



FINANCE COMMITTEE AGENDA

Tuesday, May 12, 2015

8:30 AM

Executive Conference Room, Level Three

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

MEMBERS: Council Members Cecilia Hupp and Steven Vargas

ALTERNATE: Mayor Marty Simonoff

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

CALL TO ORDER / ROLL CALL

1. Matters from the Audience

CONSENT

2. Approval of Minutes of April 14, 2015 Meeting

[Finance Committee Meeting Minutes - April 14, 2015](#)

3. Professional Services Agreements for On-Call Building and Safety Plan Check and Inspection Services

[Staff Report](#)

[Professional Services Agreement - Bureau Veritas North America, Inc.](#)

[Professional Services Agreement - CSG Consultants, Inc.](#)

[Professional Services Agreement - Willdan Engineering](#)

4. Professional Services Agreements for Annual On-Call Fire Plan Check and Inspection Services for Various Development Projects

[Staff Report](#)

[Professional Services Agreement](#)

5. Approval of Fiscal Year 2015-16 Property Tax Rate to Fund the City Paramedic Program

[Staff Report](#)

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

6. Public Hearing and Adoption of 2014-15 Operating Budget for the Brea Community Benefit Financing Authority

[Staff Report](#)

[Resolution](#)

[Exhibit A](#)

7. Fiscal Year 2015-16 Appropriation Limit

[Staff Report](#)

[Resolution](#)

DISCUSSION

8. Fiscal Year 2015-16 Refuse Rates – Informational (Bill Gallardo)

[Memorandum](#)

9. Next meeting scheduled: May 26, 2015

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)

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



FINANCE COMMITTEE MINUTES

Tuesday, April 14, 2015

8:30 AM

Executive Conference Room, Level Three

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

CALL TO ORDER / ROLL CALL

ATTENDEES: Mayor Marty Simonoff, Council Member Steven Vargas, Bill Gallardo, Chief John Conklin, David Crabtree, Eric Nicoll, Eric Aulls, Bill Bowlus, John Burks, Faith Madrazo, Lee Squire, Will Wenz and Alicia Brenner

1. Matters from the Audience – *None.*

CONSENT

2. Approval of Minutes of March 31, 2015 – *Recommended for Council approval.*
3. Amendment to Joint Agreement for the Operation, Maintenance, and Financial Management of the Orange County 800 Megahertz Countywide Coordinated Communication System – *Recommended for Council approval.*
4. Approval and Receipt of the Annual Engineer's Report for Maintenance Districts #1, 2, 3, 4, 5, 6 and 7, and Adopt the Resolution of Intent – *Recommended for Council approval.*
5. Contract for Graffiti Removal Service with Urban Graffiti Enterprises, Inc. for City-Wide Graffiti Removal Services – *Recommended for Council approval.*
6. Budget Adjustments to the City Operating Program Budget for Fiscal Year 2014-15 – *Recommended for Council approval.*
7. Schedule next meeting: April 28, 2015

Meeting adjourned: 9:04 AM

cc: Mayor Pro Tem Christine Marick
Council Member Glenn Parker
Council Member Cecilia Hupp

City of Brea

Agenda Item:

COUNCIL COMMUNICATION

Date: May 19, 2015

To: Honorable Mayor and City Council

From: City Manager

Subject: PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL BUILDING & SAFETY PLAN CHECK AND INSPECTION SERVICES

RECOMMENDATION

Approve Professional Services Agreements.

BACKGROUND

In 2013, *The Orange County Register* reported that Brea was ranked as the second fastest growing City in Orange County, second only to Irvine. The Community Development and Fire Departments are key players that have contributed to the successful growth of Brea. These departments regulate State-mandated Building and Fire Codes during the plan review process and also verify construction compliance through timely field inspections. This process ensures that our residents, visitors and businesses are occupying safe, code-compliant buildings.

The two departments accomplish their tasks by using multiple resources. In-house plan check and in-house inspection services are enhanced with outside professional service providers. The majority of the work is maintained in house, but when staffing issues arise or when increases in workload create a turnaround time in excess of two weeks

PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL BUILDING & SAFETY PLAN CHECK AND INSPECTION SERVICES

for plan check and one day for inspections, City staff uses outside professional service providers to assist with the workload.

In calendar year 2014, the City processed over 2,000 private development permits and completed over 8,000 inspections totaling over \$90 million in construction value. In order to maintain Brea's fast-paced growth and the customer service response times required by State codes and City standards, the departments are updating the Professional Services Agreements (PSAs) for on-call plan check and inspection services. The PSAs will be valid for one year, with optional one year extensions, up to four years.

DISCUSSION

In 2014, City staff announced a Request for Proposals (RFP) that included plan check and inspection services for Building & Safety. The RFP included all of the general requirements necessary when entering into a PSA with the City, as well as detailed elements specific for plan check and inspection of private development. Following is a complete list of companies that submitted a proposal and their local office location.

1. Bureau Veritas North America, Inc., Costa Mesa.
2. CSG Consultants, Inc., Santa Ana.
3. J. Lee Engineering, Inc. Alhambra.
4. VCA Code, Orange.
5. Willdan Engineering, Anaheim.

PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL BUILDING & SAFETY PLAN CHECK AND INSPECTION SERVICES

City staff created an evaluation team that subjectively reviewed, evaluated and scored all of the proposals. The evaluation process took into account the consultant's experience, professional certifications, turnaround times for plan check and inspections, references, fee schedule, availability of consultant staff and overall proposal presentation. This review criteria allowed City staff to fairly rank the consultants and made it possible to compile a list of recommended consultants. The City Departments are aware of the possibilities of staffing changes in the private sector and have determined that in order to provide the best possible services to our customers, we would need to have several options when it comes to consultants. Therefore staff is recommending entering into an agreement with more than one company in order to have the ability to select the most qualified or the best prepared consultant. Following is a list of the consultants that staff selected after the review process:

1. Bureau Veritas North America, Inc., Costa Mesa.
2. CSG Consultants, Inc., Santa Ana.
3. Willdan Engineering, Anaheim.

FISCAL IMPACT

All estimated costs related to plan review and inspection services are included in a developer cost deposit account established for each project as they submitted to the City. The developer cost deposit accounts were established under ordinance and are located in our Municipal Code Section 3.32.035 "Developer Cost Deposits." The City of

PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL BUILDING & SAFETY PLAN CHECK AND INSPECTION SERVICES

Brea established development fees to recover, in part, administrative costs reasonably borne by the City to process the development of project applications. Staff is estimating that these costs will not exceed \$250,000 per fiscal year for each firm and will be a pass through fee charged to the individual projects as services are provided. Below is a table summary of the consultants proposed fee rates.

SUMMARY OF PROPOSAL				
Consultant Name	Building Inspector		Plan Check Services	
	Regular Hourly Rate	After Hour Rate	Regular Hourly Rate	Percentage Fee
*Bureau Veritas, Inc.	\$75	\$112.50	\$115 - \$145	70%
*CSG Consultants, Inc.	\$60 - \$70 + \$5/hr. plus mileage costs	\$90 - \$105	\$75 - \$95	35% - 75%
J. Lee Engineering, Inc.	\$75 - \$85	x 1.5 regular hourly rate	\$85 - \$105	55%
VCA Code	\$55 - \$95	\$82.50 - \$142.50	\$75 - \$95	50% - 60%
*Willdan Engineering	\$95	\$118.75	\$120 - \$130	N/A

Since costs incurred from a project are paid by the developer through a deposit account, there is no impact to the General Fund.

COMMITTEE RECOMMENDATION

The Finance Committee reviewed staff’s recommendation at their May 12, 2015 meeting and recommended to ...

**PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL BUILDING & SAFETY
PLAN CHECK AND INSPECTION SERVICES**

SUMMARY

Staff is projecting a continued growth in development at an estimated \$80 million for Fiscal Year 2015-16 and would require assistance in plan check and inspection services in order to maintain efficient turnaround times.

Staff is recommending that the City Council approve Professional Services Agreements with Bureau Veritas, CSG Consultants, Inc., and Willdan Engineering in an amount not to exceed \$250,000 per firm per fiscal year to provide plan check and inspection services as needed to assist with the workload of the Building & Safety Division of the Community Development Department. There will be no impact to the General Fund.

Respectfully submitted,

Tim O'Donnell, City Manager

Prepared by:

Gabriel Linares, PE, CBO
Deputy Director of Community Development,
Building and Safety Manager

Concurrence:

David Crabtree, Community Development Director

Attachments: Professional Services Agreements with Bureau Veritas North America, Inc., Costa Mesa, CSG Consultants, Inc., Santa Ana, & Willdan Engineering, Anaheim.

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 19 day of May, 2015, between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and Bureau Veritas North America, Inc., Costa Mesa (hereinafter referred to as “CONSULTANT”).

A. Recitals

(i) CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to Building & Safety plan review and inspection services (“Tasks” hereafter), a full, true and correct copy of which is attached hereto as Exhibit “A” and by this reference made a part hereof.

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

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

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

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

B. Agreement

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

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

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be for a one-year term with provisions for three-one year extensions with the total term not exceeding four (4) years.

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

2. CONSULTANT agrees as follows:

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

(b) CONSULTANT shall supply copies of all maps, reports, plans and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined

necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

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

3. CITY agrees as follows:

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

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of Two hundred fifty thousand dollars and zero cents.

(\$250,000.00). The costs associated with the tasks performed for private development projects are not part of the not-to-exceed amount.

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

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

4. CITY agrees to provide to CONSULTANT:

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

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

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

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

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall

be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

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

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

CITY REPRESENTATIVE

Gabriel Linares PE, CBO

Deputy Director, Community Development
Building & Safety Manager
1 Civic Center Circle
Brea, CA, 92821

CONSULTANT

Patrick R. Field, MBA

Director of Operations
Bureau Veritas North America, Inc.
180 Promenade Circle Suite 150
Sacramento, CA 95834

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. MANDATORY INSURANCE. The CONSULTANT shall maintain the following insurance coverage throughout the term of this Agreement, and, upon the CITY's request, the CONSULTANT shall provide the CITY with evidence of such coverage, which may include visual inspection of all policies, copies of declarations page, endorsements signed by an

authorized representative of the underwriting company, or certificates of insurance. Insurance coverage shall be provided in the forms and coverage amounts set forth in this Section.

(1) Minimum Scope of Insurance. The CONSULTANT shall maintain policies with coverage at least as broad as:

i. Insurance Services Office Commercial General Liability insurance (occurrence Form Number CG 00 01).

ii. Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form Number CA 0001 covering “Any Auto” (Symbol 1).

iii. Workers Compensation insurance as required by the State of California, and Employer's Liability insurance.

iv. Errors and Omissions liability insurance.

(2) Minimum Limits of Insurance. The CONSULTANT shall maintain insurance coverage limits not less than:

i. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit, and shall contain specific language creating a duty to defend against any suit seeking damages.

ii. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

iii. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

iv. Errors and Omission liability: \$2,000,000 per occurrence, with an extended reporting period of not less than three (3) years.

(3) Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the CITY prior to the CONSULTANT commencing any work under this Agreement. At the CITY's option, either: (i) the insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to the CITY, its elected officials, officers, attorneys, agents, employees and designated volunteers; or (ii) the CONSULTANT shall provide a bond or other financial guarantee, satisfactory to the CITY, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) Required Endorsements. Each insurance policy required by this Section shall be endorsed as follows:

i. Except with respect to any employer's liability or professional liability/errors and omission liability policies required by this Section, the CITY, its elected officials, officers, attorneys, agents, employees, independent contractors serving in the role of city officials and designated volunteers shall be named as additional insureds (collectively, "Additional Insureds" sometimes hereafter in this Section).

ii. Additional Insured Endorsements shall not:

(1) Be limited to "Ongoing Operations";

(2) Exclude "Contractual Operations";

(3) Restrict coverage to the "Sole" liability of the CONSULTANT; or

(4) Contain any other exclusion contrary to this Agreement.

iii. For any claims related to the Project, this Agreement or the services performed under this Agreement, the CONSULTANT's insurance coverage shall be primary to any other similar insurance carried by the CITY. Any insurance or self-insurance maintained by the CITY or any of the Additional Insureds, shall be in excess of the CONSULTANT's insurance and shall not be called upon to contribute with it.

iv. All insurance coverage shall contain a provision that prohibits cancellation, modification or lapse without thirty (30) calendar days' prior written notice from insurer to the CITY. The notice shall be provided via certified mail, return receipt requested. The CONSULTANT shall require its insurer to modify the applicable policy and all certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

v. Each policy shall be endorsed to state that the insurer waives the right of subrogation against the CITY and its officers, employees, agents, independent contractors serving in the role of city officials and designated volunteers.

(5) Other Insurance Provisions. The CONSULTANT and the CITY further agree as follows:

i. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of the insurance coverage.

ii. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

iii. All insurance coverage shall cover the CONSULTANT's operations pursuant to the terms of this Agreement.

iv. Any actual or alleged failure on the part of the CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the CITY or any additional insured, in this or any other regard.

v. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the CITY has the right, but not the duty, to obtain the insurance it deems necessary and the CONSULTANT shall promptly reimburse to the CITY any premium paid by the CITY.

vi. The CONSULTANT shall provide immediate notice to the CITY of any claim or loss against the CONSULTANT that includes the CITY or any of the Additional Insureds as a defendant. The CITY assumes no obligation or liability from the notice. The CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve the CITY.

(6) Acceptability of Insurers. All insurance coverage required by this Section shall be written by insurers admitted to conduct business in the State of California by the Department of Insurance and rated "A:VIII" in the most recent A.M. Best's Insurance Rating Guide.

(7) Verification of Coverage. The CONSULTANT shall furnish the CITY with evidence of the insurance required by this Section satisfactory to the CITY. The evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall be on forms provided by the CITY or on such other forms approved by the CITY in writing, and amended to conform to the CITY's requirements. The CONSULTANT shall file all certificates of insurance and fully executed endorsements with the CITY before commencing performance of the Services. Thereafter, the CONSULTANT shall provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. The CONSULTANT shall furnish such proof to the CITY prior to the expiration of the affected coverages. The CITY may require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The CONSULTANT shall provide complete copies of policies to the CITY upon request.

(8) Subcontractors. The CONSULTANT shall include all subcontractors, and/or any other party involved in the performance of the Services, as insureds under its policies or shall require subcontractors or any other party involved in the Project by the CONSULTANT to carry the same insurance as required in this Section. The CONSULTANT shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section. The CONSULTANT shall require that no contract used by any subcontractor, or contract the CONSULTANT enters into on behalf of the CITY, shall reserve the right to charge back to the CITY the cost of insurance required by this Agreement.

The CONSULTANT shall, upon request, submit to the CITY for review, all agreements with subcontractors or others with whom the CONSULTANT contracts with on behalf of the CITY, and all certificates of insurance obtained in compliance with this Section. The CITY's failure to request copies of the documents shall not impose any liability on the CITY, or its employees, or be deemed a waiver of any of the CITY's rights.

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

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

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

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in

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

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

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

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

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

valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.

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

CONSULTANT

CITY

Mayor

Attest:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 19 day of May, 2015, between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and CSG Consultants, Inc., Santa Ana (hereinafter referred to as “CONSULTANT”).

A. Recitals

(i) CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to Building & Safety plan review and inspection services (“Tasks” hereafter), a full, true and correct copy of which is attached hereto as Exhibit “A” and by this reference made a part hereof.

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

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

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

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

B. Agreement

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

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

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be for a one-year term with provisions for three-one year extensions with the total term not exceeding four (4) years.

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

2. CONSULTANT agrees as follows:

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

(b) CONSULTANT shall supply copies of all maps, reports, plans and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined

necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

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

3. CITY agrees as follows:

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

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of Two hundred fifty thousand dollars and zero cents.

(\$250,000.00). The costs associated with the tasks performed for private development projects are not part of the not-to-exceed amount.

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

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

4. CITY agrees to provide to CONSULTANT:

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

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

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

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

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall

be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

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

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

CITY REPRESENTATIVE

Gabriel Linares PE, CBO

Deputy Director, Community Development
Building & Safety Manager
1 Civic Center Circle
Brea, CA, 92821

CONSULTANT

Khoa Duong, P.E.

Vice President
Building & Fire Life Safety
801 Park Center Drive, Suite 230
Santa Ana, CA 92705

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

8. MANDATORY INSURANCE. The CONSULTANT shall maintain the following insurance coverage throughout the term of this Agreement, and, upon the CITY's request, the CONSULTANT shall provide the CITY with evidence of such coverage, which may include visual inspection of all policies, copies of declarations page, endorsements signed by an

authorized representative of the underwriting company, or certificates of insurance. Insurance coverage shall be provided in the forms and coverage amounts set forth in this Section.

(1) Minimum Scope of Insurance. The CONSULTANT shall maintain policies with coverage at least as broad as:

i. Insurance Services Office Commercial General Liability insurance (occurrence Form Number CG 00 01).

ii. Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form Number CA 0001 covering “Any Auto” (Symbol 1).

iii. Workers Compensation insurance as required by the State of California, and Employer's Liability insurance.

iv. Errors and Omissions liability insurance.

(2) Minimum Limits of Insurance. The CONSULTANT shall maintain insurance coverage limits not less than:

i. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit, and shall contain specific language creating a duty to defend against any suit seeking damages.

ii. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

iii. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

iv. Errors and Omission liability: \$2,000,000 per occurrence, with an extended reporting period of not less than three (3) years.

(3) Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the CITY prior to the CONSULTANT commencing any work under this Agreement. At the CITY's option, either: (i) the insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to the CITY, its elected officials, officers, attorneys, agents, employees and designated volunteers; or (ii) the CONSULTANT shall provide a bond or other financial guarantee, satisfactory to the CITY, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) Required Endorsements. Each insurance policy required by this Section shall be endorsed as follows:

i. Except with respect to any employer's liability or professional liability/errors and omission liability policies required by this Section, the CITY, its elected officials, officers, attorneys, agents, employees, independent contractors serving in the role of city officials and designated volunteers shall be named as additional insureds (collectively, "Additional Insureds" sometimes hereafter in this Section).

ii. Additional Insured Endorsements shall not:

(1) Be limited to "Ongoing Operations";

(2) Exclude "Contractual Operations";

(3) Restrict coverage to the "Sole" liability of the CONSULTANT; or

(4) Contain any other exclusion contrary to this Agreement.

iii. For any claims related to the Project, this Agreement or the services performed under this Agreement, the CONSULTANT's insurance coverage shall be primary to any other similar insurance carried by the CITY. Any insurance or self-insurance maintained by the CITY or any of the Additional Insureds, shall be in excess of the CONSULTANT's insurance and shall not be called upon to contribute with it.

iv. All insurance coverage shall contain a provision that prohibits cancellation, modification or lapse without thirty (30) calendar days' prior written notice from insurer to the CITY. The notice shall be provided via certified mail, return receipt requested. The CONSULTANT shall require its insurer to modify the applicable policy and all certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

v. Each policy shall be endorsed to state that the insurer waives the right of subrogation against the CITY and its officers, employees, agents, independent contractors serving in the role of city officials and designated volunteers.

(5) Other Insurance Provisions. The CONSULTANT and the CITY further agree as follows:

i. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of the insurance coverage.

ii. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

iii. All insurance coverage shall cover the CONSULTANT's operations pursuant to the terms of this Agreement.

iv. Any actual or alleged failure on the part of the CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the CITY or any additional insured, in this or any other regard.

v. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the CITY has the right, but not the duty, to obtain the insurance it deems necessary and the CONSULTANT shall promptly reimburse to the CITY any premium paid by the CITY.

vi. The CONSULTANT shall provide immediate notice to the CITY of any claim or loss against the CONSULTANT that includes the CITY or any of the Additional Insureds as a defendant. The CITY assumes no obligation or liability from the notice. The CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve the CITY.

(6) Acceptability of Insurers. All insurance coverage required by this Section shall be written by insurers admitted to conduct business in the State of California by the Department of Insurance and rated "A:VIII" in the most recent A.M. Best's Insurance Rating Guide.

(7) Verification of Coverage. The CONSULTANT shall furnish the CITY with evidence of the insurance required by this Section satisfactory to the CITY. The evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall be on forms provided by the CITY or on such other forms approved by the CITY in writing, and amended to conform to the CITY's requirements. The CONSULTANT shall file all certificates of insurance and fully executed endorsements with the CITY before commencing performance of the Services. Thereafter, the CONSULTANT shall provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. The CONSULTANT shall furnish such proof to the CITY prior to the expiration of the affected coverages. The CITY may require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The CONSULTANT shall provide complete copies of policies to the CITY upon request.

(8) Subcontractors. The CONSULTANT shall include all subcontractors, and/or any other party involved in the performance of the Services, as insureds under its policies or shall require subcontractors or any other party involved in the Project by the CONSULTANT to carry the same insurance as required in this Section. The CONSULTANT shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section. The CONSULTANT shall require that no contract used by any subcontractor, or contract the CONSULTANT enters into on behalf of the CITY, shall reserve the right to charge back to the CITY the cost of insurance required by this Agreement.

The CONSULTANT shall, upon request, submit to the CITY for review, all agreements with subcontractors or others with whom the CONSULTANT contracts with on behalf of the CITY, and all certificates of insurance obtained in compliance with this Section. The CITY's failure to request copies of the documents shall not impose any liability on the CITY, or its employees, or be deemed a waiver of any of the CITY's rights.

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

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

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

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in

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

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

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

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

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

valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.

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

CONSULTANT

CITY

Mayor

Attest:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 19 day of May, 2015, between the City of Brea, a Municipal Corporation (hereinafter referred to as "CITY") and Willdan Engineering, Anaheim (hereinafter referred to as "CONSULTANT").

A. Recitals

(i) CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to Building & Safety plan review and inspection services ("Tasks" hereafter), a full, true and correct copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof.

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

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

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

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

B. Agreement

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

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

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be for a one-year term with provisions for three-one year extensions with the total term not exceeding four (4) years.

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

2. CONSULTANT agrees as follows:

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

(b) CONSULTANT shall supply copies of all maps, reports, plans and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined

necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

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

3. CITY agrees as follows:

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

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of Two hundred fifty thousand dollars and zero cents.

(\$250,000.00). The costs associated with the tasks performed for private development projects are not part of the not-to-exceed amount.

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

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

4. CITY agrees to provide to CONSULTANT:

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

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

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

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

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall

be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

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

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

CITY REPRESENTATIVE

CONSULTANT

Gabriel Linares PE, CBO

James M. Guerra

Deputy Director, Community Development
Building & Safety Manager
1 Civic Center Circle
Brea, CA, 92821

Deputy Director of Building and Safety
2401 E. Katella Ave., Suite 140
Anaheim, CA 92806

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. MANDATORY INSURANCE. The CONSULTANT shall maintain the following insurance coverage throughout the term of this Agreement, and, upon the CITY's request, the CONSULTANT shall provide the CITY with evidence of such coverage, which may include visual inspection of all policies, copies of declarations page, endorsements signed by an

authorized representative of the underwriting company, or certificates of insurance. Insurance coverage shall be provided in the forms and coverage amounts set forth in this Section.

(1) Minimum Scope of Insurance. The CONSULTANT shall maintain policies with coverage at least as broad as:

i. Insurance Services Office Commercial General Liability insurance (occurrence Form Number CG 00 01).

ii. Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form Number CA 0001 covering “Any Auto” (Symbol 1).

iii. Workers Compensation insurance as required by the State of California, and Employer's Liability insurance.

iv. Errors and Omissions liability insurance.

(2) Minimum Limits of Insurance. The CONSULTANT shall maintain insurance coverage limits not less than:

i. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit, and shall contain specific language creating a duty to defend against any suit seeking damages.

ii. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

iii. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

iv. Errors and Omission liability: \$2,000,000 per occurrence, with an extended reporting period of not less than three (3) years.

(3) Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the CITY prior to the CONSULTANT commencing any work under this Agreement. At the CITY's option, either: (i) the insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to the CITY, its elected officials, officers, attorneys, agents, employees and designated volunteers; or (ii) the CONSULTANT shall provide a bond or other financial guarantee, satisfactory to the CITY, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) Required Endorsements. Each insurance policy required by this Section shall be endorsed as follows:

i. Except with respect to any employer's liability or professional liability/errors and omission liability policies required by this Section, the CITY, its elected officials, officers, attorneys, agents, employees, independent contractors serving in the role of city officials and designated volunteers shall be named as additional insureds (collectively, "Additional Insureds" sometimes hereafter in this Section).

ii. Additional Insured Endorsements shall not:

(1) Be limited to "Ongoing Operations";

(2) Exclude "Contractual Operations";

(3) Restrict coverage to the "Sole" liability of the CONSULTANT; or

(4) Contain any other exclusion contrary to this Agreement.

iii. For any claims related to the Project, this Agreement or the services performed under this Agreement, the CONSULTANT's insurance coverage shall be primary to any other similar insurance carried by the CITY. Any insurance or self-insurance maintained by the CITY or any of the Additional Insureds, shall be in excess of the CONSULTANT's insurance and shall not be called upon to contribute with it.

iv. All insurance coverage shall contain a provision that prohibits cancellation, modification or lapse without thirty (30) calendar days' prior written notice from insurer to the CITY. The notice shall be provided via certified mail, return receipt requested. The CONSULTANT shall require its insurer to modify the applicable policy and all certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

v. Each policy shall be endorsed to state that the insurer waives the right of subrogation against the CITY and its officers, employees, agents, independent contractors serving in the role of city officials and designated volunteers.

(5) Other Insurance Provisions. The CONSULTANT and the CITY further agree as follows:

i. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of the insurance coverage.

ii. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

iii. All insurance coverage shall cover the CONSULTANT's operations pursuant to the terms of this Agreement.

iv. Any actual or alleged failure on the part of the CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the CITY or any additional insured, in this or any other regard.

v. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the CITY has the right, but not the duty, to obtain the insurance it deems necessary and the CONSULTANT shall promptly reimburse to the CITY any premium paid by the CITY.

vi. The CONSULTANT shall provide immediate notice to the CITY of any claim or loss against the CONSULTANT that includes the CITY or any of the Additional Insureds as a defendant. The CITY assumes no obligation or liability from the notice. The CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve the CITY.

(6) Acceptability of Insurers. All insurance coverage required by this Section shall be written by insurers admitted to conduct business in the State of California by the Department of Insurance and rated "A:VIII" in the most recent A.M. Best's Insurance Rating Guide.

(7) Verification of Coverage. The CONSULTANT shall furnish the CITY with evidence of the insurance required by this Section satisfactory to the CITY. The evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall be on forms provided by the CITY or on such other forms approved by the CITY in writing, and amended to conform to the CITY's requirements. The CONSULTANT shall file all certificates of insurance and fully executed endorsements with the CITY before commencing performance of the Services. Thereafter, the CONSULTANT shall provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. The CONSULTANT shall furnish such proof to the CITY prior to the expiration of the affected coverages. The CITY may require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The CONSULTANT shall provide complete copies of policies to the CITY upon request.

(8) Subcontractors. The CONSULTANT shall include all subcontractors, and/or any other party involved in the performance of the Services, as insureds under its policies or shall require subcontractors or any other party involved in the Project by the CONSULTANT to carry the same insurance as required in this Section. The CONSULTANT shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section. The CONSULTANT shall require that no contract used by any subcontractor, or contract the CONSULTANT enters into on behalf of the CITY, shall reserve the right to charge back to the CITY the cost of insurance required by this Agreement.

The CONSULTANT shall, upon request, submit to the CITY for review, all agreements with subcontractors or others with whom the CONSULTANT contracts with on behalf of the CITY, and all certificates of insurance obtained in compliance with this Section. The CITY's failure to request copies of the documents shall not impose any liability on the CITY, or its employees, or be deemed a waiver of any of the CITY's rights.

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

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

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

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in

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

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

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

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

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

valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.

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

CONSULTANT

CITY

Mayor

Attest:

City of Brea

Agenda Item:

COUNCIL COMMUNICATION

Date: May 19, 2015

To: Honorable Mayor and City Council

From: City Manager

Subject: **PROFESSIONAL SERVICES AGREEMENTS FOR ANNUAL ON-CALL FIRE PLAN CHECK AND INSPECTION SERVICES FOR VARIOUS DEVELOPMENT PROJECTS**

RECOMMENDATION

Approve Professional Services Agreements.

BACKGROUND

Due to the continued rapid growth in the City of Brea and a temporary short term vacancy, the Fire Department is seeking to augment current staffing with an on-call plan check and inspection service.

The Fire Department regulates State Fire Codes during the plan check process and also verifies construction compliance through timely field inspections. This process ensures that our residents, visitors and businesses are occupying safe, code compliant buildings and that builders and developers are provided prompt professional services.

Under normal circumstances, the majority of the work is completed in-house. When the need arises, city staff utilizes an outside professional service provider to supplement the work load demand. The on-call plan check and inspection contract will be valid for one year with an option to extend annually in one year increments for a total of 4 years.

PROFESSIONAL SERVICES AGREEMENTS FOR ANNUAL ON-CALL FIRE PLAN CHECK AND INSPECTION SERVICES FOR VARIOUS DEVELOPMENT PROJECTS

DISCUSSION

In March of 2015, the Fire Department prepared a Request for Proposal (RFP) that included plan check and inspection services for the Fire Department. The RFP included all of the general requirements necessary when entering into a professional services agreement with the City and also included detailed elements specific for plan check and inspection. Below is the complete list of company names that presented a RFP.

1. Jensen Hughes, Anaheim
2. CSG Consultants, Inc., Santa Ana
3. Hayer Consultants Incorporated, Lakewood
4. Code Consulting Group, LLC, Downey
5. Dennis Grubb and Associates, LLC, Mira Loma

The Fire Department established an evaluation team comprised of City staff that subjectively reviewed, evaluated and scored all of the proposals. The evaluation process took into account the team's experience, professional certifications, turnaround times for plan check and inspections, references, fee schedule, and overall proposal presentation. The review criteria allowed the City staff to fairly rank the consultants and made it possible to present a list of recommended consultants. The Fire Department is aware of the possibilities of staffing changes in the private sector and has determined that in order to provide the best possible services to our customers we would need to

PROFESSIONAL SERVICES AGREEMENTS FOR ANNUAL ON-CALL FIRE PLAN CHECK AND INSPECTION SERVICES FOR VARIOUS DEVELOPMENT PROJECTS

have several options when it comes to selecting consultants. Therefore we are recommending entering into an agreement with more than one company in order to have the ability to select the most qualified consultant. The following list includes in alphabetical order the consultants selected after the review process:

1. CSG Consultants, Inc.
2. Dennis Grubb and Associates, LLC
3. Hayer Consultants Incorporated

All estimated costs related to plan review and inspection services are included in a developer cost deposit account established for each project as they are submitted to the City. The developer cost deposit accounts were established under ordinance and are located in our municipal code section 3.32.035 Developer Cost Deposits. Staff is estimating that these costs will not exceed a total of \$50,000 per fiscal year and will be a pass-thru fee that will be charged to the individual projects as services are provided.

Below is a table summary of the consultant’s proposed fee rates:

SUMMARY OF PROPOSAL					
Consultant Name	Fire Inspection Services		Plan Check Services		
	Regular Hourly Rate	After Hour Rate	Regular Hourly Rate	Percentage Fee	Expedited Hourly Rate
Hayer Consultants Incorporated	\$75 3 hour min	\$112.50	\$65	58%	\$80

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CSG Consultants, Inc.	\$90 Plus mileage reimbursement	\$127.50	\$85	75%	\$127.50
Dennis Grubb & Associates, LLC	\$70	\$105	\$94	N/A	\$114
Code Consulting Group, LLC	\$115 4 hour min	\$150	\$100	N/A	\$125
Jensen Hughes	\$150-\$210 Plus mileage reimbursement	\$215-\$230	\$150-\$210	N/A	\$215-\$230

Since costs incurred from a project are paid by the developer through a deposit account, there is no impact to the General Fund.

COMMITTEE RECOMMENDATION

Finance Committee recommended...

SUMMARY

Staff is recommending that the City Council approve professional services agreements with CSG Consultants, Inc., Dennis Grubb and Associates, LLC, Hayer Consultants Incorporated, and in the amount not to exceed a total of \$50,000 per fiscal year to provide supplemental plan check and inspection services for various development projects in the City of Brea.

Respectfully submitted,

**PROFESSIONAL SERVICES AGREEMENTS FOR ANNUAL ON-CALL FIRE PLAN
CHECK AND INSPECTION SERVICES FOR VARIOUS DEVELOPMENT
PROJECTS**

Tim O'Donnell, City Manager

Prepared by:

Julie Kunze
Deputy Chief/Fire Marshal,
Fire Department

Concurrence:

Wolfgang Knabe, Fire Chief

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this ____ day of _____ 2015 between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and CSG Consultants, Inc (hereinafter referred to as “CONSULTANT”).

A. Recitals

(i) CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to fire department plan review and inspection services (“Tasks” hereafter), a full, true and correct copy of which is attached hereto as Exhibit “A” and by this reference made a part hereof.

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

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

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

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

B. Agreement

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

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

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be valid for a one-year term with provisions to extend annually in one year increments for a total term not exceeding four (4) years.

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

2. CONSULTANT agrees as follows:

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

(b) CONSULTANT shall supply copies of all maps, reports, plans and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined

necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

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

3. CITY agrees as follows:

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

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of fifty thousand dollars and zero cents (\$50,000.00). The costs

associated with the Tasks performed for private development projects are not part of the not-to-exceed amount.

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

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

4. CITY agrees to provide to CONSULTANT:

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

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

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

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

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall

be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

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

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

CITY REPRESENTATIVE

Wolfgang Knabe, Fire Chief

CONSULTANT

Khoa Duong, PE, Project Principal

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. MANDATORY INSURANCE. The CONSULTANT shall maintain the following insurance coverage throughout the term of this Agreement, and, upon the CITY's request, the CONSULTANT shall provide the CITY with evidence of such coverage, which may include visual inspection of all policies, copies of declarations page, endorsements signed by an authorized representative of the underwriting company, or certificates of insurance. Insurance coverage shall be provided in the forms and coverage amounts set forth in this Section.

(1) **Minimum Scope of Insurance.** The CONSULTANT shall maintain policies with coverage at least as broad as:

i. Insurance Services Office Commercial General Liability insurance (occurrence Form Number CG 00 01).

ii. Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form Number CA 0001 covering "Any Auto" (Symbol 1).

iii. Workers Compensation insurance as required by the State of California, and Employer's Liability insurance.

iv. Errors and Omissions liability insurance.

(2) **Minimum Limits of Insurance.** The CONSULTANT shall maintain insurance coverage limits not less than:

i. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit, and shall contain specific language creating a duty to defend against any suit seeking damages.

ii. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

iii. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

iv. Errors and Omission liability: \$1,000,000 per occurrence, with an extended reporting period of not less than three (3) years.

(3) **Deductibles and Self-insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the CITY prior to the CONSULTANT commencing any work under this Agreement. At the CITY's option, either: (i) the insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to the CITY, its elected officials, officers, attorneys, agents, employees and designated volunteers; or (ii) the CONSULTANT shall provide a bond or other financial guarantee, satisfactory to the CITY, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) **Required Endorsements.** Each insurance policy required by this Section shall be endorsed as follows:

i. Except with respect to any employer's liability or professional liability/errors and omission liability policies required by this Section, the CITY, its elected officials, officers, attorneys, agents, employees, independent contractors serving in the role of city

officials and designated volunteers shall be named as additional insureds (collectively, “Additional Insureds” sometimes hereafter in this Section).

ii. Additional Insured Endorsements shall not:

(1) Be limited to “Ongoing Operations”;

(2) Exclude “Contractual Operations”;

(3) Restrict coverage to the “Sole” liability of the
CONSULTANT; or

(4) Contain any other exclusion contrary to this Agreement.

iii. For any claims related to the Project, this Agreement or the services performed under this Agreement, the CONSULTANT's insurance coverage shall be primary to any other similar insurance carried by the CITY. Any insurance or self-insurance maintained by the CITY or any of the Additional Insureds, shall be in excess of the CONSULTANT's insurance and shall not be called upon to contribute with it.

iv. All insurance coverage shall contain a provision that prohibits cancellation, modification or lapse without thirty (30) calendar days' prior written notice from insurer to the CITY. The notice shall be provided via certified mail, return receipt requested. The CONSULTANT shall require its insurer to modify the applicable policy and all certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

v. Each policy shall be endorsed to state that the insurer waives the right of subrogation against the CITY and its officers, employees, agents, independent contractors serving in the role of city officials and designated volunteers.

(5) Other Insurance Provisions. The CONSULTANT and the CITY further agree as follows:

i. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of the insurance coverage.

ii. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

iii. All insurance coverage shall cover the CONSULTANT's operations pursuant to the terms of this Agreement.

iv. Any actual or alleged failure on the part of the CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the CITY or any additional insured, in this or any other regard.

v. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the CITY has the right, but not the duty, to obtain the insurance it deems necessary and the CONSULTANT shall promptly reimburse to the CITY any premium paid by the CITY.

vi. The CONSULTANT shall provide immediate notice to the CITY of any claim or loss against the CONSULTANT that includes the CITY or any of the Additional Insureds as a defendant. The CITY assumes no obligation or liability from the notice. The CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve the CITY.

(6) Acceptability of Insurers. All insurance coverage required by this Section shall be written by insurers admitted to conduct business in the State of California by the Department of Insurance and rated "A:VIII" in the most recent A.M. Best's Insurance Rating Guide.

(7) Verification of Coverage. The CONSULTANT shall furnish the CITY with evidence of the insurance required by this Section satisfactory to the CITY. The evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall be on forms provided by the CITY or on such other forms approved by the CITY in writing, and amended to conform to the CITY's requirements. The CONSULTANT shall file all certificates of insurance and fully executed endorsements with the CITY before commencing performance of the Services. Thereafter, the CONSULTANT shall provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. The CONSULTANT shall furnish such proof to the CITY prior to the expiration of the affected coverages. The CITY may require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The CONSULTANT shall provide complete copies of policies to the CITY upon request.

(8) Subcontractors. The CONSULTANT shall include all subcontractors, and/or any other party involved in the performance of the Services, as insureds under its policies or shall require subcontractors or any other party involved in the Project by the CONSULTANT to carry the same insurance as required in this Section. The CONSULTANT shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section. The CONSULTANT shall require that no contract used by any subcontractor, or contract the CONSULTANT enters into on behalf of the CITY, shall reserve the right to charge back to the CITY the cost of insurance required by this Agreement. The CONSULTANT shall, upon request, submit to the CITY for review, all agreements with subcontractors or others with whom the CONSULTANT contracts with on behalf of the CITY, and all certificates of insurance obtained in compliance with this

Section. The CITY's failure to request copies of the documents shall not impose any liability on the CITY, or its employees, or be deemed a waiver of any of the CITY's rights.

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

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

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

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in public hearing form to the reasonable satisfaction of CITY, within the time set forth herein, or as may be extended by written consent of the parties hereto, CONSULTANT shall pay to CITY, as

liquidated damages and not as a penalty, the sum of N/A dollars (\$000.00) per day for each day CONSULTANT is in default, which sum represents a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable losses that might result from such a default in performance by CONSULTANT, and due to the difficulty which would otherwise occur in establishing actual damages resulting from such default, unless said default is caused by CITY or by acts of God, acts of the public enemy, fire, floods, epidemics, or quarantine restrictions.

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

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

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

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

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

CONSULTANT

CITY

Mayor

Attest:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this ____ day of _____ 2015 between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and Hayer Consultants Incorporated (hereinafter referred to as “CONSULTANT”).

A. Recitals

(i) CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to fire department plan review and inspection services (“Tasks” hereafter), a full, true and correct copy of which is attached hereto as Exhibit “A” and by this reference made a part hereof.

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

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

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

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

B. Agreement

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

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

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be valid for a one-year term with provisions to extend annually in one year increments for a total term not exceeding four (4) years.

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

2. CONSULTANT agrees as follows:

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

(b) CONSULTANT shall supply copies of all maps, reports, plans and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined

necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

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

3. CITY agrees as follows:

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

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of fifty thousand dollars and zero cents (\$50,000.00). The costs

associated with the Tasks performed for private development projects are not part of the not-to-exceed amount.

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

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

4. CITY agrees to provide to CONSULTANT:

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

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

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

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

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall

be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

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

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

CITY REPRESENTATIVE

Wolfgang Knabe, Fire Chief

CONSULTANT

Richard Mitchell, Senior Manager

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. MANDATORY INSURANCE. The CONSULTANT shall maintain the following insurance coverage throughout the term of this Agreement, and, upon the CITY's request, the CONSULTANT shall provide the CITY with evidence of such coverage, which may include visual inspection of all policies, copies of declarations page, endorsements signed by an authorized representative of the underwriting company, or certificates of insurance. Insurance coverage shall be provided in the forms and coverage amounts set forth in this Section.

(1) **Minimum Scope of Insurance.** The CONSULTANT shall maintain policies with coverage at least as broad as:

i. Insurance Services Office Commercial General Liability insurance (occurrence Form Number CG 00 01).

ii. Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form Number CA 0001 covering "Any Auto" (Symbol 1).

iii. Workers Compensation insurance as required by the State of California, and Employer's Liability insurance.

iv. Errors and Omissions liability insurance.

(2) **Minimum Limits of Insurance.** The CONSULTANT shall maintain insurance coverage limits not less than:

i. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit, and shall contain specific language creating a duty to defend against any suit seeking damages.

ii. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

iii. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

iv. Errors and Omission liability: \$1,000,000 per occurrence, with an extended reporting period of not less than three (3) years.

(3) **Deductibles and Self-insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the CITY prior to the CONSULTANT commencing any work under this Agreement. At the CITY's option, either: (i) the insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to the CITY, its elected officials, officers, attorneys, agents, employees and designated volunteers; or (ii) the CONSULTANT shall provide a bond or other financial guarantee, satisfactory to the CITY, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) **Required Endorsements.** Each insurance policy required by this Section shall be endorsed as follows:

i. Except with respect to any employer's liability or professional liability/errors and omission liability policies required by this Section, the CITY, its elected officials, officers, attorneys, agents, employees, independent contractors serving in the role of city

officials and designated volunteers shall be named as additional insureds (collectively, "Additional Insureds" sometimes hereafter in this Section).

ii. Additional Insured Endorsements shall not:

- (1) Be limited to "Ongoing Operations";
- (2) Exclude "Contractual Operations";
- (3) Restrict coverage to the "Sole" liability of the
- (4) Contain any other exclusion contrary to this Agreement.

CONSULTANT; or

iii. For any claims related to the Project, this Agreement or the services performed under this Agreement, the CONSULTANT's insurance coverage shall be primary to any other similar insurance carried by the CITY. Any insurance or self-insurance maintained by the CITY or any of the Additional Insureds, shall be in excess of the CONSULTANT's insurance and shall not be called upon to contribute with it.

iv. All insurance coverage shall contain a provision that prohibits cancellation, modification or lapse without thirty (30) calendar days' prior written notice from insurer to the CITY. The notice shall be provided via certified mail, return receipt requested. The CONSULTANT shall require its insurer to modify the applicable policy and all certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

v. Each policy shall be endorsed to state that the insurer waives the right of subrogation against the CITY and its officers, employees, agents, independent contractors serving in the role of city officials and designated volunteers.

(5) Other Insurance Provisions. The CONSULTANT and the CITY further agree as follows:

i. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of the insurance coverage.

ii. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

iii. All insurance coverage shall cover the CONSULTANT's operations pursuant to the terms of this Agreement.

iv. Any actual or alleged failure on the part of the CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the CITY or any additional insured, in this or any other regard.

v. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the CITY has the right, but not the duty, to obtain the insurance it deems necessary and the CONSULTANT shall promptly reimburse to the CITY any premium paid by the CITY.

vi. The CONSULTANT shall provide immediate notice to the CITY of any claim or loss against the CONSULTANT that includes the CITY or any of the Additional Insureds as a defendant. The CITY assumes no obligation or liability from the notice. The CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve the CITY.

(6) Acceptability of Insurers. All insurance coverage required by this Section shall be written by insurers admitted to conduct business in the State of California by the Department of Insurance and rated "A:VIII" in the most recent A.M. Best's Insurance Rating Guide.

(7) Verification of Coverage. The CONSULTANT shall furnish the CITY with evidence of the insurance required by this Section satisfactory to the CITY. The evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall be on forms provided by the CITY or on such other forms approved by the CITY in writing, and amended to conform to the CITY's requirements. The CONSULTANT shall file all certificates of insurance and fully executed endorsements with the CITY before commencing performance of the Services. Thereafter, the CONSULTANT shall provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. The CONSULTANT shall furnish such proof to the CITY prior to the expiration of the affected coverages. The CITY may require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The CONSULTANT shall provide complete copies of policies to the CITY upon request.

(8) Subcontractors. The CONSULTANT shall include all subcontractors, and/or any other party involved in the performance of the Services, as insureds under its policies or shall require subcontractors or any other party involved in the Project by the CONSULTANT to carry the same insurance as required in this Section. The CONSULTANT shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section. The CONSULTANT shall require that no contract used by any subcontractor, or contract the CONSULTANT enters into on behalf of the CITY, shall reserve the right to charge back to the CITY the cost of insurance required by this Agreement. The CONSULTANT shall, upon request, submit to the CITY for review, all agreements with subcontractors or others with whom the CONSULTANT contracts with on behalf of the CITY, and all certificates of insurance obtained in compliance with this

Section. The CITY's failure to request copies of the documents shall not impose any liability on the CITY, or its employees, or be deemed a waiver of any of the CITY's rights.

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

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

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

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in public hearing form to the reasonable satisfaction of CITY, within the time set forth herein, or as may be extended by written consent of the parties hereto, CONSULTANT shall pay to CITY, as

liquidated damages and not as a penalty, the sum of N/A dollars (\$000.00) per day for each day CONSULTANT is in default, which sum represents a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable losses that might result from such a default in performance by CONSULTANT, and due to the difficulty which would otherwise occur in establishing actual damages resulting from such default, unless said default is caused by CITY or by acts of God, acts of the public enemy, fire, floods, epidemics, or quarantine restrictions.

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

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

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

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

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

CONSULTANT

CITY

Mayor

Attest:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this ____ day of _____ 2015 between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and Dennis Grubb & Associates, LLC (hereinafter referred to as “CONSULTANT”).

A. Recitals

(i) CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to fire department plan review and inspection services (“Tasks” hereafter), a full, true and correct copy of which is attached hereto as Exhibit “A” and by this reference made a part hereof.

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

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

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

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

B. Agreement

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

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

(b) Services: Such professional services as are necessary to be performed by CONSULTANT in order to complete the assigned Tasks. The CONSULTANT will provide services on an “as-needed (on-call)” basis for projects to be determined during the term of the contract. The contract will be valid for a one-year term with provisions to extend annually in one year increments for a total term not exceeding four (4) years.

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

2. CONSULTANT agrees as follows:

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

(b) CONSULTANT shall supply copies of all maps, reports, plans and documents (hereinafter collectively referred to as “documents”) including all supplemental technical documents, as described in Exhibits “A” to CITY within the time specified in Exhibit “A”. Copies of the documents shall be in such numbers as are required in Exhibit “A”. CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined

necessary by CITY. The time limits set forth pursuant to this Section B2(b) may be extended upon written approval of CITY.

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

3. CITY agrees as follows:

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

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks, as approved, in writing, by CITY. In no event shall CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of fifty thousand dollars and zero cents (\$50,000.00). The costs

associated with the Tasks performed for private development projects are not part of the not-to-exceed amount.

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

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

4. CITY agrees to provide to CONSULTANT:

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

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

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

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

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall

be considered the property of CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

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

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

CITY REPRESENTATIVE

Wolfgang Knabe, Fire Chief

CONSULTANT

Dennis Grubb, President

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. MANDATORY INSURANCE. The CONSULTANT shall maintain the following insurance coverage throughout the term of this Agreement, and, upon the CITY's request, the CONSULTANT shall provide the CITY with evidence of such coverage, which may include visual inspection of all policies, copies of declarations page, endorsements signed by an authorized representative of the underwriting company, or certificates of insurance. Insurance coverage shall be provided in the forms and coverage amounts set forth in this Section.

(1) **Minimum Scope of Insurance.** The CONSULTANT shall maintain policies with coverage at least as broad as:

i. Insurance Services Office Commercial General Liability insurance (occurrence Form Number CG 00 01).

ii. Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form Number CA 0001 covering "Any Auto" (Symbol 1).

iii. Workers Compensation insurance as required by the State of California, and Employer's Liability insurance.

iv. Errors and Omissions liability insurance.

(2) **Minimum Limits of Insurance.** The CONSULTANT shall maintain insurance coverage limits not less than:

i. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit, and shall contain specific language creating a duty to defend against any suit seeking damages.

ii. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

iii. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

iv. Errors and Omission liability: \$1,000,000 per occurrence, with an extended reporting period of not less than three (3) years.

(3) **Deductibles and Self-insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the CITY prior to the CONSULTANT commencing any work under this Agreement. At the CITY's option, either: (i) the insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to the CITY, its elected officials, officers, attorneys, agents, employees and designated volunteers; or (ii) the CONSULTANT shall provide a bond or other financial guarantee, satisfactory to the CITY, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) **Required Endorsements.** Each insurance policy required by this Section shall be endorsed as follows:

i. Except with respect to any employer's liability or professional liability/errors and omission liability policies required by this Section, the CITY, its elected officials, officers, attorneys, agents, employees, independent contractors serving in the role of city

officials and designated volunteers shall be named as additional insureds (collectively, "Additional Insureds" sometimes hereafter in this Section).

ii. Additional Insured Endorsements shall not:

- (1) Be limited to "Ongoing Operations";
- (2) Exclude "Contractual Operations";
- (3) Restrict coverage to the "Sole" liability of the
CONSULTANT; or
- (4) Contain any other exclusion contrary to this Agreement.

iii. For any claims related to the Project, this Agreement or the services performed under this Agreement, the CONSULTANT's insurance coverage shall be primary to any other similar insurance carried by the CITY. Any insurance or self-insurance maintained by the CITY or any of the Additional Insureds, shall be in excess of the CONSULTANT's insurance and shall not be called upon to contribute with it.

iv. All insurance coverage shall contain a provision that prohibits cancellation, modification or lapse without thirty (30) calendar days' prior written notice from insurer to the CITY. The notice shall be provided via certified mail, return receipt requested. The CONSULTANT shall require its insurer to modify the applicable policy and all certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

v. Each policy shall be endorsed to state that the insurer waives the right of subrogation against the CITY and its officers, employees, agents, independent contractors serving in the role of city officials and designated volunteers.

(5) Other Insurance Provisions. The CONSULTANT and the CITY further agree as follows:

i. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of the insurance coverage.

ii. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

iii. All insurance coverage shall cover the CONSULTANT's operations pursuant to the terms of this Agreement.

iv. Any actual or alleged failure on the part of the CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the CITY or any additional insured, in this or any other regard.

v. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the CITY has the right, but not the duty, to obtain the insurance it deems necessary and the CONSULTANT shall promptly reimburse to the CITY any premium paid by the CITY.

vi. The CONSULTANT shall provide immediate notice to the CITY of any claim or loss against the CONSULTANT that includes the CITY or any of the Additional Insureds as a defendant. The CITY assumes no obligation or liability from the notice. The CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve the CITY.

(6) Acceptability of Insurers. All insurance coverage required by this Section shall be written by insurers admitted to conduct business in the State of California by the Department of Insurance and rated "A:VIII" in the most recent A.M. Best's Insurance Rating Guide.

(7) Verification of Coverage. The CONSULTANT shall furnish the CITY with evidence of the insurance required by this Section satisfactory to the CITY. The evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall be on forms provided by the CITY or on such other forms approved by the CITY in writing, and amended to conform to the CITY's requirements. The CONSULTANT shall file all certificates of insurance and fully executed endorsements with the CITY before commencing performance of the Services. Thereafter, the CONSULTANT shall provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. The CONSULTANT shall furnish such proof to the CITY prior to the expiration of the affected coverages. The CITY may require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The CONSULTANT shall provide complete copies of policies to the CITY upon request.

(8) Subcontractors. The CONSULTANT shall include all subcontractors, and/or any other party involved in the performance of the Services, as insureds under its policies or shall require subcontractors or any other party involved in the Project by the CONSULTANT to carry the same insurance as required in this Section. The CONSULTANT shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section. The CONSULTANT shall require that no contract used by any subcontractor, or contract the CONSULTANT enters into on behalf of the CITY, shall reserve the right to charge back to the CITY the cost of insurance required by this Agreement. The CONSULTANT shall, upon request, submit to the CITY for review, all agreements with subcontractors or others with whom the CONSULTANT contracts with on behalf of the CITY, and all certificates of insurance obtained in compliance with this

Section. The CITY's failure to request copies of the documents shall not impose any liability on the CITY, or its employees, or be deemed a waiver of any of the CITY's rights.

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

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

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

11. Damages: In the event that CONSULTANT fails to submit to CITY the completed project, together with all documents and supplemental material required hereunder, in public hearing form to the reasonable satisfaction of CITY, within the time set forth herein, or as may be extended by written consent of the parties hereto, CONSULTANT shall pay to CITY, as

liquidated damages and not as a penalty, the sum of N/A dollars (\$000.00) per day for each day CONSULTANT is in default, which sum represents a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable losses that might result from such a default in performance by CONSULTANT, and due to the difficulty which would otherwise occur in establishing actual damages resulting from such default, unless said default is caused by CITY or by acts of God, acts of the public enemy, fire, floods, epidemics, or quarantine restrictions.

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

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

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

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

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

CONSULTANT

CITY

Mayor

Attest:

City of Brea

Agenda Item:

COUNCIL COMMUNICATION

Date: May 19, 2015

To: Honorable Mayor and City Council

From: City Manager

Subject: APPROVAL OF FISCAL YEAR 2015-16 PROPERTY TAX RATE TO FUND THE CITY PARAMEDIC PROGRAM

RECOMMENDATION

Adopt resolution.

BACKGROUND

At the March 7, 1978, general municipal election, the qualified electors of the City authorized the City, by and through the City Council, to levy an annual property tax rate to fund the City's Paramedic Program. This annual property tax was not to exceed \$0.20 per \$100 of assessed value (25% of market value) per year.

Beginning in 1981, the County of Orange implemented a policy change concerning Assessed Value. The tax roll is now reported at "Full Taxable Value" rather than Assessed Value. This change resulted in a revised paramedic tax levy of \$0.045 per \$100 of Full Taxable Value. It did not, however, change the actual amount of taxes paid by the property owner.

State law prohibits the City Council from increasing the paramedic levy above the voter-authorized level. The rate of \$0.045 is the maximum that can be levied, regardless of program costs, without a voter-approved increase. The passage of Proposition 218 by the voters in November 1996 had no impact on the City's ability to levy the annual Paramedic Tax, as the tax was voter-approved in 1978.

APPROVAL OF THE FISCAL YEAR 2015-16 PROPERTY TAX RATE TO FUND THE PARAMEDIC PROGRAM

Prior to the beginning of each fiscal year, the City Council adopts a resolution approving the rate of tax upon taxable property within the City of Brea. The adoption of the proposed resolution enables the Orange County Auditor-Controller to apply the rate of taxation to the City of Brea's property tax rolls, and ultimately enables the City to maintain the Paramedic Program.

DISCUSSION

Since its inception in 1979, the Brea Fire Services Department Paramedic Program has grown considerably from the days when the paramedics responded to calls in an old red van. Currently, the paramedics utilize a modern paramedic engine company configuration. The original program that began in Fiscal Year 1978-79 had a budget of \$200,000 and was fully funded by revenues generated from the paramedic tax. While the actual tax rate has remained constant over the past 34 years, additional revenue has been generated from increases in the property values. Meanwhile, direct expenditures have increased as the program has been greatly enhanced, as outlined below, and as the City's population and service demands have increased. Today, the estimated annual cost of the program is \$5,058,385. Estimated revenue to the General Fund from the paramedic tax is \$2,700,000 which will cover approximately 53.4% of program costs.

About the Paramedic Program

A "Paramedic Engine Company" is considered the most efficient method of Emergency Medical Service (EMS) delivery, and is currently the most common staffing configuration in operation locally and regionally. This configuration provides for Advanced Life Support capability within its fire fighting and emergency response resources without com-

APPROVAL OF THE FISCAL YEAR 2015-16 PROPERTY TAX RATE TO FUND THE PARAMEDIC PROGRAM

promising either service. The City's paramedic units, Brea Engine Company #1, Truck Company #2 and Engine Company #3, are complete units that respond to both fires and medical emergencies. In addition, resources necessary to provide functional support, such as extrication of patients and fire protection during traffic emergencies, are available at the scene with the paramedic unit.

The program started in Fiscal Year 1978-79 with seven certified paramedics. The Brea Fire Services Department currently carries a complement of 21 certified paramedics. This allocation level meets the staffing requirement of the Orange County EMS Agency while providing for uninterrupted deployment of paramedics during leave, training and emergency conditions. Just as the nature of emergencies has changed, so has the required paramedic skill level. Paramedics are being delegated greater responsibility in the field as emergency room medicine is continually being evaluated and streamlined. Paramedic staff all receive continuous in-service training on a myriad of topics, including: trauma medicine; air and blood-borne pathogens; environmental emergencies; pediatric medicine, including sudden infant death syndrome; swift water rescue and mass casualty management.

Field techniques have improved greatly since the program began with treatment advances in the areas of Adult and Pediatric Intubation (airway management requiring insertion of appliances into the trachea), cervical-spine treatments and neurological protection, improved treatment for burn victims and the EMT-D (cardiac defibrillation) program, which is in service on all responding Brea units.

APPROVAL OF THE FISCAL YEAR 2015-16 PROPERTY TAX RATE TO FUND THE PARAMEDIC PROGRAM

<u>Paramedic Response History</u>					
<u>Calendar Year</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Total Emergency Medical Calls (Patient Intervention Required)	2,323	2,460	2,681	2,863	2,848
Total Calls for Service from Fire Dept. (Including false alarm responses)	3,656	3,717	4,247	3,663	4,804
Percent of Total ¹	63.5%	66.2%	63.1%	78.2%	59.3%

¹ *The percentages listed in the table reflect EMS calls where a patient actually received treatment. The paramedic unit responds to a number of calls for emergency medical services that are not reflected in the total calls for service listed above. These are calls where the paramedic engine was requested to respond, but the injuries evaluated upon arrival did not require medical intervention by the unit.*

The City of Brea continues to evaluate this program in order to maintain the high standard of care that the Community has come to rely upon.

FINANCE COMMITTEE RECOMMENDATION

The Finance Committee reviewed this staff report and related draft resolution at its regular meeting held on May 12, 2015, and recommended that

FISCAL IMPACT

The requirements of staying current with changing technology ultimately affect the cost of paramedic service and will continue to do so as the costs of training and equipment increase. The Paramedic Program budget for Fiscal Year 2015-16 includes personnel costs for 21 full-time paramedics and related costs to operate the program. For a homeowner with a dwelling assessed at \$500,000, the tax rate of \$0.045 per \$100 valuation will result in an annual charge of \$225.

The Paramedic Tax revenues are included in the General Fund budget. It is estimated the paramedic tax rate of \$0.045 per \$100 of Full Taxable Value will generate

**APPROVAL OF THE FISCAL YEAR 2015-16 PROPERTY TAX RATE TO FUND THE
PARAMEDIC PROGRAM**

\$2,700,000 in General Fund revenues in Fiscal Year 2015-16. The revenue collected will cover approximately 53.4% of the \$5,058,385 estimated for program costs.

Respectfully submitted,

Tim O'Donnell
City Manager

Prepared by:

Ana Conrique
Senior Accountant

Concurrence:

William Gallardo
Assistant City Manager/Administrative
Services Director

Wolfgang Knabe
Fire Chief

Brea Community Benefit Financing Authority

Agenda Item:

COMMUNICATION

Date: June 2, 2015

To: Chair and Authority Board

From: Executive Director

Subject: PUBLIC HEARING AND ADOPTION OF 2014-15 OPERATING BUDGET FOR THE BREA COMMUNITY BENEFIT FINANCING AUTHORITY

RECOMMENDATION

Adopt the attached resolution appropriating funds for the Brea Community Benefit Financing Authority 2014-15 Operating Budget.

BACKGROUND AND DISCUSSION

The Brea Community Benefit Financing Authority is a shared exercise of powers between the City of Brea and the Industrial Development Authority of the City of Brea, created by a joint powers agreement in July 2014. The creation of such was necessary as a result of the Brea Redevelopment Agency's dissolution and the inability of the Brea Public Financing Authority to continue operations in regards to the issues of any new bonds issues.

In August 2014, the Brea Community Benefit Financing Authority issued \$18,555,000 in Water Revenue Bonds. The Bonds were issued at a premium of \$2,174,710, providing sufficient resources to reimburse the Water Utility Fund (420) for the prior purchase of \$20,443,520 in water rights, purchased in May 2014. Subsequently, the Water Utility Fund (420) reimbursed the loans from the Fixed Asset Replacement Fund (182), Sewer

**ADOPT THE 2014-15 OPERATING BUDGET FOR THE BREA COMMUNITY
BENEFIT FINANCING AUTHORITY**

Utility Fund (430) and Impact Fees Fund (540).

FISCAL IMPACT

The fiscal impact for the Brea Community Benefit Financing Authority Operating Budget for 2014-15 has equal revenues and expenditures of \$21,028,623 as shown on attached Exhibit A.

Respectfully submitted,

Tim O'Donnell
Executive Director

Prepared by:

Lee Squire
Financial Services Manager/Accounting

Concurrence:

Bill Gallardo, CCMT
Assistant City Manager/Administrative
Services Director

RESOLUTION NO.

A RESOLUTION OF THE BREA COMMUNITY BENEFIT FINANCING AUTHORITY ADOPTING AN OPERATING BUDGET FOR SAID AUTHORITY FOR THE FISCAL YEAR COMMENCING JULY 1, 2014, AND ENDING JUNE 30, 2015, AND APPROPRIATING FUNDS FOR ACCOUNTS, DEPARTMENTS, DIVISIONS, PROGRAMS, OBJECTS AND PURPOSES THEREIN SET FORTH

A. RECITALS:

(i) The Executive Director has, heretofore, presented to the Authority Directors the "Proposed Budget" for the fiscal year July 1, 2014 through June 30, 2015.

(ii) Copies of said Proposed Budget are on file in the Office of the Secretary and said Proposed Budget is hereby made a part of this Resolution.

B. RESOLUTION:

NOW, THEREFORE, be it is found, determined and resolved by the Brea Community Benefit Financing Authority as follows:

1. Said Proposed Brea Community Benefit Financing Authority Budget is hereby adopted as the Budget of the Authority for the fiscal year commencing July 1, 2014 and ending June 30, 2015, and consists of the estimated and anticipated expenditures and revenues for the fiscal year.

2. There are hereby appropriated for obligation and expenditure by the Executive Director the amounts shown for the various funds and accounts separately set forth in the Brea Community Benefit Financing Authority Proposed Budget for fiscal year 2014-15. All obligations and expenditures shall be incurred and made in the manner provided by the provisions of State law and Authority resolutions applicable to purchasing

and contracting.

3. No warrant shall be issued or indebtedness incurred which exceeds the unexpended balance of the fund and project appropriations herein before authorized unless such has been amended by a supplemental appropriation duly enacted by the Authority by resolution.

APPROVED AND ADOPTED this _____ day of _____, 2015

Secretary

ATTEST: _____
City Clerk

I, Lillian Harris-Neal, Secretary of the Brea Community Benefit Financing Authority, do hereby certify that the foregoing Resolution was adopted at the regular meeting of the Brea Community Benefit Financing Authority on the 2nd day of June, 2015, by the following vote:

AYES: AUTHORITY MEMBERS:

NOES: AUTHORITY MEMBERS:

ABSENT: AUTHORITY MEMBERS:

ABSTAIN: AUTHORITY MEMBERS:

DATED: _____

Secretary

815 BREA COMMUNITY BENEFIT FINANCING AUTHORITY

This fund is used to account for revenues received and expenditures made for the \$18,555,000 Brea Community Benefit Financing Authority 2014 Water Revenue Bonds.

	Actual FY 2013-14	Adopted FY 2014-15	Estimated FY 2014-15	Budget FY 2015-16
Beginning Balance 7/1	\$ -	\$ -	\$ -	\$ -
Resources				
Revenues				
Water Fund Payments	-	298,913	-	-
Bond Proceeds	-	18,555,000	-	-
Premium on Bonds	-	2,174,710	-	-
Total Resources	-	21,028,623	-	-
Total Available	-	21,028,623	-	-
Requirements				
Expenditures				
Bond Interest	-	298,913	-	-
Water Utility Fund	-	20,729,710	-	-
Total Requirements	-	21,028,623	-	-
Ending Balance 6/30	\$ -	\$ -	\$ -	\$ -

City of Brea

Agenda Item:

COUNCIL COMMUNICATION

Date: May 19, 2015

To: Honorable Mayor and City Council
From: City Manager
Subject: **FISCAL YEAR 2015-16 APPROPRIATIONS LIMIT**

RECOMMENDATION

Adopt the attached resolution approving the Fiscal Year 2015-16 Appropriations Limit.

BACKGROUND/DISCUSSION

In November 1979, the voters of the State of California approved Proposition 4, commonly known as the “Gann Initiative.” The Proposition created Article XIII B of the State Constitution placing various limits on the appropriations of state and local governments. The law requires the governing body of each local jurisdiction to establish annually by resolution, the Appropriations Limit for the upcoming year. In effect, the law requires that expenditures subject to the limit cannot exceed the prior year’s expenditures after adjusting for inflation and population changes.

In June 1990, Proposition 111 was enacted which modified the formula to allow the Appropriations Limit to be more responsive to local growth issues. Prop. 111 allowed the City of Brea to modify its limit to take into consideration the change in the County or City population, whichever is greater.

Fiscal Year 2015-16 APPROPRIATIONS LIMIT

The Appropriations Limit applies to all taxes levied by and for a municipality. In addition, user fees are excluded from the formula. The Appropriations Limit also excludes the following activities: Successor Agency to the Brea Redevelopment Agency Funds, Enterprise Funds, Capital Improvement Funds, and funds received from special assessment districts.

Brea's appropriations that are "subject to the limit" have traditionally been much lower than required by Article XIII B. This year's Appropriations Limit has been calculated to be \$82,861,145. Revenues subject to the Appropriations Limit are \$37,693,159 resulting in a favorable gap of \$45,167,986.

FISCAL IMPACT

There is no fiscal impact associated with establishing the Appropriations Limit.

Respectfully submitted,

Tim O'Donnell
City Manager

Prepared by:

Alicia Brenner
Senior Management Analyst

Fiscal Year 2015-16 APPROPRIATIONS LIMIT

In Concurrence:

Faith Madrazo
Revenue and Budget Manager

William Gallardo, CCMT
Administrative Services Director/Assistant City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BREA DETERMINING AND APPROVING DESIGNATED INFLATION FACTORS AND ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2015-16

A. RECITALS:

(i) The voters of California, on November 6, 1979, added Article XIII B to the State Constitution placing various limitations on the appropriations of state and local governments.

(ii) Pursuant to Article XIII B and Section 7910 of the State Government Code, Brea must adopt an annual appropriations limit.

(iii) The documentation used in the determination of the appropriations limit set forth below has been available to the public as required by law.

B. RESOLUTION:

NOW, THEREFORE, be it is found, determined and resolved by the City Council of the City of Brea as follows:

1. Selects the California per capita personal income and the greater of the County or City population increase as allowable inflation factors.

2. Approves the following as the Appropriations Limit for Fiscal Year 2015-16:

The Fiscal Year 2014-15 Appropriations Limit is \$82,861,145.

APPROVED AND ADOPTED this 19th day of May, 2015.

Mayor

ATTEST: _____
City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council of the City of Brea, held on the 19th day of May, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

DATED: _____

City Clerk



CITY OF BREA

**ADMINISTRATIVE SERVICES DEPARTMENT
PUBLIC WORKS DEPARTMENT**

Memorandum

Date: May 12, 2015
To: Finance Committee
From: Bill Gallardo, Assistant City Manager/Administrative Services Director
Eric Nicoll, Public Works Director
By: Faith Madrazo, Revenue & Budget Manager
Subject: **Refuse Rates for Fiscal Year 2015-16 – Informational**

The contractual relationship with Republic Services a.k.a. Brea Disposal (BDI) requires the Public Works Director to review and administratively modify the refuse rates effective July 1 each year. The refuse rate adjustments have traditionally been shared with the Finance Committee.

The agreement calls for a commitment to pass on 90% of the December Consumer Price Index (CPI). The December 2014 CPI index for the Los Angeles-Riverside-Orange County was 0.73% resulting in an application of a 0.65% increase to various components of the refuse rates.

The components of the refuse rate subject to the 0.65% increase are:

- Refuse Collection (also includes bulky item)
- Recycling Collection & Yard Waste Collection
- Yard Waste Processing & Transfer cost of refuse from Republic Services to landfill

The components of the refuse rate subject to payment based on actual tonnage disposed are:

- Gate fees (per ton) paid to County landfill
- Transfer cost (per ton) of disposed waste to landfill

Other components of the refuse rate are:

- Recycling Revenue Credit & Franchise Fee
- City Public Works Costs
- Fuel Pricing Index

REFUSE RATE COMPONENTS						
REFUSE RATE CHANGES FOR FY 2015-16						
		JULY 1ST	JULY 1ST	INCREASE	%	
		RATE	RATE	(DECREASE)	INCREASE	
		FY 2014-15	FY 2015-16	ROUNDED	(DECREASE)	
Refuse Collection		\$5.13	\$5.16	\$0.03		0.66%
Recycling Collection		4.43	4.46	0.03		0.65%
Yard Waste Collection		2.32	2.34	0.02		0.69%
Landfill Disposal						
	Gate Fee	2.76	2.80	0.04		1.63%
	Transfer	1.25	1.26	0.01		0.80%
Yard Waste						
	Processing & Disposal	1.76	1.77	0.01		10.85%
Fuel Price Index		0.53	0.58	0.05		8.82%
	Sub-Total	18.18	18.37	0.19		1.05%
Less: Recycling Revenue Credit		-1.01	-1.02	-0.01		0.99%
	Sub-Total	17.17	17.35	0.18		1.05%
Franchise Fee @ 10%		1.72	1.74	0.02		1.05%
	Sub-Total	18.89	19.09	0.20		1.05%
Public Works		0.87	0.87	0		0.00%
	TOTAL	\$ 19.76	\$ 19.96	\$ 0.20		0.99%

Recycling Revenue Credit

Recycling revenue has leveled off over the past year as the resale value of aluminum, glass, paper and cardboard products has marginally declined. However, we have slightly increased the recycling credit to customers from \$1.01 to \$1.02 per month. This City adjusted credit is based upon a five year average.

Fuel Pricing Index

The Fuel Pricing Index component to the refuse rate is adjusted annually based on the cost of fuel and related products. The adjustment is based on the year to year change in the December U.S. Bureau of Labor Statistics Producer Price Index –Commodities #2 Diesel Fuel & Liquefied Natural Gas.

The cost of fuel from 2013 to 2014 increased. This results in an 8.82% increase or \$0.05 more per month in the residential rate.

Collection, Disposal, and Transfer Components

Black can refuse was 39.60 pounds last year and has slightly decreased to 39.58 pounds per can a week. This slight decrease in black can refuse decrease the processing and disposal costs to the customer and is reflected in the rate.

Yard waste also decreased slightly from 20.33 to 20.26 pounds per can a week.

Extra Black Can

There are 470 customers that currently receive an extra black can. The cost for the additional black can will increase \$0.10 from \$9.67 to \$9.77 per month.

Overall Residential Rate Increase

The total amount of the rate increase effective July 1 is \$0.20 per month or 0.99% from the current rate of \$19.76 to \$19.96.

Commercial Rate Increase

The commercial monthly rates effective July 1 for the average customer with a 3 yard bin with once a week pick-up is \$138.95 per month an increase of \$1.25 per month or 0.91% Overall commercial rate increases are adjusted based on changes in the consumer price index and similar components such as landfill gate fees and disposal costs.