors, or the filing by or against TENANT of a petition to have TENANT adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against TENANT, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of TENANT's assets located in or about the Premises or of TENANT's interest in this Lease, where possession is not restored to TENANT within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of TENANT's assets located in or about the premises or of TENANT's interest in this Lease, where such seizure is not discharged in thirty (30) days.

14. Remedies in Default. In the event of any such material default or breach by TENANT, LANDLORD may at any time thereafter and without notice or demand and, without limiting LANDLORD in the exercise of a right or remedy LANDLORD may have by reason of such default or breach:

A. Terminate TENANT's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and upon written notice TENANT shall

immediately surrender possession of the Premises to LANDLORD. In such event, LANDLORD shall be entitled to recover from TENANT all damages incurred by LANDLORD by reason of TENANT's default including, but not limited to, the cost of recovering possession of the Premises, including necessary renovation and alteration of the Premises, for reasonable attorneys' fees and costs, and the amount by which the unpaid rent for the balance of the term, after the time of court award, exceeds the amount of such rental loss for the same period that TENANT proves could be reasonably avoided. Unpaid installments of rent or other sums shall bear interest from due date thereof at the rate of eighteen percent (18%) per annum or at the maximum legal rate then in effect in California, whichever is higher. In the event TENANT shall have abandoned the Premises, LANDLORD shall have the option of (1) taking possession of the Premises and recovering from TENANT the amount specified in this subparagraph, or (2) proceeding under the provisions of the following subparagraphs.

B. Maintain TENANT's right to possession, in which case this Lease shall continue, in effect whether or not TENANT shall have abandoned the Premises. In such event, LANDLORD shall be entitled to enforce all of LANDLORD's rights and remedies under this Lease, including the right to recover rent as it becomes due hereunder.

C. Pursue any other remedy now or hereafter available to LANDLORD under the laws or judicial decisions of the State of California. Furthermore, TENANT agrees that no election by LANDLORD as to any rights or remedies available hereunder or under or pursuant to any law or judicial decisions of the State of California shall be binding upon LANDLORD until the time of trial of any such action or proceeding. Notwithstanding the provisions of Section 14.A., above, if an event of default by TENANT occurs, LANDLORD shall not have the right, prior to the termination of this Lease by a court of competent jurisdiction, to re-enter the Premises and/or remove persons or property therefrom.

D. Notwithstanding any provision herein to the contrary, a revocation of any regulatory approval, shall not constitute an electable remedy for purposes of this paragraph 14.

15. **Eminent Domain.** If more than fifty percent (50%) of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, either party hereto shall have the right, at its option, to terminate this Lease, and LANDLORD shall be entitled to any and all income, rent, award, or any interest therein whatsoever which may be paid or made in connection with such public or quasi-public use or purpose, and TENANT shall have no claim against LANDLORD for the value of any unexpired term of this Lease. Notwithstanding the foregoing, in the event of condemnation of the Premises, LANDLORD shall use its best efforts to provide a reasonable, alternative location for TENANT's facilities that are the subject of this Lease. In such event, LANDLORD and TENANT shall renegotiate rent to be paid by TENANT. Except as so provided, LANDLORD shall have no other liability as to TENANT in the event of condemnation of the Premises. If either less than or more than fifty percent (50%) of the Premises is taken, and neither party elects to terminate as herein provided, the rental thereafter to be paid shall be equitably reduced.

16. **Offset Statement.** TENANT shall, at any time and from time to time upon not less than thirty (30) days' prior written notice from LANDLORD, execute, acknowledge and deliver to LANDLORD a statement in writing (a) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to TENANT's knowledge, any uncured defaults on the part of LANDLORD hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of which the Premises are a part.

17. **Assignment and Subletting.** TENANT SHALL NOT ASSIGN OR TRANSFER THIS LEASE OR ANY RIGHT HEREUNDER TO ANY OTHER PARTY OR PARTIES, NOR SHALL TENANT SUBLET ALL OR ANY PORTION OF THE PREMISES WITHOUT FIRST OBTAINING THE WRITTEN CONSENT OF LANDLORD. Any assignment or subletting of the Premises without such prior written consent shall be void for all purposes and LANDLORD may, at its option, declare a forfeiture of the same in any

manner provided by law. Notwithstanding the foregoing, TENANT may assign this Lease to any subsidiary, parent company or other company owning fifty-one per cent (51%) or greater interest in TENANT without LANDLORD's prior written consent provided such assignee executes a document satisfactory to LANDLORD evidencing assignee's consent to be bound by all terms of this Lease.

18. **Attorneys' Fees.** In the event that any action or proceeding is brought by either Party to enforce any term or provision of this Lease, the prevailing Party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

19. **Fixtures.** All trade fixtures and/or temporary facilities installed in or on the Premises by TENANT may be removed by TENANT at any time during the term of this Lease so long as the same may be removed without permanent damage to the Premises. TENANT shall repair all damage which may result therefrom to the reasonable satisfaction of LANDLORD.

20. **Indemnification.**

Except to the extent caused by the negligence or willful misconduct of the LANDLORD, TENANT agrees to defend, indemnify and hold LANDLORD, the City of Brea, and each of LANDLORD's and CITY's elected officials, officers, agents and employees free and harmless from all claims and liabilities for damage to persons or property by reason of TENANT's negligence, or TENANT's acts or omissions or those of TENANT's employees, agents, guests or invitees in connection with TENANT's use and occupancy of the Premises.

21. **Insurance.**

A. **Fire and Extended Coverage - TENANT's Duty to Keep Improvements Insured.**

Throughout the term hereof, at TENANT's sole cost and expense, TENANT shall keep or cause to be kept insured, all improvements located on or appurtenant to the Premises against loss or damage by fire and such other risks as are now or hereafter

included in an extended coverage endorsement in common use for such structures, including vandalism and malicious mischief. The amount of insurance shall be the then replacement cost, excluding costs of replacing excavations and foundations but without deduction for depreciation (herein called "full insurable value"). TENANT shall provide LANDLORD satisfactory evidence of personal property insurance in an amount sufficient to fully protect all personal property owned or controlled by TENANT from theft, fire, or other loss or damage while upon the Premises.

B. Commercial General Liability Insurance. Throughout the term hereof, at TENANT's sole cost and expense, TENANT shall keep or cause to be kept in full force and effect, for the mutual benefit of TENANT, and LANDLORD and CITY OF BREA as an additional insured, commercial general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of the Premises, improvements, or adjoining areas or ways, providing protection of at least Three Million Dollars (\$3,000,000.00) combined single limit per occurrence.

C. Policy Form, Contents and Insurer. All insurance required by express provision of this Lease shall be carried only in responsible insurance companies licensed to do business in the State of California with a current A.M. Best rating of no less than A:VII. All such policies shall contain language to the effect that: (1) the policies are primary and noncontributing with any insurance that may be carried by LANDLORD; (2) they cannot be canceled except after thirty (30) days' notice by the insurer to LANDLORD; (3) LANDLORD, CITY OF BREA, and each of LANDLORD's and CITY's elected officials, officers and employees are additional insureds on liability policies; (4) any failure by TENANT to comply with reporting or other provisions of the policies including breaches of warranties shall not affect the required coverage; and (5) the required insurance 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. TENANT shall furnish LANDLORD with copies of all certificates and the generic liability endorsement form CG 20 26 11 85 or equivalent as provided by TENANT evidencing the insurance. TENANT may effect for its own account any insurance not required under this Lease.

or equivalent



D. Failure to Maintain Insurance; Proof of Compliance. TENANT shall deliver to LANDLORD, in the manner required for notices, copies of certificates and the generic liability endorsement form CG 20 26 11 85 as provided by TENANT to all insurance policies required by this Lease, within the following time limits: (1) For insurance required at the commencement of this Lease, within ten (10) days after execution of this Lease and prior to TENANT's occupancy of the Premises; (2) For insurance becoming required at a later date, at least ten (10) days before that requirement takes effect, or as soon thereafter as the requirement, if new, takes effect; (3) For any renewal or replacement of a policy already in existence, within fourteen (14) calendar days after expiration of the existing policy.

If TENANT fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish LANDLORD with required proof that the insurance has been procured and is in full force and paid for, LANDLORD shall have the right, at LANDLORD's election and on five (5) days' notice, to procure and maintain such insurance. The premiums paid by LANDLORD shall be treated as added rent due from TENANT with interest at the rate of eighteen percent (18%) per year or the maximum allowable legal rate in effect in the State of California on the date when the premium is paid, whichever is higher, to be paid on the first day of the month following the date on which the premium was paid. LANDLORD shall give TENANT prompt notice and provide TENANT with a certificate of insurance and agent's invoice evidencing payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the effective date of coverage.

22. Authority of Parties. Each individual executing this Lease on behalf of each party represents and warrants that he or she is fully authorized to execute and deliver this Lease on behalf of such Party and that this Lease is binding upon such party in accordance with its terms.

23. Waiver. The waiver by LANDLORD of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by LANDLORD shall not be

deemed to be a waiver of any preceding breach by TENANT of any term, covenant or condition of this Lease, other than the failure of the TENANT to pay the particular rental so accepted, regardless of LANDLORD's knowledge of such preceding breach at the time of acceptance of such rent.

24. **Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

25. **Late Charges.** TENANT hereby acknowledges that late payment by TENANT to LANDLORD of rent or other sums due hereunder will cause LANDLORD to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or of a sum due from TENANT shall not be received by LANDLORD or LANDLORD's designee within fifteen (15) days after written notice that said amount is past due, then TENANT shall pay to LANDLORD a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that LANDLORD will incur by reason of the late payment by TENANT. Acceptance of such late charges by LANDLORD shall in no event constitute a waiver of TENANT's default with respect to such overdue amount, nor prevent LANDLORD from exercising any of the other rights and remedies granted hereunder.

26. **Inability to Perform.** This Lease and the obligations of TENANT hereunder shall not be affected or impaired because LANDLORD is unable to fulfill any of obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, war, civil insurrection, acts of God, or any other cause beyond the reasonable control of LANDLORD.

27. **Sale of Premises by LANDLORD.** In the event of any sale or conveyance of the Premises, LANDLORD shall be and hereby is entirely freed and relieved of all liability under any and all of the covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale or conveyance. The purchaser, at such sale or any subsequent sale of the Premises,

or other subsequent owner of the Premises, shall be deemed, without any further agreements between the parties or their successors in interest or between the Parties and any such purchaser, to have assumed and agreed to carry out each and all of the covenants and obligations of LANDLORD under this Lease.

28. **Signs and Lights.** TENANT shall not place any sign upon the Premises without LANDLORD's prior written consent and approval thereof. TENANT shall not externally illuminate any of its facilities unless required by law or as may be approved in writing by LANDLORD.

29. **Successors.** Subject to the provisions of this Lease with respect to assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the successors of the respective parties.

30. **Notices.** Except where otherwise required herein, any notice required or permitted under the terms of this Lease shall be deemed served when personally served on TENANT or LANDLORD or when the same has been placed in the United States mail, postage prepaid and addressed as follows:

TENANT:
Los Angeles SMSA Limited Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

LANDLORD:
Brea Redevelopment Agency
1 Civic Center Circle
Brea, CA 92821

31. **Execution by LANDLORD Not a Waiver.** TENANT understands and agrees that LANDLORD, by entering into and executing this Lease, shall not have waived any right, duty, privilege, obligation or authority vested in the City of Brea to approve, disapprove or conditionally approve any application which TENANT may be required to make under any laws, rules, ordinances or regulations now or hereafter in effect which said City may be empowered to apply, including, but not limited to any use permit, wireless permit or approval, whether similar in nature or not.

32. **Entire Agreement.** This Lease contains the entire agreement between the Parties. No promise, representation, warranty, or covenant not included in this Lease has been or is relied on by either Party. Each Party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either Party to inspect the Premises or improvements, to read the Lease or other documents or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

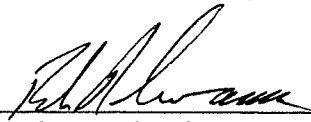
33. **Applicable Law and Venue.** Any action brought to enforce any provision of this Lease shall be brought in the Superior Court of the County of Orange, and the same shall be governed by the laws of the State of California.

34. **Recording.** LANDLORD agrees to execute a Memorandum of this Lease Agreement which TENANT may record with the appropriate Recording Officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either term or rent payments.

WHEREFORE, the Parties hereto have entered into the Lease as of the date set forth below opposite the name of each signatory hereto.

"TENANT"
LOS ANGELES SMSA LIMITED
PARTNERSHIP d/b/a VERIZON WIRELESS
By AirTouch Cellular, its general partner

Dated: 11-22-02

By: 
Name: Robert F. Swaine
Title: West Area Vice President - Network

"LANDLORD"
BREA REDEVELOPMENT AGENCY
A public entity

Dated: 12-17-02

S By: Bev Perry
Name: Bev Perry
Title: CHAIRPERSON

ATTEST:

Elaine Capps
Elaine Capps
City Clerk/Asst. Secretary

Exhibit A

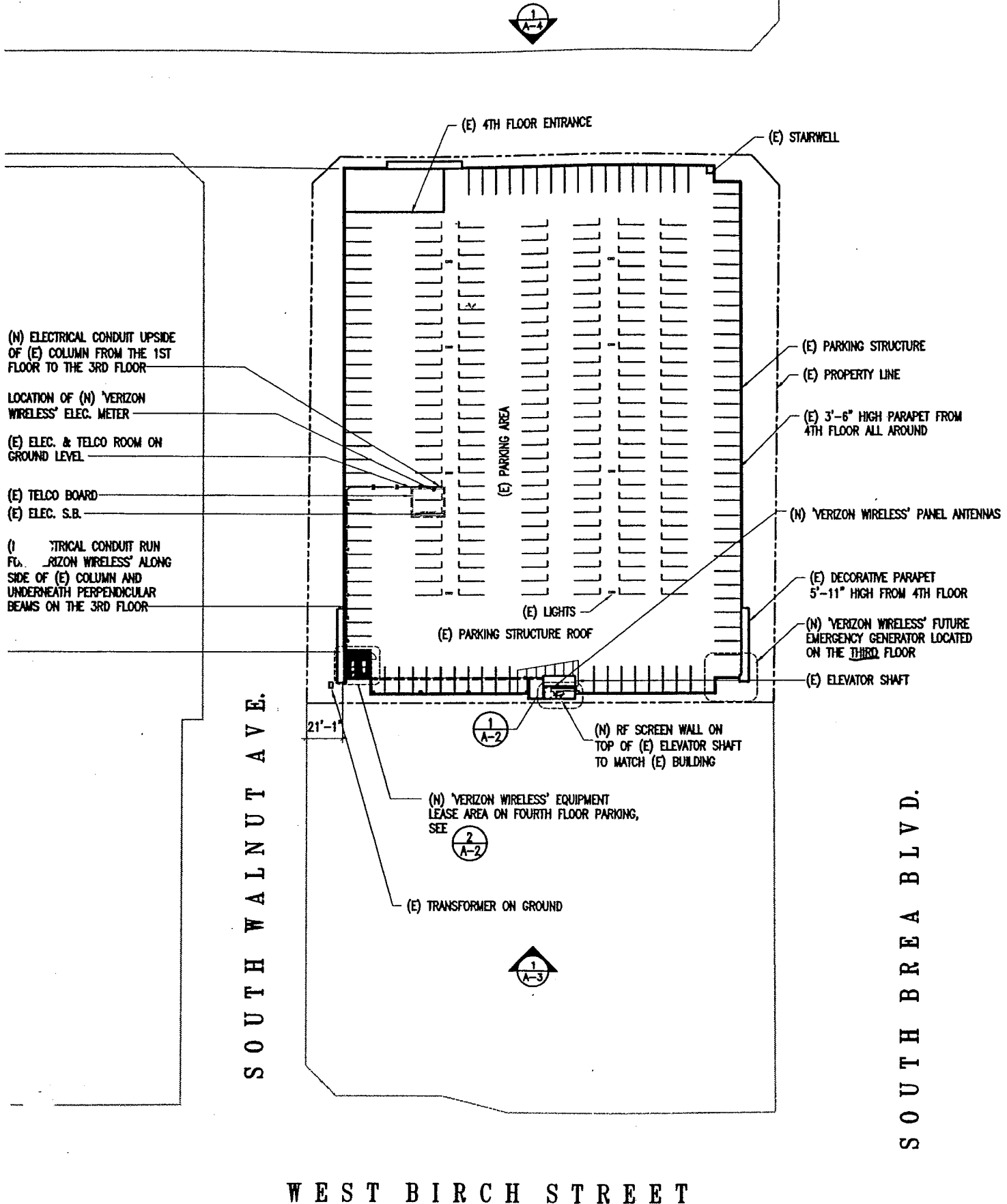


Exhibit A-1

Parcel 1 of Parcel Map No. 96-177, in the City of Brea, County of Orange, State of California, as per map filed in Book 300, Pages 45 to 48 inclusive of Parcel Maps, in the office of the County Recorder of said County.

Excepting therefrom all coal, oil, petroleum, natural gas and other hydrocarbons upon, in or under said land, but without the right of surface entry, as reserved by Ontario Investment Company in the deed recorded November 28, 1910, in Book 194, Page 243 of Deeds, records of Orange County, California and in other deeds of record.

Exhibit B

Property and Premises Survey

To be supplied by TENANT and inserted once approved by LANDLORD.

Exhibit C

To be inserted later as conditions of approval Plan review #02-05

FIRST AMENDMENT TO COMMUNICATIONS FACILITY LEASE

This First Amendment to Communications Facility Lease (the "Amendment") is dated as of the latter of the signature dates below (the "Effective Date") by and between the City of Brea ("Landlord") and Los Angeles SMSA Limited Partnership, dba Verizon Wireless ("Tenant"), with reference to the facts set forth in the Recitals below:

RECITALS

A. Landlord is the owner of certain real property located at 101 South Brea Boulevard, Brea, California (the "Property").

B. Landlord, as successor-in-interest to the Brea Redevelopment Agency, and Tenant are parties to that certain Communications Facility Lease dated as of December 17, 2002 (the "Lease"), pursuant to which Tenant leases a portion ("Premises") of the Property for the operation of a communications facility.

C. The term of the Lease expires on December 16, 2022 ("Current Term"), and Landlord and Tenant have agreed to amend the Lease to: (i) further extend the term, and (ii) modify certain other provisions of the Lease, as provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Extension Terms.** Commencing on December 1, 2022, Landlord and Tenant hereby agree to extend the Lease for a term of five (5) years ("Extension Term"), unless Tenant terminates the Lease by giving Landlord written notice of its intent to terminate at least ninety (90) days before the end of the Current Term. Thereafter, the Lease will automatically extend for one (1) additional extension term of five (5) years unless Tenant terminates the Lease by giving Landlord written notice of its intent to terminate at least ninety (90) days before the end of the Extension Term.

2. **Annual Rent.** Landlord and Tenant agree that commencing on July 1, 2020, the monthly rent due under the Lease shall be Three Thousand Three Hundred Five and 69/100 Dollars (\$3,305.69). Commencing on January 1, 2021, the monthly rent shall increase annually as provided in Section 3 of the Lease.

3. **Application Fee.** Within forty-five (45) days after this Amendment is fully executed, Tenant shall pay Landlord an application fee in the amount of Seven Thousand Five Hundred Dollars (\$7,500).

4. **Modifications.** Notwithstanding anything contained in the Lease to the contrary, all improvements, equipment, antennas and conduits shall be at Tenant's expense and their

installation shall be at the discretion and option of Tenant. Tenant shall, within the Premises, have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, provided that any equipment or antenna modification is of a like kind or substantially similar in nature ("Like-kind Modifications"). As used herein, "like-kind" shall mean a piece of equipment, system or a unit that (i) has a similar technological purpose or use as the item being replaced; and (ii) fits within the Premises, including within the screen wall located above the existing elevator shaft, as depicted in the Exhibits attached to the Lease. All other Tenant modifications to the Property and Premises ("Tenant Modifications") shall require Landlord's prior written approval of the aesthetics of the proposed changes, such approval not to be unreasonably withheld, conditioned, denied or delayed. In no event shall Landlord condition approval of any Tenant Modifications within the Premises on an increase in rent. Landlord shall work in good faith toward responding to any Tenant request for consent to proposed Tenant Modifications in a timely manner, and with a goal to provide Tenant with a response thereto within thirty (30) days after receipt of Tenant's written request.

Landlord acknowledges and agrees that any provision in the Lease that provides for: (i) Tenant to obtain Landlord's consent for Like-kind Modifications prior to commencing Like-kind Modifications or to send notice to Landlord prior to commencing Like-kind Modifications, (ii) an increase in rent as consideration for Tenant Modifications and Like-kind Modifications, (iii) Tenant to submit engineering designs, including but not limited to, a structural analysis, to Landlord for approval prior to making Tenant Modifications or Like-kind Modifications and (iv) an amendment to memorialize any Tenant Modifications or Like-kind Modifications, are hereby deleted; provided however, that the foregoing shall not affect Tenant's obligations under Sections 4.D and 4E of the Lease.

5. **Continued Effect.** Except as specifically modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect. In the event of a conflict between any term or provision of the Lease and this Amendment, the terms and provisions of this Amendment shall control. In addition, except as otherwise stated in this Amendment, all initially capitalized terms will have the same respective defined meaning stated in the Lease. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment.

[Signatures appear on next page]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed by each party's duly authorized representative effective as of the last date written below.

Landlord:

City of Brea

By: _____

Name: _____

Title: _____

Date: _____

Tenant:

Los Angeles SMSA Limited Partnership,
dba Verizon Wireless

By: AirTouch Cellular Inc., its General Partner

By:  _____

Name: STEVEN LAMB

Title: DIRECTOR

Date: 5/28/2020

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

McGuireWoods LLP
1800 Century Park East, 8th Floor
Los Angeles, Califio 90067
Attention: Reena Yuba

(Space above this line for Recorder's use.)

MEMORANDUM OF FIRST AMENDMENT TO LEASE

This Memorandum of First Amendment to Lease ("Memorandum") is made this _____ day _____, 2020, between the City of Brea, hereinafter referred to as "Landlord," and Los Angeles SMSA Limited Partnership, d/b/a Verizon Wireless, hereinafter referred to as "Tenant."

Landlord and Tenant are parties to that certain Communications Facility Lease dated December 17, 2002 (the "Lease"), pursuant to which Tenant leases a portion of that certain real property located at 101 South Brea Boulevard, Brea, California, and which is more particularly described in Exhibit "A" attached hereto ("Property"). A Memorandum of Lease was recorded on January 6, 2003, in the Office of the Orange County Recorder as Instrument Number 2003000013318.

Pursuant to that certain First Amendment to Communications Facility Lease dated _____, 2020, the term of the Lease will automatically extend on December 1, 2022, for two (2) extension terms of five (5) years each, unless Tenant terminates the Lease by giving Landlord written notice of its intent to terminate at least ninety (90) days prior to the end of the current term. The total guaranteed extended term is less than thirty-five (35) years.

The terms, covenants and provisions of the Lease, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum to be duly executed on the date first written hereinabove.

LANDLORD:

City of Brea

By: _____

Name: _____

Title: _____

TENANT:

Los Angeles SMSA Limited Partnership,
d/b/a Verizon Wireless

By: AirTouch Cellular Inc., its General Partner

By:  _____

Name: STEVEN LAMB

Title: 5/28/2020

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On MAY 28, 2020, before me, KELLY A MCDONOUGH, Notary Public, personally appeared STEVEN LAMB, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Kelly A McDonough
Notary Public

(Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)

County of _____)

On _____, 2020, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"

(LEGAL DESCRIPTION OF LANDLORD'S PROPERTY)

Parcel 1 of Parcel Map 96-177, in the City of Brea, County of Orange, State of California, as per map filed in Book 300, Pages 45 to 48 inclusive of Parcel Maps, in the office of the County Recorder of said County.

Excepting therefrom all coal, oil, petroleum, natural gas and other hydrocarbons upon, in or under said land, but without the right of surface entry, as reserved by Ontario Investment Company in the deed recorded November 28, 1910, in Book 194, Page 243 of Deeds, records of Orange County, California and in other deeds of record.

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: Approve the Agreement with Fuscoe Engineering, Inc. to Provide NPDES Stormwater Management Services

RECOMMENDATION

1. Approve the Agreement with Fuscoe Engineering, Inc. for NPDES Stormwater Management Services in the amount not-to-exceed \$91,500; and
2. Authorize the City Manager to approve up to four (4) additional one (1) year extensions in an annual amount not-to-exceed \$66,500.

BACKGROUND/DISCUSSION

The National Pollution Discharge Elimination System (NPDES) program is a federally mandated program under the Clean Water Act. The Clean Water Act prohibits the discharge of "pollutants" under the provisions of an NPDES permit. The City of Brea is a co-permittee on a regional Orange County NPDES permit along with the County of Orange and the rest of Orange County cities. The permit contains limits on discharging, monitoring and reporting requirements, and other provisions to ensure that the discharge does not negatively affect water quality. NPDES violation fines can reach \$10,000 per day in the worst case.

On April 24, 2020, the City of Brea issued a Request for Proposals (RFP) to qualified firms to provide NPDES Stormwater Management Services in support of the NPDES program. On May 18, 2020, the City received proposals from the following two firms: Infrastructure Engineers and Fuscoe Engineering, Inc. (Fuscoe). Both firms met the general criteria outlined in the RFP to provide the NPDES management services for the City. However, staff selected Fuscoe based on their familiarity with the Orange County permit, their expertise working with other Orange County cities and their excellent past performance working for the City of Brea for the last 13 years. Fuscoe was selected based on qualifications as is required for professional services. For reference purposes only, Fuscoe's proposed fee was \$37,577 lower than Infrastructure Engineers.

The detailed scope-of-work is provided in Exhibit A of the Agreement. In summary, Fuscoe would provide the support and guidance over the following eight (8) tasks:

1. Program Management and Development
2. Municipal Activities Program
3. New Development/Redevelopment Program
4. Construction Program
5. Existing Development Program

6. Program Effectiveness Assessment
7. Stormwater Database Management
8. Industrial / Commercial Inspections (until Environmental Services Inspector position is filled)

This agreement is for NPDES management services and as-needed inspection services for FY 2020/21. The agreement has an option to add up to an additional four (4) years based on performance to be approved by the City Manager. Since the upcoming renewal of the OC NPDES Permit is expected to include additional regulations, staff strongly recommends having Fuscoe to assist Brea with compliance. Some of those new regulations that will have an impact include having the Municipal Separate Storm Sewer Permits (MS4) become more regional and watershed based and the incorporation of Total Maximum Daily Loads (TMDLs) such as Trash, Selenium, Metals, Nutrients into the MS4 Permits.

The proposed fee for the first year of this agreement is \$91,500. This amount includes an estimated fee of \$25,000 to perform as-needed inspection services while the Brea's Environmental Services Inspector remains vacant. Since the position is expected to be filled by FY 2021-22, the estimated amount is removed from years 2 through 5 as shown in Exhibit B of the agreement.

SUMMARY/FISCAL IMPACT

Funds are available from the NPDES account using Stormwater Fees as the funding source. Plan checking services related to private development would be paid through the Cost Center funded by private developers. There is no General Fund impact.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Brian M. Ingallinera, Environmental Services Coordinator

Concurrence: Rudy Correa, Interim Water Superintendent
Tony Olmos, P.E., Public Works Director

Attachments

Agreement

**AGREEMENT
for Professional Services
Greater than \$25,000**

For NPDES Stormwater Management Services

This Agreement is dated **July 1, 2020** for reference purpose and is executed by the **City of Brea** ("City"), a California municipal corporation, and **Fusco Engineering, Inc.**, ("Contractor").

RECITALS

- A. City desires to retain Contractor as an independent contractor to provide the **services as set forth in Exhibit A.**
- B. Contractor represents that it is fully qualified to perform such work by virtue of its quality, fitness, capacity, and experience to satisfactorily provide the requirements as set forth in Exhibit A.

NOW, THEREFORE, the parties agree as follows:

- I. **Definitions.** In addition to the terms defined above, the following definitions shall apply for purposes of this Agreement:
 - A. "Contract Administrator": the City's duly authorized designee as named in Notices subsection.
 - B. "Contract Amount": **\$91,500**
 - C. "Fee Schedule": the fee schedule set forth in the attached Exhibit B.
 - D. "Indemnitees": the City and its officers, employees, agents, and volunteers.
 - E. "Insurance Requirements": the insurance requirements set forth in the attached Exhibit D.
 - F. "Labor Code Requirements": the applicable Labor Code requirements set forth in the attached Exhibit E.
 - G. "Liabilities": actual, alleged, or threatened causes of action, claims, costs, damages, demands, expenses (including fees of accountants, attorneys, and other professionals), judgments, liens, losses, penalties, and proceedings of any nature whatsoever.
 - H. "Services": the tasks set forth in the attached Exhibit A.

II. Term

- A. **Base Term.** The base term of this Agreement shall be for one year, commencing on **July 1, 2020** and expiring on **June 30, 2021**, unless extended or earlier terminated as provided herein.
- B. **Extension Options.** City shall have **four** options by which it may extend the term of this Agreement by one year at a time in its sole discretion. The one-year extension options may be exercised sequentially or concurrently. To exercise an extension option, City shall give written notice to Contractor at least 30 days prior to the then-scheduled expiration date.
- C. **City Manager Authority.** The City Manager may exercise extension options without prior City Council approval if both of the following conditions are satisfied:
 - (i) the compensation to be paid Contractor for the applicable extension period is

included in a City Council-approved budget; and (ii) Contractor is not in breach of this Agreement.

- D. **Termination.** If either party breaches this Agreement and fails to cure such breach within seven days of written notice, then the non-breaching party may immediately terminate this Agreement for cause. Additionally, the City may terminate this Agreement for convenience upon 30 days prior written notice to Contractor.

III. **Notices.** Any notices, invoices, or other documents related to this Agreement shall be deemed received on: (a) the day of delivery, if delivered by hand during the receiving party's regular business hours or by e-mail before or during the receiving party's regular business hours; (b) the business day after delivery, if delivered by e-mail after the receiving party's regular business hours; or (c) on the second business day following deposit in the United States mail, postage prepaid, to the addresses listed below, or to such other addresses as the parties may, from time to time, designate in writing.

City Contract Administrator:

City of Brea
545 N. Berry St.
Brea, CA 92821
Brian M. Ingallinera
Environmental Services Coordinator
Briani@CityofBrea.net
(714) 990-7692

City Clerk (if over \$25,000):

City of Brea
1 Civic Center Circle
Brea, CA 92821
Lillian Harris-Neal, MMC
City Clerk
LillianHN@CityofBrea.net
(714) 990-7757

Contractor:

Contractor Name Fuscoe Engineering, Inc.
Mailing Address 16795 Von Karman, Suite 100
City, State, Zip Irvine, CA 92606
Representative's Name Howard Wen, MPH, CPSWQ, QSD/P
Title Project Manager
Email hwen@fuscoe.com
Phone 949.474.1960

(SIGNATURES ON FOLLOWING PAGE)

Offer and Acceptance

Digital Signatures are acceptable if they conform to all requirements of California Government Code Section 16.5.

OFFER made by Contractor to the City of Brea on this Date: May 18, 2020

I/we, the undersigned, hereby represent and warrant that I am/we are authorized to submit this Offer on behalf of and to bind the principals who I/we represent to all the requirements of the City of Brea's Terms & Conditions, Specifications, Scope or Work, any attachments, exhibits, amendments; and I/we offer and agree to those requirements at the prices set forth in Exhibit B-Compensation. Further, I/we understand that no contract exists unless City accepts this Offer by signing below.

Business Name: FUSCOE ENGINEERING, INC.

Mailing Address: 16795 Von Karman, Suite 100

City, State, Zip Irvine, CA 92606

Phone 949.474.1960

Email jolivier@fuscoe.com

Taxpayer ID#: 330531135

only for Prevailing Wages work Contractor Lic.#: N/A-is a civil eng firm DIR Reg#: 1000015538

[use this signature block if contractor is a corporation]

Pursuant to California Corporations Code Section 313, both signature lines must be executed unless the signatory holds at least one of the offices designated on each line



☐ Chairperson ☒ President ☐ Vice President

☐ Secretary ☐ Asst. Secretary ☒ Chief Finance Officer

☐ Asst. Treasurer

[use this signature block if contractor is a corporation]

Pursuant to California Corporations Code Section 17703.01(d), both signature lines must be executed unless the articles of incorporation state that the firm is managed by only one manager.

☐ Manager

☐ Manager

ACCEPTANCE of Offer by the City of Brea:

I, the undersigned, hereby represent and warrant that I am authorized to accept Offer on behalf of and to bind City of Brea and I accept the Offer accordingly. Contractor is now bound to furnish all requirements set forth in Contractor's Offer. Contractor is cautioned not to begin work until a written notice to proceed or purchase order is received from City.

City of Brea, a California Municipal Corporation

Address: 1 Civic Center Circle

City, State, Zip: Brea California 92821

Printed Name & Title: Marty Simonoff, Mayor

Authorized Signature: _____

Date _____

Attestation (if total contract value exceeds \$25,000 or \$200,000 for Public Works projects)

Printed Name & Title: Lillian Harris-Neal, MMC, City Clerk

Authorized Signature: _____

Date _____

EXHIBIT A
SCOPE OF SERVICES

I. Time of Performance

- A. **Commencement and Completion of Work.** The Services to be performed pursuant to this Agreement shall commence upon ***receipt of written notice to proceed from the City***. Failure to commence work in a timely manner and/or diligently pursue work to completion may be deemed to be a breach, resulting in termination of this Agreement.
- B. **Schedule.** After commencement of performance pursuant to paragraph A, above, the Services must be completed ***within the Scope of Services Requirements or for Additional Services as agreed-upon time by Parties***.

II. Scope of Services

A. **Required Services.**

1. PROGRAM MANAGEMENT AND DEVELOPMENT

- a) Attend permittee sub-committee meetings, as-needed, and provide technical guidance with regional watershed issues and applicable TMDLs for the San Gabriel River-Coyote Creek Watershed Management Area.
- b) Provide two additional trainings or education and outreach events per year, on an as-needed basis at the request of the City, to supplement the County-provided core competencies training program.
- c) The Fullerton Creek Restoration Project is a priority for the City of Brea and OC Parks for Watershed Improvement Project Subcommittee (WIPS) implementation. Assist the City with budgeting and phasing, project alternatives, resource agency coordination (i.e. US Army Corps 408 permit requirements) and coordination with OC Parks to help move the project forward. Assist with the application for grant funding opportunities, where available.
- d) Assist with Track 1 implementation of the Trash Provisions TMDL for the City. Through GIS analysis and field survey, ensure City's catch basin data is accurate, identify catch basins that require Full Capture System Best Management Practices (BMPs), identify and quantify installed treatment BMPs that receive partial capture credit, and identify Alternative Land Use (ALU) land swap opportunities for Priority Land Uses not being treated by Full Capture System BMPs. Results shall be incorporated into the City's Catch Basin Atlas (see below). Develop a workplan to meet full compliance for Trash Provisions by 2030, with a minimum 10% progress each year.
- e) Based on Orange County's Alternative Land Use Substitution Guidance Document, conduct On-Land Visual Trash Assessments (OVTAs), as necessary, for Track 1 implementation for the City. Validate land substitutions of PLUs with ALUs using OVTA results.

2. MUNICIPAL ACTIVITIES PROGRAM

- a) Create a Catch Basin Atlas in GIS. Atlas shall include catch-basin specific attributes including installed BMPs, full capture systems, and/or screens or inserts. Additional catch basin information included in attributes may consist of drainage area priority (PLU vs ALU) and service and cleaning dates. Atlas shall be updated regularly based on OVTA's, catch basin cleanings, and new development projects or catch basin renovations.
- b) City intends to perform municipal inspections by City staff, but may request assistance when needed. Firm must have adequate staffing to assist with Fixed Facility and Field Program inspections, as needed upon request by the Environmental Services Coordinator. Inspection results shall be logged in the City's database system for use in annual reporting and performance assessments.

3. NEW DEVELOPMENT/REDEVELOPMENT PROGRAM

- a) Plan Check Water Quality Management Plans (WQMPs) and Non-Priority Project (NPPs) for both public and private developments. The City receives approximately 12 priority project WQMPs per year and 2 NPPs per year.
- b) Maintain WQMP plan check records. Records shall include, at a minimum, name of project and City tracking number, date plan check received and returned, name of plan checker, status of plan check approval, and additional project-specific notes. Plan check tracking checklist in Excel or equivalent format shall be sent to Environmental Services Coordinator on a weekly basis.
- c) Update the City's WQMP plan check documents, as needed, to ensure that plan checks occur efficiently and in accordance with County and Regional requirements. Specific updates may include editing the City WQMP review checklist to include new requirements and updates to the City's plan check approval and resubmittal protocols for both preliminary and final WQMPs.
- d) Maintain inventory of individual BMPs per property/WQMP and inspection records in the City's electronic database. WQMP inspection records shall be verified to be in accordance with permit requirements and used for annual reporting.
- e) City intends to perform WQMP inspections by City staff, but may request assistance when needed. Firm must have adequate staffing to assist with WQMP O&M inspections, as needed upon request by the Environmental Services Coordinator. The City has approximately 50 WQMP sites in its inventory. Inspection results shall be logged in the City's database system for use in annual reporting and performance assessments.

4. CONSTRUCTION PROGRAM

- a) On a monthly basis, review the State Water Resources Control Board's SMARTS database for CGP facilities in the City of Brea.

Update the City's construction inventory as needed, which can include assigning priority to construction sites and notifying the City of any project-specific concerns or requirements.

- b) City intends to perform construction inspections by City staff, but may request assistance when needed. Firm must have adequate staffing to assist with Construction site stormwater compliance inspections, as needed upon request by the Environmental Services Coordinator. Inspection results shall be logged in the City's database system for use in annual reporting and performance assessments.

5. EXISTING DEVELOPMENT PROGRAM

- a) Update the industrial/commercial inventory and prioritizations on a monthly basis, per DAMP guidelines. Assist with the implementation of Senate Bill 205 through the City's Business Licensing program.
- b) Maintain industrial/commercial inventory and inspection records in the City's electronic database. Inventory shall be formatted so that it can be exported to tables that can be utilized for annual reporting and performance assessments (counts, priorities, scheduled and completed inspections).
- c) City intends to perform industrial/commercial inspections by City staff, but may request assistance when needed. Firm must have adequate staffing to assist with industrial/commercial facility inspections, as needed upon request by the Environmental Services Coordinator. Inspection results shall be logged in the City's database system for use in annual reporting and performance assessments.

6. PROGRAM EFFECTIVENESS ASSESSMENT

- a) Assist City Staff with the preparation of the Program Effectiveness Assessment (PEA) to report to the Santa Ana Regional Water Quality Control Board. Analyze trends in annual reporting data and recommend changes to iteratively improve the City's Stormwater Program. Prepare GIS-based exhibits and figures, as-needed, to illustrate or support the annual reporting data (including prior years).

7. STORMWATER DATABASE MANAGEMENT

- a) Provide database management of commercial/industrial/municipal, construction, and post-construction BMP inspections associated with the National Pollutant Discharge Elimination System (NPDES) program to be in compliance with the North Orange County MS4 Permit. The Consultant shall provide an online database and inspection platform accessible from the web for City staff to access and conduct inspections using mobile devices (i.e. laptop, tablet, smart phone) with real-time uploads and reporting. Additional functions of the database shall include e-mailable inspection reports,

inventories of facilities to be inspected, storage of photographs, property and inspection search, and a catalog of post-construction BMPs and WQMP Plans. The web-based database shall provide a management dashboard for inspection scheduling and PEA reporting. At minimum, the database shall have the functions provided by the City's current Stormwater Inspection Management System Database and include the migration of data to the new system, if necessary. Alternatively, the consultant selected may utilize the City's SIMS Database to perform inspections and database management.

- b) Assist with the data migration of catch basins, LID BMPs, and Full Capture System BMPs into OC Stormwater Tools. Prepare CSV data files from the City's stormwater databases, catch basin atlas, and other relevant data sources for bulk upload to OC Stormwater Tools. QA/QC to ensure accuracy of data migration.

8. AS-NEEDED COMPLIANCE INSPECTIONS

- a) Conduct approximately 125 compliance inspections for the Stormwater and FOG programs.

B. Additional Services.

- 1. Hourly Rates. Propose fully-loaded hourly rates for services that are directly related to the Scope of Services.

- C. The proposed annual not-to-exceed fee shall not increase due to consumer price index without the approval of the City Council.

End of Exhibit A

D. FUSCOE ENGINEERING - PRICING

City of Brea
NPDES Stormwater Management Services

Contract# 2020042201

EXHIBIT B COMPENSATION SCHEDULE

- A. **Firm Fixed Fees.** Fees shall be fixed for each year of Agreement as extended by City.
B. **Required Services Fees.** May be adjusted by City with a corresponding price change.
C. **Optional/Additional Services Fees.** Rendered only upon City's prior written approval.
(attached)

Required Services (per Exhibit A)

LN	Tasks	Year 1	Year 2	Year 3	Year 4	Year 5
1	Program Management and Development	\$30,500	\$27,500	\$28,050	\$28,600	\$29,150
2	Municipal Activities Program	\$5,000	\$8,000	\$3,060	\$3,120	\$3,180
3	New Development/Redevelopment Program	\$3,000	\$3,000	\$3,060	\$3,120	\$3,180
4	Construction Program	\$2,000	\$2,000	\$2,040	\$2,080	\$2,120
5	Existing Development Program	\$4,000	\$4,000	\$4,080	\$4,160	\$4,240
6	Program Effectiveness Assessment	\$13,000	\$13,000	\$13,260	\$13,520	\$13,780
7	Stormwater Database Management	\$9,000	\$9,000	\$9,080	\$9,160	\$9,240
8	As-Needed Compliance Inspections	\$25,000	\$0	\$0	\$0	\$0
A	Total of Above Tasks	\$91,500	\$66,500	\$62,630	\$63,760	\$64,890

Optional Services (per Exhibit A)

LN	Tasks	Year 1	Year 2	Year 3	Year 4	Year 5
1	Fog Program (per inspection)	\$125	\$125	\$127	\$130	\$133

Additional Services (per Exhibit A)

LN	Hourly Rates	Year 1	Year 2	Year 3	Year 4	Year 5
1	Principal/Senior Project Manager	\$230	\$230	\$235	\$239	\$244
2	Project Manager	\$198	\$198	\$202	\$206	\$210
3	Sr. Water Resource Engineer	\$178	\$178	\$182	\$185	\$189
4	Project Scientist/GIS Analyst	\$159	\$159	\$162	\$165	\$169
5	Engineering/Environmental Tech.	\$129	\$129	\$132	\$134	\$137
6	Inspector	\$125	\$125	\$127	\$130	\$133
7	Information Coordinator	\$90	\$90	\$92	\$94	\$96
8		\$	\$	\$	\$	\$
9		\$	\$	\$	\$	\$
10		\$	\$	\$	\$	\$

End of Exhibit B

C. FUSCOE ENGINEERING - PROPOSAL

City of Brea

NPDES Stormwater Management Services (RFP No. 2020042201)

May 12, 2020

STORMWATER SERVICES

Task 1. Program Management and Development

- a) Attend and participate in the North Orange County Watershed Improvement Projects Sub-Committee (WIPS) meetings to represent the City's interests, at the City's request as needed. Budget assumes maximum attendance of 4 meetings per year.

Hourly (*Estimate) \$2,000/yr (Years 1-5)

- b) Prepare two 1-hour training presentations on a stormwater program element, as requested by the City, to supplement the Core Competencies trainings to City Staff provided by the County of Orange. Up to two 1-hour trainings can be provided to City Staff per presentation.

Hourly (*Estimate) \$6,500/yr (Years 1-5)

- c) Assist the City in coordination efforts for their Fullerton Creek Restoration Project. Coordination efforts include assistance with qualified grant applications, meeting coordination with agencies, and project planning (budgeting and phasing). This task does not include engineering or design services for the project, to be covered under a separate contract.

Hourly (*Estimate) \$4,000/yr (Years 1-5)

- d) Prepare Trash Provisions Track 1 PLU Map based on catch basin catchments. Use Orange County 1m DEM data from 2011, for the analysis. Run ArcGIS spatial analyst tools to generate sub-watershed/sub-drainage basins and flow lines and flow direction. Analyze results around each PLU area to determine flow directions into catch basins and confirm which catch basins receive runoff from PLU areas. Identify catch basins requiring FCS BMPs and cross reference with catch basin atlas to identify catch basins with FCS installed.

Hourly (*Estimate) \$18,000/yr (Year 1)

Identify Alternative Land Use (ALU) land swap opportunities for PLUs that are not feasible to install FCS BMPs. Review City approved WQMPs for BMPs that qualify for partial capture credit to contribute to ALU land swap analysis. Estimate Trash Generation Rates (TGR) for ALU/PLU land swap areas to determine equivalency/proportionality of the land swap opportunities.

Hourly (*Estimate) \$5,000/yr (Years 2-5)

- e) Conduct On-Land Visual Trash Assessments (OVTAs) for selected land swap ALU/PLU areas to grade and validate Trash Generation Rates to achieve full capture equivalency. FEI will employ Artificial Intelligence (A.I.) through optical capture and machine learning tools it has developed to rapidly perform OVTAs and automatically quantify trash load results. A minimum of 2 OVTAs are to be performed per site per year. US Census income data will be used to apply income rates to residential and retail areas of interest for TGR analysis. Compute trash generate rates for each of the land uses in the land swap areas based on OVTA results.

Hourly (*Estimate) \$10,000/yr (Years 2-5)

Task 2. Municipal Activities Program

- a) Prepare Catch Basin GIS Atlas with the City's catch basin inventory. All data to be incorporated will be provided by the City. This includes, but are not limited to, catch basin ID, inlet type, and structural/treatment BMPs installed (including FCS certified devices).

Hourly (*Estimate) \$5,000/yr (Years 1 & 2)

Update the Catch Basin GIS Atlas, as needed and requested by the City. Updated information to be provided by the City.

Hourly (*Estimate) \$3,000/yr (Years 2-5)

Task 3. New Development/Redevelopment Program

- a) Update the City's WQMP plan check applicant reference materials, as needed and as requested by the City. This includes, but are not limited to, the WQMP Plan Check Checklist, City WQMP or NPP Template, and BMP Summary sheet. Develop any additional reference materials (i.e. pre-treatment guidance), at the City's request.

Hourly (*Estimate) \$3,000/yr (Years 1-5)

Task 4. Construction Program

- a) Update the City's Construction inventory and prioritization, monthly. Update the City's SIMS database with applicable construction sites to generate construction compliance stormwater inspections for those projects.

Hourly (*Estimate) \$2,000/yr (Years 1-5)

Task 5. Existing Development Program

- a) Update the City's industrial/commercial inventory and prioritization, monthly. Review that Business License applications to ensure GISP regulated facilities provide SIC codes in accordance with Senate Bill 205. Update the City's SIMS database with applicable industrial and commercial facilities to generate compliance stormwater inspections for those properties.

Hourly (*Estimate) \$4,000/yr (Years 1-5)

Task 6. Program Effectiveness Assessment

- a) Assist the City with the data and trends analysis in conformance with the PEA standards. Data analysis will include the use of GIS to evaluate spatial and temporal data compiled through PEAs of past years. FEI will assist the City with developing adequate responses for the Annual Report and setting objectives for the following fiscal year. Assist the City with the compilation of the final PEA submittal. Three (3) digital and one (1) hardcopy format will be provided to the City for submittal to the regulatory agencies and for the City's records.

Hourly (*Estimate) \$13,000/yr (Years 1-5)

Task 7. Stormwater Database Management

- a) Provide annual subscription to the Brea SIMS Database management tool. Subscription provides access to the SIMS online database for City staff for use in their tracking of properties and stormwater inspections. The subscription covers software patches for bug fixes, security vulnerability, performance improvements, and reporting improvements.

Fee \$5,000/yr (Years 1-5)

Brea SIMS can be customized with additional add-on features that the City requests. This task item covers the development and implementation of minor add-on features that are not currently provided by Brea SIMS, as budget allows. For more substantial customizations that alters the functionality and purpose of the database, a separate change order can be prepared that work.

Hourly (*Estimate) \$2,500/yr (Years 1-5)

- b) Assist with the bulk upload of stormwater data to the OC Stormwater Tools software application. This includes Trash Module data, BMP inventory data, and catch basin data, as collected by OC Stormwater Tools. Provide QA/QC of the .csv file outputs prior to submittal to the County.

Hourly (*Estimate) \$1,500/yr (Years 1-5)

Task 8. As-Needed Compliance Inspections

- a) Conduct compliance inspections for the Stormwater and FOG Programs, as needed and at the request of the Environmental Services Coordinator. Inspections include industrial/commercial, municipal, construction and WQMP O&M stormwater compliance inspections, as well as FOG inspections. Budget allows for approximately 125 inspections to be performed.

Hourly (*Estimate) \$25,000/yr (Year 1)

***Not to exceed without prior authorization**

EXHIBIT C
GENERAL PROVISIONS

I. Standard Requirements

A. Services.

1. **General Requirements.** Contractor shall perform the Services in a timely, regular basis in accordance with applicable laws. Time is of the essence in the performance of this Agreement.
2. **Performance Standard.** Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City. Contractor shall consult the Contract Administrator for any decisions that must be made by the City.
3. **Customer Care.** While fulfilling the terms of this Agreement, Contractor is performing as a representative of City and shall provide exceptional customer care. Any negative contact with City staff, residents, businesses, visitors, or other contractors shall be reported by Contractor immediately to the Contract Administrator.
4. **Cooperation.** In the event any claim is brought against the City relating to Contractor's performance of the Services, Contractor shall provide any reasonable assistance and cooperation that the City might require.
5. **Labor Code Requirements.** Contractor acknowledges that when Services are within the scope of the Prevailing Wage Law (Labor Code Section 1720 et seq.), Contractor shall comply with the Labor Code Requirements. Exhibit E Labor Requirements contains detailed requirements.
6. **Excusable Delays.** Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations enacted after the Effective Date, riots, acts of war, or any other conditions beyond the reasonable control of a party.
7. **Additional/Optional Services.** Services Contractor must perform as relate to the overall scope of services of Exhibit A and as City has provided written authorization. Such services are to be based on lump sum tasks or time and materials as appropriate to the required work and performed at a mutually agreed-upon time.
8. **Unauthorized Work.** Any work performed without City's prior written approval shall be deemed to have been performed as part of the Services and included within the not-to-exceed Contract Amount.

B. Compensation.

1. **Full Satisfaction.** The City shall compensate Contractor for performance of the Services, and Contractor agrees to accept as full satisfaction for such work, payment according to the Fee Schedule. In no event shall the compensation payable to Contractor under this Agreement exceed the Contract Amount.
2. **Invoices.** Contractor shall submit monthly invoices to the City for the Services. Each invoice shall itemize the work performed during the billing

period and the amount due. Within 30 days of receipt of each invoice, the City shall pay all undisputed amounts on the invoice. City shall not withhold applicable taxes or other authorized deductions from the payments, and Contractor shall pay all required taxes on the payments.

3. **Rate Changes.** The Fee Schedule shall not be revised during the term of this Agreement (including any extension periods) without prior approval by the City's duly authorized signatory on the Signature page of this Agreement.
4. **Accounting Records.** During performance of this Agreement and for a period of three (3) years after termination or expiration of this Agreement, Contractor shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of Contractor's costs for all Services and Additional Services performed under this Agreement and records of Contractor's reimbursable expenses, if any, in accordance with generally accepted accounting practices, and shall keep and make records available for inspection and audit by City representatives upon reasonable written notice.

C. **Independent Contractor Status.** Contractor is retained as an independent contractor and is not an employee of City. No employee or agent of Contractor is or shall become an employee of City. The work to be performed shall be in accordance with the Scope of Services described in this Agreement, subject to such directions and amendments from City as herein provided.

1. All work and other Services provided pursuant to this Agreement shall be performed by Contractor or by Contractor's employees or other personnel under Contractor's supervision, and Contractor and all of Contractor's personnel shall possess the qualifications, permits, and licenses required by State and local law to perform the Services, including, without limitation, a City of Brea business license as required by the Brea Municipal Code. Contractor will determine the means, methods, and details by which Contractor's personnel will perform the Services. Contractor shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Services and compliance with the customary professional standards.
2. All of Contractor's employees and other personnel performing any of the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor and Contractor's personnel shall not supervise any of City's employees; and City's employees shall not supervise Contractor's personnel. Contractor's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as an employee of City; and Contractor's personnel shall not use any City e-mail address or City telephone number in the performance of any of the Services under this Agreement. Contractor shall acquire and maintain at its sole cost and expense such vehicles, equipment and supplies as Contractor's personnel require to perform any of the Services required by this Agreement.

3. Contractor shall be responsible for and pay all wages, salaries, benefits and other amounts due to Contractor's personnel in connection with their performance of any Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, State, or federal policy, rule, regulation, statute or ordinance to the contrary, Contractor and its officers, employees, agents, and subcontractors providing any of the Services under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by City, including but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") or any other retirement program, as an employee of City, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits or any other retirement benefits.
4. To the maximum extent permitted by laws, Contractor shall indemnify, defend and hold harmless Indemnitees from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Contractor's violation of any provision of this Section, or any of Contractor's personnel practices. In addition to all other remedies at law, City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification obligation arising under this Section. The duty of indemnification set forth in this Section is in addition to all other indemnification provisions of this Agreement.

D. PERS Compliance and Indemnification.

1. General Requirements. Parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Contractor agrees that, in providing its employees and any other personnel to City to perform any work or other Services under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code § 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Contractor shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.
2. Indemnification. To the maximum extent permitted by law, Contractor shall defend, indemnify and hold harmless Indemnitees from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provision of this Section.

- E. **Indemnification.** Without limiting Contractor's Insurance obligations under this Agreement, Contractor shall defend, hold harmless, and indemnify the Indemnitees as specified in the Indemnity Requirements
- F. **Insurance.** Without limiting Contractor's defense, hold harmless, and indemnification obligations under this Agreement, Contractor shall maintain policies of insurance as specified in the Insurance Requirements.
- G. **Suspension.** The Contract Administrator may suspend all or any part of the Services for the City's convenience or for work stoppages beyond the control of the parties. Written notice of a suspension shall be given to Contractor.
- H. **Assignability.** Contractor shall not assign, transfer or subcontract any interest in this Agreement or the performance of any of its obligations without the City Manager's prior written consent. This prohibition is not intended to preclude, and shall not be interpreted as precluding, Contractor from utilizing subcontractors identified in Contractor's proposal for the Services. Any attempt by Contractor to assign, transfer or subcontract any rights, duties or obligations in violation of this prohibition shall be void.
- I. **Litigation.** In the event that either party shall commence legal action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs of suit including reasonable attorneys' fees. The venue for litigation shall be Orange County, California. The interpretation of this Agreement shall not be resolved by any rules of construction providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the disputed language.
- J. **Exhibits.** The attached Exhibits are incorporated into this Agreement by reference. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of an Exhibit, the provisions of this Agreement shall prevail.
- K. **Incorporation of Mandatory Language.** Each and every provision required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though such provision were included. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon request of either party this Agreement shall promptly be amended to make such insertion or correction.
- L. **Entire Agreement.** This Agreement (and the attached Exhibits) represents the entire and integrated contract between the parties regarding the Services. This Agreement supersedes all prior oral or written negotiations, representations and contracts related to the Services. This Agreement may not be amended, nor any provision or breach waived, except in a writing that is signed by the parties and that expressly refers to this Agreement.

II. Professional Services Requirements

- A. **Information and Assistance.** City will provide information and assistance as set forth in Exhibit "A" hereto; photographically reproducible copies of maps and other information, if available, which Contractor considers necessary in order to complete the Project. Such information as is generally available from City files applicable to the Project. Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be Contractor's responsibility to make all initial contact with respect to the gathering of such information.
- B. **Confidentiality.** Any and all information and data provided to Contractor pursuant to this Agreement shall be forever maintained as confidential by Contractor, to the maximum extent permitted by law.
- C. **Hires.** Contractor shall, at Contractor's sole cost and expense, secure and hire such other persons as may, in the opinion of Contractor, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by Contractor, Contractor hereby warrants that such persons shall be fully qualified to perform services required hereunder. Contractor further agrees that no subcontractor shall be retained by Contractor except upon the prior written approval of City.
- D. **Ownership of Work Product.**
1. Unless otherwise agreed upon in writing, all reports, documents, or other original written material, including any original images, photographs, video files, digital files, and/or or other media created or developed for the City by Contractor in the performance of this Agreement (collectively, "Work Product") shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. All Work Product shall be considered to be "works made for hire", and all Work Product and any and all intellectual property rights arising from creation thereof, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. Contractor shall not obtain or attempt to obtain copyright protection as to any of the Work Product.
 2. Contractor hereby assigns to City all ownership and any and all intellectual property rights to the Work Product that are not otherwise vested in the City pursuant to the foregoing paragraph.
 3. Contractor warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of all Work Product produced under this Agreement, and that City has full legal title to and the right to reproduce the Work Product. Contractor shall defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim or liability in any way related to a claim that City's use of any of the Work Product is violating federal, state or local

laws, or any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in product or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Services and Work Product produced under this Agreement. In the event the use of any of the Work Product or other deliverables hereunder by City is held to constitute an infringement and the use of any of the same is enjoined, Contractor, at its expense, shall: (a) secure for City the right to continue using the Work Product and other deliverables by suspension of any injunction, or by procuring a license or licenses for City; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. This covenant shall survive the termination of this Agreement.

End of Exhibit C

EXHIBIT D
INDEMNITY AND INSURANCE REQUIREMENTS

I. Indemnity Requirements

- A. Indemnity for Professional Services.** To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, protect, defend, hold harmless and indemnify City, its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees" in this Section), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys and other professionals, and all costs associated therewith (collectively "Claims"), whether actual, alleged or threatened, arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness or willful misconduct of Contractor, and/or its officers, agents, servants, employees, subcontractors, contractors or their officers, agents, servants or employees (or any entity or individual for that Contractor shall bear the legal liability thereof) in the performance of professional services under this Agreement. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Claims with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.
- B. Indemnity for Design Professional Services.** To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, indemnify and hold harmless City, its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees" in this Section), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense (collectively "Claims"), whether actual, alleged or threatened, to the extent arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness or willful misconduct of the Contractor, and/or its officers, agents, servants, employees, subcontractors, contractors or their officers, agents, servants or employees (or any entity or individual that the Contractor shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code § 2782.8(c). Notwithstanding the foregoing and as required by Civil Code § 2782.8(a), in no event shall the cost to defend the Indemnitees that is charged to Contractor exceed Contractor's proportionate percentage of fault.
- C. Other Indemnities.** Other than in the performance of professional services or design professional services, and to the fullest extent permitted by law, Contractor shall, at its sole cost and expense, protect, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments,

penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys and other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively "Damages"), in law or equity, whether actual, alleged or threatened, which arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, suppliers, or contractors, or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Damages arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Damages with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

- D. **Scope.** to the fullest extent permitted by law, Contractor's obligations under this section shall apply, without limitation, to Liabilities that partially involve active or passive negligence by the City. However, Contractor's obligations under this section shall not apply to Liabilities that arise from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by consensus of the parties.
- E. **Survival.** Contractor's obligations under this section shall survive expiration or termination of this Agreement, and shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities.
- F. These Indemnification provisions are independent of and shall not in any way be limited by Insurance Requirements of this Agreement.

(CONTINUED ON NEXT PAGE)

II. Insurance Requirements

A. Insurance Requirements Summary

1. All insurance shall comply with the specific requirements set forth herein.
2. Only the following types of coverages are required for this Agreement.
 - a) **Commercial General Liability (CGL)**
Limits shall be at least \$2,000,000 per occurrence.
 - b) **Automobile Liability Insurance (ALI) (any auto)**
Limits shall be at least \$1,000,000 per occurrence.
 - c) **Workers' Compensation**
State of California statutory limits & Employer's Liability Insurance
Limits shall be at least \$1,000,000 per accident for bodily injury or disease. Provide a Self-Employment Affidavit or Declaration, signed under the penalty of perjury, if Contractor does not have any employees who will be performing work on behalf of City.
 - d) **Professional Liability Insurance (PL)**
Limits shall be at least \$1,000,000 per claim.
3. In the event of any conflict with the above Insurance Requirements Summary section and the below Coverages section, the Coverages section shall govern.

B. General

1. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.
2. Without limiting the Contractor's indemnity obligations hereunder, Contractor shall procure and maintain in full force and effect for the Term of this Agreement, the following policies of insurance.
3. For all insurance required by this Agreement, if a general aggregate limit applies, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be twice the required occurrence limit.
4. If the Contractor maintains broader coverage and/or higher limits than the minimums required herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

C. Coverages

1. **Commercial General Liability (CGL)**
 - a) CGL affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury.
 - b) Limits shall be no less than \$2,000,000 per occurrence

2. Products-Completed Operations (PCO)

Contractor shall procure and submit to City evidence of insurance for a period of at least ten (10) years from the time that all work under this Contract is completed.

3. Automobile Liability Insurance (ALI)

- a) ALI with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) for each accident for bodily injury and property damage with limit no less than \$1,000,000 per occurrence.
- b) If Contractor does not own any vehicles, Contractor may satisfy this requirement by providing the following:
 - (1) A personal automobile liability policy for the contractor's own vehicle, if Contractor is a one-person operation; and
 - (2) A non-owned & hired auto liability endorsement to the commercial general liability policy if the contractor may lease, hire, rent, borrow, or use vehicles of others (e.g., employee-owned vehicles).

4. Workers' Compensation (WC)

- a) Workers' Compensation as required by the State of California with statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.
- b) Self-Employment Affidavit or Declaration, signed under the penalty of perjury, if Contractor does not have any employees who will be performing work on behalf of City, Contractor must provide the following:
 - (1) A signed Self-Employment Affidavit Letter or a signed Declaration that Contractor is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that Contractor will comply with such provisions before commencing the performance of the work of this contract; and
 - (2) A certification that Contractor does not employ any individual(s) in the course and scope of business operations.

5. Professional Liability Insurance (PL)

- a) Covered Professional Services shall specifically include all work to be performed under this contract and delete any exclusion that may potentially affect the work to be performed.
- b) Limits shall be no less than \$1,000,000 per claim; \$1,000,000 aggregate.

D. Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to City for approval. The insurance policies shall contain or be endorsed to contain, the following provisions:

1. Commercial General Liability & Contractors Pollution Liability

a) Additional Insured

- (1) City, its elected officials, officers, employees, volunteers, boards, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.
- (2) Additional Insured Endorsements shall not:
 - (a) Be limited to "Ongoing Operations"
 - (b) Exclude "Contractual Liability"
 - (c) Restrict coverage to the "Sole" liability of Contractor
 - (d) Exclude "Third-Party-Over Actions"
 - (e) Contain any other exclusion contrary to the Contract
- (3) Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 2010 and CG 20 37.

b) Primary Insurance

This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

2. Auto Liability

a) Additional Insured

City, its elected officials, officers, employees, volunteers, boards, agents and representatives) shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor.

b) Primary Insurance

This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

3. Workers' Compensation

A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

E. Insurance Obligations of Contractor

The Insurance obligations under this Agreement shall be: (1) all the Insurance coverage and/or limits carried by or available to Contractor; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to City. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

F. Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon City except ten (10) days shall be allowed for non-payment of premium.

G. Waiver of Subrogation

Required insurance coverages (except professional liability) shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether City has received a waiver of subrogation endorsement from the insurer.

H. Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by City. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

I. Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and

related investigations, claim administration and defense expenses within the retention.

J. Contractual Liability

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this Contract.

K. Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to City. City shall have the right to withhold any payment due until Contractor has fully complied with the insurance provisions of this Contract.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

L. Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by City.

M. Claims Made Policies

If coverage, including coverage for Construction Defect claims, is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Agreement with City and an extended reporting period shall be provided for a period of at least ☐ 2 years ☐ 3 years ☒ 5 years ☐ 10 years from termination or expiration of this Contract.

N. Insurance for Subcontractors

Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

End of Exhibit D

EXHIBIT E
Labor Code Requirements

(As Applicable based on the Work to Be Performed)

1. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Services are on file at City Hall and will be made available to any interested party on request. By initiating any Work, Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by these Contract Documents.
2. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty paid to the City, forfeit \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to these Contract Documents by Contractor or by any subcontractor.
3. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records. Contractor has 10 days in which to comply subsequent to receipt of a written notice requesting these records, or as a penalty to the City, Contractor shall forfeit \$100 for each day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
4. Contractor and each subcontractor shall comply with and be bound by the provisions of Labor Code Section 1771.4(a)(3), which requires that each contractor and each subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner at least monthly, in a format prescribed by the Labor Commissioner.
5. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty paid to the City, forfeit \$25 for each worker employed in the performance of the Services by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of the Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than 1.5 times the basic rate of pay.
6. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing the Services, Contractor shall provide the City with a copy of the information

submitted to any applicable apprenticeship program. Within 60 days after concluding work, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

7. Contractor shall not perform work with any subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. Contractor and subcontractors shall not be debarred or suspended throughout the duration of this Agreement pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If Contractor or any subcontractor becomes debarred or suspended during the duration of this Agreement, Contractor shall immediately notify the City.
8. In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5.
9. The Services are subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.
10. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by signing this Agreement, Contractor 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 the Work of this contract."

End of Exhibit E

City of Brea

FINANCE COMMITTEE COMMUNICATION

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: 3rd Floor Remodel - COVID-19 Update - Verbal Update: Jenn Colacion

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 06/09/2020

SUBJECT: Fire Services - FY 2020-21 Budget Decision Package Review - Verbal Update

RESPECTFULLY SUBMITTED
