



# FINANCE COMMITTEE AGENDA

Tuesday, January 12, 2016

8:30 AM

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

**MEMBERS:** Mayor Pro Tem Cecilia Hupp and Council Member Steven Vargas  
**ALTERNATE:** Council Member 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 DECEMBER 8, 2015 MEETING

### Attachments

Minutes

3. AMENDMENT TO THE MASTER AGREEMENT WITH PAYMENTUS CORPORATION TO PROVIDE ELECTRONIC BILL PAYMENT PROCESSING FOR THE CITY'S UTILITY BILLING CUSTOMERS

### Attachments

Exhibit A

Exhibit B

4. BOND PROCEEDS FUNDING AGREEMENTS BETWEEN THE CITY OF BREA AND THE SUCCESSOR AGENCY TO THE BREA REDEVELOPMENT AGENCY FOR THE 2011A NON-HOUSING BONDS AND THE 2011B HOUSING BONDS

**Attachments**

2011A Non-Housing Bonds  
2011B Housing Bonds

**DISCUSSION**

5. TRACKING NOTIFICATION FOR ON-CALL AS-NEEDED PROFESSIONAL SERVICES, DAVID EVANS AND ASSOCIATES FOR LAGOS DE MORENO PARK UPGRADES

**Attachments**

PSA Tracking Memo  
Tracking Sheet\_DEA

6. UPDATE RFP FOR BREA/FULLERTON FIRE FEASIBILITY STUDY - ORAL PRESENTATION
7. Schedule Next Meeting: January 26, 2016

cc: Council Member Glenn Parker  
Mayor Christine Marick

**Special Accommodations**

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

City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**FROM:** City Manager

**DATE:** 01/12/2016

**SUBJECT:** APPROVAL OF MINUTES OF DECEMBER 8, 2015 MEETING

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**Attachments**

Minutes

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# FINANCE COMMITTEE MINUTES

Tuesday, December 8, 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 Pro Tem Cecilia Hupp, Council Member Steven Vargas, David Crabtree, Chris Emeterio, Eric Nicoll, Bill Bowlus, Steve Kooyman, Faith Madrazo, Alicia Brenner, Ana Conrique and Mario Maldonado

1. Matters from the Audience – *None*

## CONSENT

2. Approval of Minutes of November 10, 2015 Meeting – *Approved.*
3. Award Pest Control Agreement to Exterminetics of Southern California for Pest Control at City Buildings, Various City Parks for Squirrel Control, and the Berry Street Reservoir for Rodent Control – *Recommended for City Council approval.*
4. Receive Proposals and Award Contracts to Tropical Plaza Nursery, Inc. and So Cal Land Maintenance, Inc. for Mowing and Landscape Maintenance Services at Various Locations in the City of Brea – *Recommended for City Council approval.*
5. Authorize Professional Services Agreement (PSA) with Stantec for Brea Skate Park Repairs, CIP 7914 – *Recommended for City Council approval.*

## DISCUSSION

6. Schedule Next Meeting: December 22, 2015

Meeting adjourned: 8:44 AM

cc: Mayor Christine Marick  
Council Member Glenn Parker  
Council Member Marty Simonoff

City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**TO:** Honorable Chair and Committee Members

**FROM:** City Manager

**DATE:** 01/12/2016

**SUBJECT:** AMENDMENT TO THE MASTER AGREEMENT WITH  
PAYMENTUS CORPORATION TO PROVIDE ELECTRONIC  
BILL PAYMENT PROCESSING FOR THE CITY'S UTILITY  
BILLING CUSTOMERS

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**RECOMMENDATION**

Staff recommends approving the amendment with Paymentus Corporation and authorizing the City Manager to execute.

**BACKGROUND/DISCUSSION**

In an effort to provide enhanced customer service and to deliver more efficient services to the City of Brea's utility billing customers, staff issued a Request for Proposal (RFP) in September 2010 to provide a platform for electronic bill payment and presentment for the City's utility billing customers. With the use of the platform, registered customers have the ability to access their account and pay their utility billing online, anytime.

After evaluating proposals, staff determined that Paymentus Corporation was the preferred vendor to provide these services and entered into a five year agreement. Paymentus' proposal offered the lowest cost with an initial implementation fee of \$2,500 and a convenience fee to utility billing customers of \$2.95 per transaction.

In April 2014, staff received direction to amend the agreement to absorb the convenience fee for customers because it is perceived as the cost of doing business. Currently, customers are able to make one-time online payments for free with the City absorbing the convenience fee at a reduced rate of \$2.50 per credit card transaction and \$1.50 per

checking/savings account transaction. Absorbing the convenience fee for customers resulted in approximately \$24,500 in banking fees. Approximately, 8.6% of customers utilize the one-time online bill pay feature through Paymentus. It is anticipated that the online bill pay rate will grow as customers become aware of this payment option.

The agreement with Paymentus expires in February 2016 and staff is interested in amending the agreement to extend the terms for another three (3) years with an automatic renewal clause for an additional three (3) years. Staff is pleased with the services provided by Paymentus and their ability to respond to staff questions in a timely manner. For your reference, attached is the existing Master Agreement with Paymentus (Exhibit A) along with the proposed amendment (Exhibit B).

In addition, Paymentus will upgrade the City's Utility Billing Customer Portal to the "enhanced" version (at no cost to the City) that will allow customers a better user experience. The enhanced version offers more versatile tools and functionality. Customers will be able to set up reoccurring online payments using their preferred payment method and have greater flexibility accessing their billing and payment information from their smartphone or tablet. With these enhanced features, staff anticipates online payment processing to increase by 8 to 10 percent.

Staff is also looking to upgrade the City's Utility Billing Software in the near future which may include a new Customer Portal platform that could replace the Customer Portal currently provided by Paymentus. With the proposed amendment, Paymentus is willing to integrate to any new Utility Billing Software that the City chooses so long as Paymentus retains services related to payment processing. Staff have contacted several prospective Utility Billing Software vendors and all have a working relationship with Paymentus.

### **SUMMARY/FISCAL IMPACT**

As part of the proposed amendment, staff was able to negotiate a reduced per transaction fee from \$2.50 to \$2.00 for credit card transactions and \$1.50 to \$1.00 for checking/savings account transactions. This would result in annual savings of approximately \$5,430 based upon the current online payment usage. However, as the online payment processing program continues to grow, the savings realized may

be absorbed from overall increased transactions. Banking fees are currently budgeted in the Water Utility Fund (420) and a budget adjustment is not recommended. There is no General Fund impact.

**RESPECTFULLY SUBMITTED**

Bill Gallardo, City Manager

Prepared by: Alicia Brenner, Senior Management Analyst

Concurrence: Faith Madrazo, Revenue and Budget Manager

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**Attachments**

Exhibit A

Exhibit B

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**MASTER SERVICES AGREEMENT**

Customer:	City of Brea, California
Customer Address:	1 Civic Center Circle, Brea, CA 92821
Contact for Notices to Customer:	Carol Hofstetter
Estimated Yearly Bills / Invoices:	144,000

This Master Services Agreement ("Master Agreement") is entered into as of the Effective Date below, by and between the Customer ("Customer") identified above and **Paymentus Corporation**, a Delaware Corporation ("Paymentus").


**WHEREAS** Paymentus desires to provide and the Client desires to receive certain services under the terms and conditions set forth in this Agreement. Paymentus provides electronic bill payment services to utilities, municipalities, insurance and other businesses.


**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows. This Agreement consists of this signature page, General Terms and Conditions, and the attachments ("**Attachments**") with schedules ("**Schedules**") listed below:

**Schedule A: Paymentus Service Fee Schedule**

This Agreement represents the entire understanding between the parties hereto with respect to its subject matter and supersedes all other written or oral agreements heretofore made by or on behalf of Paymentus or Customer with respect to the subject matter hereof and may be changed only by agreements in writing signed by the authorized representatives of the parties.

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

**Customer:**  
 By:   
 Name: William Gallardo  
 Title: Administrative Services Director  
 Date: February 11, 2011

**Paymentus:**  
 By:   
 Name: DUSHYANT SHARMA  
 Title: CEO  
 Date: FEB 25, 2011





## GENERAL TERMS AND CONDITIONS

### 1 Definitions:

For the purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise.

- 1.1 "**Agreement**" or "**Contract**" shall refer to this Agreement, as amended from time to time, which shall constitute an authorization for the term of this contract for Paymentus to be the exclusive provider of services, stated herein, to the Customer
- 1.2 "**User**" shall mean the users of the Customer's services
- 1.3 "**Effective Date**" shall be the last date upon which the parties signed this Agreement. The Agreement will not be effective against any party until the said date
- 1.4 "**Launch Date**" shall be the date on which Customer launches this service to the Users
- 1.5 "**Payment**" shall mean Users to make payments for Customer's services or Customer's bills
- 1.6 "**Payment Amount**" shall mean the bill amount User wants to pay to the Customer.
- 1.7 "**Services**" shall include the performance of the Services outlined in section 2 of this Agreement
- 1.8 "**Paymentus Authorized Processor**" shall mean a Paymentus authorized merchant account provider and payment processing gateway
- 1.9 "**Average Bill Amount**" shall mean the total amount of Payments collected through Paymentus system in a given month divided by the number of the Payments for the same month.

### 2 Description of Services to be Performed

#### 2.1 **Scope of Services**

Paymentus shall provide Users the opportunity to make Payments by Credit Cards and other payment methods as deemed necessary by Paymentus. Payments may be made by Interactive Telephone Voice Response System ("IVR") or secure Internet interface provided at the Paymentus Corporation's web site or other websites part of Paymentus' Instant Payment Network ("WebSites"), collectively referred to as the ("System").

Paymentus shall, on behalf of the Customer, collect and process Payments from Users using Visa, MasterCard or other credit cards ("hereinafter referred to as a "Card"). Paymentus may also offer other payment options such as eChecks or Debit Cards.

#### 2.2 **Professionalism**

Paymentus shall perform in a professional manner all Services required to be performed under this Agreement.



### **3 Compensation**

#### **3.1 No Cost Installation**

Paymentus will charge no fees related to the initial setup and personalization of its standard service for both Web and IVR interfaces.

#### **3.2 Paymentus Service Fee**

System will charge each User a Service fee for each transaction processed (hereinafter called "Paymentus Service Fee"). Such Paymentus Service Fee is to be collected in addition to the corresponding Payment as part of the transaction.

For each payment, the Paymentus Service Fee collected will be used to pay the corresponding Credit Card transaction fees or transaction fees associated with Debit Cards or eChecks (hereinafter called "Transaction Fees") except for the return items (eCheck returns or Credit/Debit Card chargebacks).

A schedule of Paymentus Service Fee is attached hereto as Schedule A. Paymentus and Customer may mutually review Paymentus Service Fee schedule at regular intervals. However, Paymentus can amend this schedule upon a prior written notice to the Customer, if such change is required due to changes in the Visa and MasterCard regulations or changes in Credit Card fees or changes in the Average Bill Amount.

#### **3.3 E-Bill Hosting Fee**

Paymentus will offer e-bill presentment and payment (EBPP) through the provided web portal "Customer Dashboard" to the customer. Paymentus will invoice a one-time fee of \$2500.00 on the Effective Date of this agreement to customize the e-bill offering.

### **4 Payment Processing**

#### **4.1 Integration with Customer's Billing System**

At no cost to Customer, Paymentus will develop one (1) file format interface with Customer's billing system using Customer's existing text file format currently used to post payments to Customer's billing system. Customer will be responsible to provide Paymentus with the one file format specification and will fully cooperate with Paymentus during the development of the said interface. If Customer chooses to create an automated file integration process to download the posting file, due to Paymentus security requirements, Customer will use Paymentus specified integration process.

#### **4.2 Explicit User Confirmation**

Paymentus shall confirm the dollar amount of all Payments and the corresponding Paymentus Service Fee to be charged to a Card and electronically obtain the User approval of such charges prior to initiating Card authorizations transaction. Paymentus will provide User with electronic confirmation of all transactions.

#### **4.3 Merchant Account**

Paymentus will arrange for the Customer to have a merchant account with the Paymentus Authorized Processor for processing and settlement of the credit card transactions.

#### **4.4 Card Authorization**

For authorization purposes, Paymentus will electronically transmit all Card transactions to the appropriate Card-processing center, in real time as the transactions occur.



#### **4.5 Settlement**

Paymentus together with its authorized Card processor shall forward the payment transactions and corresponding Paymentus Service Fee to the appropriate card organizations for settlement directly to the Customer's depository bank account previously designated by the Customer (hereinafter the "Customer Bank Account").

Paymentus together with Paymentus Authorized Processor will continuously review its settlement and direct debit processes for its simplicity and efficiencies. Customer and Paymentus agree to fully cooperate with each other if Paymentus were to change its settlement and invoicing processes.

### **5 General Conditions of Services**

#### **5.1 Service Reports**

Paymentus shall provide Customer with reports summarizing use of the Services by Users for a given reporting period.

#### **5.2 User Adoption Communication by Customer**

Customer will make Paymentus' Services available to its residential and commercial customers by different means of customer communication including a) through bills, invoices and other notices; b) by providing IVR and Web payment details on the Customer's website including a "Pay Now" or similar link on a mutually agreed prominent place on the web site; c) through customer's general IVR/Phone system; and d) other channels deemed appropriate by the Customer.

Paymentus shall provide Customer with logos, graphics and other marketing materials for Customer's use in its communications with its users regarding the Services and/or Paymentus.

Both parties agree that Paymentus will be presented as a payment method option. Customer will communicate Paymentus option to its end residential and commercial customers wherever Customer usually communicates its other payment methods.

#### **5.3 Independent Contractor**

Customer and Paymentus agree and understand that the relationship between both parties is that of an independent contractor.

#### **5.4 Customer's Responsibilities**

In order for Paymentus to provide Services outlined in this Agreement, the Customer shall cooperate with Paymentus by:

- (i) Customer will enter into all applicable merchant Card or cash management agreements.
- (ii) For the duration of this Agreement, Customer will keep a bill payment link connecting to Paymentus System at a prominent and mutually agreed location on the Customer website. The phone number for the IVR payment will also be added to the web site. Customer will also add the IVR payment option as part of the Customer's general phone system.
- (iii) User Adoption marketing as described in 5.2.
- (iv) Within 30 days of the merchant account setup, Customer will launch the service to the Users.



- (v) For the purpose of providing Customer a posting file for posting to Customer's billing system, Customer will provide the file format specification currently used to post its payments to the billing system. Customer will fully cooperate with Paymentus and provide the information required to integrate with Customer's billing system.

## **6 Governing Laws**

This Agreement shall be governed by the laws of the state of Delaware.

## **7 Communications**

### **7.1 Authorized Representative**

Each party shall designate an individual to act as a representative for the respective party, with the authority to transmit instructions and receive information. The parties may from time to time designate other individuals or change the individuals.

### **7.2 Notices**

All notices of any type hereunder shall be in writing and shall be given by Certified Post or a national Courier or by hand delivery to an individual authorized to receive mail for the below listed individuals, all to the following individuals at the following locations:

To Customer

c/o Carol Hofstetter, Fiscal Specialist  
 Customer of Brea, Administrative Services Department  
 1 Civic Center Circle, Brea 92821  
 (714) 990 - 7681 (Phone)  
 (714) 671- 4484 (Fax)

To Paymentus

c/o President and CEO  
 3455 Peachtree Road N.E. 5<sup>th</sup> Floor  
 Atlanta, GA 30326  
 (888) 476-8910 (Phone)  
 (877) 882-1676 (Fax)

Notices shall be declared to have been given or received on the date the notice is physically received if given by hand delivery, or if notices given by US Post, then notice shall be deemed to have been given upon on date said notice was deposited in the mail addressed in the manner set forth above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be received.

### **7.3 Interpretation**

It is the intent of the parties that no portion of this Agreement shall be interpreted more harshly against either of the parties as the drafter.



#### **7.4 Amendment of Agreement**

Modifications or changes in this Agreement must be in writing and executed by the parties bound to this Agreement.

#### **7.5 Severability**

If a word, sentence or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence or paragraph shall be severed from this Agreement, and this Agreement shall be read as if said word, sentence or paragraph did not exist.

#### **7.6 Attorney's Fees**

Should any litigation arise concerning this Agreement between the parties hereto, the parties agree to bear their own costs and attorney's fees.

#### **7.7 Confidentiality**

Customer will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential or proprietary non-public information it obtains during the term of this Agreement about Paymentus' business, operations, financial condition, technology, systems, no-how, products, services, suppliers, customers, marketing data, plans, and models, and personnel. Paymentus will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential User information it receives in connection with its performance of the services.

#### **7.8 Intellectual Property**

In order that the Customer may promote the Services and Paymentus' role in providing the Services, Paymentus grants to Customer a revocable, non-exclusive, royalty-free, license to use Paymentus' logo and other service marks (the "Paymentus Marks") for such purpose only. Customer does not have any right, title, license or interest, express or implied in and to any object code, software, hardware, trademarks, service mark, trade name, formula, system, know-how, telephone number, telephone line, domain name, URL, copyright image, text, script (including, without limitation, any script used by Paymentus on the IVR or the WebSite) or other intellectual property right of Paymentus ("Paymentus Intellectual Property"). All Paymentus Marks, Paymentus Intellectual Property, and the System and all rights therein (other than rights expressly granted herein) and goodwill pertain thereto belong exclusively to Paymentus.

#### **7.9 Force Majeure**

Paymentus will be excused from performing the Services as contemplated by this Agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Paymentus' reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including telecommunications services), external computer "hacker" attacks, and/or delays of common carrier.

#### **7.10 Time of the Essence**

Paymentus and Customer acknowledge and agree that time is of the essence for the completion of the Services to be performed and each parties respective obligations under this Agreement.

### **8 Indemnification**

#### **8.1 Paymentus Indemnification and Hold Harmless**



Paymentus agrees to the fullest extent permitted by law, to indemnify and hold harmless the Customer and its governing officials, agents, employees, and attorneys (collectively, the "Customer Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Customer Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Paymentus in performing the Services or (ii) a material breach by Paymentus of its covenants.

## **8.2 Customer Indemnification and Hold Harmless**

Customer agrees to the fullest extent permitted by law, to indemnify and hold harmless Paymentus, its affiliates, officers, directors, stockholders, agents, employees, and representatives, (collectively, the "Paymentus Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including without limitation reasonable attorney's fees and expenses) incurred by any Paymentus Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Customer related to the Services or (ii) a material breach of Customer's covenants.

## **8.3 Warranty Disclaimer**

Except as expressly set forth in this Agreement, Paymentus disclaims all other representations or warranties, express or implied, made to the Customer or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness, for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under this Agreement.

## **8.4 Limitation of Liability**

Notwithstanding the foregoing, the parties agree that neither party shall be liable to the other for any lost profits, lost savings or other special, indirect or consequential damages, even if the party has been advised of or could have foreseen the possibility of such damages. Paymentus' total liability for damages for any and all actions associated with this Agreement or the Services shall in no event exceed the specific dollar amount of the Paymentus Service Fee paid to Paymentus for the particular payment transaction which is the subject matter of the claim of damage.

## **8.5 Compliance with Laws and Regulations**

Paymentus shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of Services, including, but not limited to those listed in Schedule B.

## **8.6 Insurance**

Paymentus shall not commence work under this Agreement until it has provided evidence satisfactory to the Customer that it has secured all insurance required in Schedule C and shall maintain such coverage throughout term of this agreement and any subsequent renewal terms.

# **9 Term and Termination**

## **9.1 Term**

The term of this Agreement shall commence on the effective date of this Agreement and continue for a period of 3 (three) years ("Initial Term") from the Launch Date. Services under this Agreement shall begin within 30 days of the merchant account setup.

At the end of the Initial Term, this Agreement will automatically renew for two (2) year unless either Customer or Paymentus provide the other party with not less than 3 (three) months prior written notice before such automatic renewal date that such party elects not to automatically renew the term of this Agreement.

## **9.2 Material Breach**



A material breach of this Agreement shall be cured within 90 (ninety) days ("Cure Period") after a party notifies the other of such breach. In the event, such material breach has not been cured within the Cure Period, the non-breaching party can terminate this Agreement by providing the other party with a 30 (thirty) days notice.

**9.3 Upon Termination**

Upon termination of this Agreement, the parties agree to cooperate with one another to ensure that all Payments are accounted for and all refundable transactions have been completed. Upon termination, Paymentus shall cease all Services being provided hereunder unless otherwise directed by the Customer in writing.



### Schedule A – Paymentus Service Fee Schedule

Paymentus Service Fee charged to the User will be based on one of the following table:

<b>Payment Type</b>	<b>Paymentus Service Fee</b>
Average Bill Amount of \$75.25	Flat Fee of \$2.95

Note: Maximum Amount per Payment is \$300. Multiple payments can be made.

The Paymentus Service Fee will be collected in addition to the end-user bill payment total. Paymentus may apply different limits per transactions for user adoption or to mitigate risks.

The cost for return items and investigations for eCheck returns or Credit/Debit Card chargebacks is \$5.00 per incident.





## **Schedule B**

1. City of Brea Harrassment Policy
2. City of Brea Utility Billing Identify Theft Prevention Program
3. City of Brea Business License and Regulation (Municipal Code, Part I, Title 5)



## Schedule C – Insurance Requirements

**Time for Compliance.** Paymentus shall not commence work under this Agreement until it has provided evidence satisfactory to the Customer that it has secured all insurance required under this schedule. In addition, Paymentus shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Customer that the subcontractor has secured all insurance required under this section.

**Types of Insurance Required.** As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, Paymentus, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Paymentus agrees to amend, supplement or endorse the policies to do so.

- (a) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, and shall be no less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.
- (b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence.
- (c) [[Not Applicable as we are doing no onsite work.]]
- (d) **Professional Liability:** Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

The policy or policies of insurance required under Commercial General Liability shall be endorsed to include Customer as an additional insured

**Insurance.** Paymentus, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the Customer. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Customer. If such coverage is cancelled or reduced, Paymentus shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Customer evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

**Failure to Maintain Coverage.** Paymentus agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not



been furnished to the Customer. The Customer shall have the right to withhold any payment due Paymentus until Paymentus has fully complied with the insurance provisions of this Agreement. In the event that the Paymentus's operations are suspended for failure to maintain required insurance coverage, the Paymentus shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

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

**Safety.** Paymentus shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Paymentus shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

# Paymentus

## AMENDING AGREEMENT

Customer:	City of Brea (CA)
Customer Address:	1 Civic Center Circle Brea, CA 92821
Contact for Notices to Customer:	Alicia Lopez

This Amending Agreement is entered into as of April 8, 2014, by and between the Customer ("Customer") identified above and Paymentus Corporation, a Delaware Corporation ("Paymentus").

### WHEREAS:

- A - The parties entered into a Master Services Agreement dated February 25, 2011
- B - The parties now wish to amend the Schedule A of the Master Services Agreement to convert from a Convenience Fee/User Pay Pricing Model to an Absorbed Fee Pricing Model on July 1, 2014 or thereafter.
- C - The parties now wish to amend Section 3.2 of the Master Service Agreement ("Paymentus Service Fee")


**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:


**Schedule A** of Master Services Agreement will be amended per Schedule A attached with this Amending Agreement, to include discounted Visa Utility Program Rates.

**Section 3.2** of the Master Service Agreement ("Paymentus Service Fee") will be updated to include the Non-Qualified Fee Adjustment disclosure.

**Except the Schedule A, and Section 3.2**, as provided in this Amending Agreement, all provisions of the Agreement remain in full force and effect, un-amended.

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

Customer:  
By:   
Name: William Gallardo  
Title: Acting City Manager  
Date: April 8, 2014

Paymentus:  
By:   
Name: MARK SOLON  
Title: V.P.  
Date: 4-18-2014

# Paymentus

## Schedule A – Paymentus Service Fee Schedule

Paymentus Service Fee charged to the Client will be based on the following model:

<b>Absorbed Fee Model</b>	
<input type="checkbox"/>	Absorbed Model
<input type="checkbox"/>	Average Bill Amount: \$109.71
<input type="checkbox"/>	Paymentus Service Fee per qualified utility rate transaction
•	Credit/Debit Card      \$2.50* (Visa, MasterCard , Discover Utility Program Rate)
•	ACH/ eCheck              \$1.50

Note: Maximum Amount per Payment is \$300. Multiple payments can be made.

\*Pricing is subject to approval by Visa, in accordance with the Visa Utility Program. Pricing is effective upon receipt of the approval from Visa.

Paymentus may apply different limits per transactions for user adoption or to mitigate risks, upon written notification to the Client.

# Paymentus

## General Terms & Conditions

### 3.2 Paymentus Service Fee

For each payment, Paymentus will charge a Paymentus Service Fee as per Schedule A. Paymentus Service Fee collected will be used to pay the corresponding Credit Card transaction fees or transaction fees associated with Debit Cards or eChecks (hereinafter called "Transaction Fees") except for the return items (eCheck returns or Credit/Debit Card chargebacks)..

A schedule of Paymentus Service Fee is attached hereto as Schedule A. The Paymentus Service Fee is based on the Average Bill Amount ("Over-Average") and on the assumption that the total number of payments and the total Payment Amount collected each month from the use of non utility rate qualified cards ("Non-Qualified") such as commercial cards or purchase cards shall not exceed 5%. Paymentus will apply monthly adjustments to the Paymentus Service Fee based on the Over-Average and Non-Qualified adjustments. Paymentus can amend this schedule upon prior written notice to the Client, if such change is required due to changes in the Visa and MasterCard regulations or changes in Credit Card fees or changes in the Average Bill Amount.

## AMENDING AGREEMENT

Customer:	City of Brea (CA)
Customer Address:	1 Civic Center Circle Brea, CA 92821
Contact for Notices to Customer:	Alicia Brenner

This Amending Agreement is entered into as of the below effective date, by and between the Customer ("Customer") identified above and **Paymentus Corporation**, a Delaware Corporation ("Paymentus").

### WHEREAS:

A - The parties entered into a Master Services Agreement dated February 11, 2011

B - The parties now wish to amend the Schedule A of the Master Services Agreement to accommodate a pricing reduction.

C- The parties now wish to amend Section 9.1 of the Master Service Agreement ("Term") to extend the initial term for an additional three (3) years to May 19, 2019. The Agreement shall automatically renew for successive three (3) year terms unless either party provides the other with written notice of the intent not to renew six months prior to the renewal date.

D – The parties now wish to amend Section 4.1 of the Master Service Agreement ("Integration with Customer's Billing System") to acknowledge that Paymentus will, at no cost to the City, integrate with any future Billing System selected by City of Brea, assuming the Billing System will accommodate such integration and will partner with the City and Paymentus to achieve the agreed integration.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Schedule A** of Master Services Agreement will be amended per Schedule A attached with this Amending Agreement.

**Except the Schedule A, Section 4.1 and Section 9.1**, as provided in this Amending Agreement, all provisions of the Agreement remain in full force and effect, un-amended.

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

**Customer:**

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

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

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

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

**Paymentus:**

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

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

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

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

## Schedule A – Paymentus Service Fee Schedule

Paymentus Service Fee charged to the Client will be based on the following model:

Absorbed Fee Model	
<input type="checkbox"/>	Absorbed Model
<input type="checkbox"/>	Average Bill Amount: \$100.00
<input type="checkbox"/>	Paymentus Service Fee per qualified utility rate transaction
•	Credit/Debit Card \$2.00 (Visa, MasterCard , Discover Utility Program Rate)
•	ACH/ eCheck \$1.00

Note: Maximum Amount per Payment is \$300. Multiple payments can be made.

Paymentus may apply different limits per transactions for user adoption or to mitigate risks, upon written notification to the Client.



City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**TO:** Honorable Chair and Committee Members

**FROM:** City Manager

**DATE:** 01/12/2016

**SUBJECT:** BOND PROCEEDS FUNDING AGREEMENTS BETWEEN THE CITY OF BREA AND THE SUCCESSOR AGENCY TO THE BREA REDEVELOPMENT AGENCY FOR THE 2011A NON-HOUSING BONDS AND THE 2011B HOUSING BONDS

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**RECOMMENDATION**

Adopt resolutions.

**BACKGROUND/DISCUSSION**

As a result of the Dissolution Act, the Brea Redevelopment Agency was dissolved on February 1, 2012 and replaced with the Successor Agency to the Brea Redevelopment Agency. In September 2015, Senate Bill (SB) 107 was enacted amending the Dissolution Act and thus allowing for the expenditure of bonds issued between January 2011 to June 2011. The Successor Agency currently has about \$12,594,000 in unspent 2011A Non-Housing Bonds and \$1,709,000 in unspent 2011B Housing Bonds.

A maximum of 45% or approximately \$5,667,000 of the unspent non-housing bond proceeds may be accessed under this legislation. SB 107 allows up to 5% of the proceeds (approximately \$630,000) to be requested on the Recognized Obligation Payment Schedule (ROPS) for Fiscal Year 16-17 (July 1, 2016 to June 30, 2017). The remaining 40% (approximately \$5,037,000) is subject to the approval by the state Department of Finance (DOF) on the Last and Final ROPS. We anticipate filing for the Last and Final ROPS during Fiscal Year 2017-18. Staff is requesting these unspent bonds be used for the Downtown Parking Structure.

In order to spend the bonds, the City of Brea and the Successor Agency must adopt resolutions approving the 2011A Non-Housing Bond Proceeds Funding Agreement. The Bond Funding Agreement will allow the City of Brea to be reimbursed by the Successor Agency for costs incurred for the Downtown Parking Structure.

The remaining balance of the unspent 2011B Housing Bonds may be transferred to the City of Brea and will be included on ROPS Fiscal Year 16-17. The proceeds may be spent on eligible affordable housing uses. In order to spend the bonds, the City of Brea as Housing Successor and the Successor Agency must adopt resolutions approving the 2011B Housing Bond Proceeds Funding Agreement. The Bond Funding Agreement will allow for a transfer to the City of Brea of these unspent bond proceeds in July 2016.

The Bond Proceeds Funding Agreements for the 2011A Non-Housing Bonds and the 2011B Housing Bonds must also be approved by resolution by the Oversight Board and will be on their agenda for their January 26, 2016 special meeting. Upon approval by the Oversight Board, a copy of the resolutions and the Bond Proceeds Funding Agreements will be forwarded to the DOF for approval.

### **FINANCE COMMITTEE**

The proposed Bond Proceeds Funding Agreements were discussed by the Finance Committee at its January 12, 2016 meeting and recommended...

### **SUMMARY/FISCAL IMPACT**

The Successor Agency has about \$12,594,000 in unspent 2011A Non-Housing Bonds and \$1,709,000 in unspent 2011B Housing Bonds. As a result of SB107, the Successor Agency may use 45% (5,667,000) of the unspent Non-Housing Bonds. The first 5% (approximately \$630,000) may be included on ROPS for FY16-17 and the remaining 40% (approximately \$5,037,000) may be included on the Last and Final ROPS, which is anticipated for Fiscal Year 2017-18. Staff is recommending these unspent bonds be used to reimburse the City for the Downtown Parking Structure. The Successor Agency is entitled to the entire unspent 2011B Housing Bonds of approximately \$1,709,000 to be used for affordable

housing purposes. The Bond Proceeds Funding Agreements for the 2011A Non-Housing Bonds and 2011B Housing Bonds must also be approved by the Oversight Board and will be on the agenda for their January 26, 2016 special meeting. A copy of the resolutions and the Bond Proceeds Funding Agreements will be forwarded to DOF for approval.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Lee Squire, Financial Services Manager

Concurrence: David Crabtree, Community Development Director

Kathie DeRobbio, Economic Development Manager

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**Attachments**

2011A Non-Housing Bonds

2011B Housing Bonds

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## 2011A NON-HOUSING BOND PROCEEDS FUNDING AGREEMENT

This 2011A NON-HOUSING BOND PROCEEDS FUNDING AGREEMENT (this “Agreement”), dated as of \_\_\_\_\_, 2016, is entered into by and between the City of Brea (the “City”) and the Successor Agency to the Brea Redevelopment Agency (the “Successor Agency,” and together with the City, the “Parties”).

### RECITALS:

A. The Brea Redevelopment Agency (the “Former Agency”) issued its 2011 Tax Allocation Bonds, Series A (Redevelopment Project AB) (the “2011 Non-Housing Bonds”), in the aggregate principal amount of \$18,839,323.25, pursuant to an Indenture of Trust, dated as of June 1, 2011 (the “Indenture”), by and between the Former Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”).

B. The 2011A Non-Housing Bonds were issued in part to refund tax-exempt bonds issued by the Former Agency, in that a portion of the proceeds of the 2011A Bonds were used to refund and defease the Former Agency’s 2001 Subordinate Tax Allocation Refunding Bonds, Series B, and a portion of the proceeds of the 2011A Bonds, in the amount of \$13,365,473.44, was deposited in a 2011 Redevelopment Fund (as established under the Indenture) for use on Qualifying Redevelopment Projects (as defined in the Indenture). The moneys deposited and maintained in the 2011 Redevelopment Fund are referred to below as the “2011A Project Proceeds.”

C. As of the \_\_\_\_\_, 2016, there remains a balance of \$\_\_\_\_\_ of the 2011A Project Proceeds in the 2011 Redevelopment Fund not yet spent.

D. Pursuant to AB X1 26 (which was enacted in June 2011) and the California Supreme Court’s decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal. 4th 231 (2011), the Former Agency was dissolved as of February 1, 2012, the Successor Agency was constituted as the successor entity to the Former Agency, and an oversight board of the Successor Agency (the “Oversight Board”) was established.

E. AB X1 26 added Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the California Health and Safety Code (“HSC”). Such Parts 1.8 and 1.85, including amendments and supplements enacted after AB X1 26, are referred to herein as the “Dissolution Act.”

F. Pursuant to the Dissolution Act, all assets, properties and contracts of the Former Agency, including unspent 2011A Project Proceeds, transferred to the control of the Successor Agency by operation of law.

G. Pursuant to the Dissolution Act, the Successor Agency must prepare Recognized Obligation Payment Schedules (“ROPS”) at the times prescribed by the Dissolution Act, listing the Successor Agency’s expenditures for each applicable fiscal period.

H. Pursuant to HSC Section 34177(a)(3), the Successor Agency may only make payments listed on an ROPS approved by the Oversight Board and the State Department of Finance (“DOF”).

I. Pursuant to HSC Section 34191.6, the Successor Agency may prepare a last and final ROPS (the “LFROPS”) upon meeting certain conditions; provided that such LFROPS will only become effective upon the Oversight Board’s and the DOF’s approval.

J. According to HSC Section 34191.4, the Successor Agency may proceed with certain actions pertaining to the use of remaining unspent bond proceeds, after the Successor Agency has received a finding of completion (the “Finding of Completion”) issued by the DOF pursuant to HSC Section 34179.7.

K. The DOF issued a Finding of Completion to the Successor Agency on July 9, 2013.

L. Pursuant to HSC Section 34191.4(c)(4) and Section 34191.4(c)(2), the Successor Agency may spend up to 45 percent of the 2011A Project Proceeds on projects in a manner consistent with the bond covenants; provided, that the Successor Agency may spend no more than five percent of the 2011A Project Proceeds before the effectiveness of the LFROPS, and the remaining balance may be expended only after the effectiveness of LFROPS.

M. The Successor Agency has determined that it will use the remaining 2011A Project Proceeds, to the fullest extent permitted, for the costs of Qualifying Redevelopment Projects, including those projects listed in Exhibit A hereto (the “Projects”).

N. In light of Successor Agency’s limited staffing, the City’s traditional role and established procedures for the awarding of public works contracts, and the timing needs with respect to the Projects, the Successor Agency desires to enter into this Agreement with the City, for the City to perform or cause to be performed the work required to complete the Projects, with payment therefor to be made from 2011A Project Proceeds.

O. This Agreement is in furtherance of the winding down affairs of the Former Agency, with respect to the expenditure of unspent bond proceeds as permitted under HSC Section 34191.4.

P. Resolution No. OB\_\_\_\_\_ adopted by the Oversight Board on \_\_\_\_\_, 2016 approving the Successor Agency’s execution and delivery of this Agreement was [approved] [deemed approved] by the DOF pursuant to HSC Section 34179(h) on \_\_\_\_\_, 2016.

**NOW, THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:**

**Section 1.** Subject to the provisions of this Agreement and with the funding provided pursuant to this Agreement, the City agrees to perform or cause to be performed the work required for the Projects, including but not limited to the preparation of designs, plans and specifications and all demolitions, construction and installations. The City shall perform such work in accordance with all applicable federal, state and local laws, rules and regulations.

Subject to the covenants set forth herein, the City shall have the sole discretion with respect to the design, planning, specification and the timing with respect to all components of the Projects.

**Section 2.** (a) For the ROPS (the “FY 2016-17 ROPS”) covering the period from July 1, 2016 through June 30, 2017 (the “FY 2016-17 ROPS Period”), the Successor Agency shall list the transfer of \$\_\_\_\_\_ (which is approximately, but not more than, five percent of the 2011A Project Proceeds) to the City (the “2016-17 ROPS Transfer”).

(b) At the commencement of the FY 2016-17 ROPS Period, the Successor Agency shall transfer the 2011A Project Proceeds in an amount equal to the 2016-17 ROPS Transfer to the City.

**Section 3.** (a) At such time as the Successor Agency prepares the LFROPS, the Successor Agency shall list on the LFROPS a transfer of the Balance Amount (defined below) to the City. “Balance Amount” means an amount of the 2011A Project Proceeds which, when added to the 2016-17 ROPS Transfer, shall equal to 45 percent of the 2011 Project Proceeds; provided, that such calculation shall take into account and include interest earnings on the 2011 Project Proceeds while maintained in the 2011 Redevelopment Fund up to the time of the transfer pursuant to Section 3(b).

(b) As soon as practicable upon the effectiveness of LFROPS, the Successor Agency shall transfer the Balance Amount (per the DOF-approved LFROPS) to the City.

**Section 4.** The City shall use the 2011A Project Proceeds transferred to it pursuant to this Agreement for costs of the Projects (or reimbursement to the City for any funds advanced for costs of the Projects) in a manner consistent with the covenants in the Indenture.

**Section 5.** To the extent the City still holds 2011 Project Proceeds transferred pursuant to this Agreement after the completion of the Projects (as determined by the City Council), the City shall return such unspent 2011 Project Proceeds to the Successor Agency within a reasonable time after such determination.

**Section 6.** Each Party shall maintain books and records regarding its duties pursuant to this Agreement. Such books and records shall be available for inspection by the officers and agents of the other Party at all reasonable times.

**Section 7.** The Parties agree to take all appropriate steps and execute any documents which may reasonably be necessary or convenient to implement the intent of this Agreement.

**Section 8.** This Agreement may be amended from time to time by written instrument executed by both Parties.

**Section 9.** No official, agent, or employee of the Successor Agency or the City, or members of the City Council, or members of the Successor Agency Board of Directors or Oversight Board shall be individually or personally liable for any payment hereunder in the event of any default or breach by the Successor Agency or the City, or for any amount which may otherwise become due to the City or Successor Agency, or successor thereto, or on any obligations under the terms of this Agreement.

**Section 10.** This Agreement is made in the State of California under the Constitution and laws of the State of California, and is to be so construed.

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

**SUCCESSOR AGENCY TO THE BREA  
REDEVELOPMENT AGENCY**

By \_\_\_\_\_  
Mayor of the City of Brea

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Brea

**CITY OF BREA**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

**OVERSIGHT BOARD OF THE  
SUCCESSOR AGENCY TO THE BREA  
REDEVELOPMENT AGENCY**

By \_\_\_\_\_  
Chair

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



## EXHIBIT A

### Description of Projects

1. the construction of a multi-level parking structure at the intersection of Brea Boulevard and Birch Street in the City's Downtown area
2. any other programs and projects and activities of benefit to the Former Agency's Redevelopment Project AB, so long as the program or project is determined by the City to be consistent with the bond covenants under the Indenture.

## 2011B HOUSING BOND PROCEEDS FUNDING AGREEMENT

This 2011B HOUSING BOND PROCEEDS FUNDING AGREEMENT (this “Agreement”), dated as of \_\_\_\_\_, 2016, is entered into by and between the City of Brea, in its capacity as the successor to the housing assets and functions of the former Brea Redevelopment Agency (the “Housing Successor”), and the Successor Agency to the Brea Redevelopment Agency (the “Successor Agency,” and together with the Housing Successor, the “Parties”).

### **RECITALS:**

A. The former Brea Redevelopment Agency (the “Former Agency”) issued its 2011 Taxable Tax Allocation Housing Bonds, Series B (Redevelopment Project AB), in the principal amount of \$10,295,000 (the “2011B Bonds”).

B. The 2011B Bonds were issued pursuant to an Indenture of Trust, dated as of June 1, 2011 (the “Indenture”), by and between the Former Agency and The Bank of New York Trust Company, N.A., as trustee.

C. The 2011B Bonds were issued and sold to finance projects in furtherance of the Former Agency’s low and moderate income housing program (the “Housing Projects”).

D. Pursuant to AB X1 26 (which was enacted in June 2011) and the California Supreme Court’s decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal. 4th 231 (2011), the Former Agency was dissolved as of February 1, 2012, and the Successor Agency was constituted, and an oversight board of the Successor Agency (the “Oversight Board”) was established.

E. AB X1 26 added Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the California Health and Safety Code (“HSC”). Such Parts 1.8 and 1.85, including amendments and supplements enacted after AB X1 26, are referred to herein as the “Dissolution Act.”

F. Pursuant to HSC Section 34175(b), all assets, properties and contracts of the Former Agency, including the unspent proceeds of the 2011B Bonds transferred to the control of the Successor Agency by operation of law.

G. There remains a balance of the 2011B Bonds proceeds in the 2011 Housing Project Fund established and held pursuant to the Indenture (the “Remaining Housing Bond Proceeds”) after satisfaction of enforceable obligations that have been approved on the Successor Agency’s recognized obligation payment schedules (“ROPS”).

H. Pursuant to HSC Section 34176(a), the City Council of the City of Brea (the “City”) adopted Resolution 2012-003 on January 17, 2012, electing for the City to retain the housing assets and housing functions previously performed by the Former Agency, as allowed by law, and thereby becoming the Housing Successor.

I. HSC Section 34176(g) provides that the Housing Successor may designate the use of, and commit, the Remaining Housing Bond Proceeds; provided that such use or commitment of Remaining Housing Bond Proceeds is consistent with the bond covenants.

J. HSC Section 34176(g) further provides that a designation of the use (or commitment) of the Remaining Housing Bond Proceeds must be listed on a ROPS and that the Housing Successor must provide notice to the Successor Agency regarding a designation of the use (or commitment) of the Remaining Housing Bond Proceeds before submitting the ROPS to the Oversight Board.

K. HSC Section 34176(g) provides that the review by the Successor Agency, the Oversight Board and the State Department of Finance (the "DOF") of the Housing Successor's designations and commitments of Remaining Housing Bond Proceeds shall be limited to a determination that the designations and commitments are consistent with bond covenants and that there are sufficient funds available therefor.

L. The Successor Agency received a copy of Resolution No. \_\_\_\_\_, adopted on January \_\_, 2016, by the City Council of the City, acting in its capacity as the Housing Successor, which confirms the Housing Successor's designation of the use of Remaining Housing Bond Proceeds for (the "Housing Successor Projects").

M. The use of the Remaining Housing Bond Proceeds for the Housing Successor Projects shall be consistent with the covenants relating to the 2011B Bonds.

N. The Housing Successor and the Successor Agency desire to enter into this Agreement in connection with the use of Remaining Housing Bond Proceeds for the Housing Successor Projects.

O. This Agreement is in furtherance of the winding down affairs of the Former Agency, with respect to the expenditure of the Remaining Housing Bond Proceeds as permitted under HSC Section 34176(g).

P. Resolution No. \_\_\_\_ adopted by the Oversight Board on \_\_\_\_\_, 2016, approving the Successor Agency's execution and delivery of this Agreement was approved [deemed approved] by the DOF pursuant to HSC Section 34179(h) on \_\_\_\_\_, 2016.

**NOW, THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:**

**Section 1.** (a) For the ROPS (the "FY 2016-17 ROPS") covering the period from July 1, 2016 through June 30, 2017 (the "FY 2016-17 ROPS Period"), the Successor Agency shall list the transfer of all of the Remaining Housing Bond Proceeds (including estimated interest earnings to the date of transfer under Section 1(b)) to the Housing Successor for the costs of the Housing Successor Projects.

(b) At the commencement of the 2016-17 ROPS Period, the Successor Agency shall transfer the Remaining Housing Bond Proceeds to the the Housing Successor.

**Section 2.** Upon receipt, the Housing Successor shall deposit the Remaining Housing Bond Proceeds into the Low and Moderate Income Housing Asset Fund, which fund has been established and is maintained by the Housing Successor pursuant to HSC Sections 34176 and 34176.1.

**Section 3.** The Housing Successor covenants that it shall use the Remaining Housing Bond Proceeds in a manner consistent with the covenants in the Indenture and all applicable law.

**Section 4.** Each Party shall maintain books and records regarding its duties pursuant to this Agreement. Such books and records shall be available for inspection by the officers and agents of the other Party at all reasonable times.

**Section 5.** The Parties agree to take all appropriate steps and execute any documents which may reasonably be necessary or convenient to implement the intent of this Agreement.

**Section 6.** This Agreement may be amended from time to time by written instrument executed by both Parties.

**Section 7.** No official, agent, or employee of the Successor Agency or the City (whether or not acting in its capacity as the Housing Successor), or members of the City Council, or members of the Successor Agency Board of Directors or Oversight Board shall be individually or personally liable for any payment hereunder in the event of any default or breach by the Successor Agency or the Housing Successor, or for any amount which may otherwise become due to the Housing Successor or Successor Agency, or successor thereto, or on any obligations under the terms of this Agreement.

**Section 8.** This Agreement is made in the State of California under the Constitution and laws of the State of California, and is to be so construed.

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

**SUCCESSOR AGENCY TO THE BREA  
REDEVELOPMENT AGENCY**

By \_\_\_\_\_  
Mayor of the City of Brea

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Brea

**CITY OF BREA, as Housing Successor**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

**OVERSIGHT BOARD OF THE  
SUCCESSOR AGENCY TO THE BREA  
REDEVELOPMENT AGENCY**

By \_\_\_\_\_  
Chair

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

City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**TO:** Honorable Chair and Committee Members

**FROM:** City Manager

**DATE:** 01/12/2016

**SUBJECT:** TRACKING NOTIFICATION FOR ON-CALL AS-NEEDED  
PROFESSIONAL SERVICES, DAVID EVANS AND  
ASSOCIATES FOR LAGOS DE MORENO PARK UPGRADES

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**RECOMMENDATION**

Receive notification and concur to proceed with David Evans and Associates for preparing plans, specifications and estimates for Lagos de Moreno Park upgrades.

**BACKGROUND/DISCUSSION**

City Council authorized six (6) Professional Services Agreements (PSA's) at the September 16, 2015 Council meeting. With this authorization, Council also requested a process to track expenditures on the PSA's through the City Council's Finance Committee. The tracking method and form were reviewed and approved by the Finance Committee at their September 28, 2015 meeting (attached guidelines and tracking form).

One of the six PSA's was for David Evans and Associates (DEA). Outside of this PSA, DEA had been contracted to provide the concept plan for the upgrades at Lagos.

The Laurel playground/Lagos de Moreno Park upgrades have been a high Council priority project which has required close coordination with the School District on a short timeline. DEA was one of two consultants interviewed for the current project. Because DEA has had multiple project experiences with the Division of State Architect (DSA), who reviews all construction work at school sites, staff felt they're best suited for the project. The existing PSA with DEA will allow staff to expedite the design work for the upgrades.

While being able to expedite the work, this contract is unique in the fact that it will use the majority of the PSA and passes the reporting trigger of 75% of the total PSA value per the attached tracking and reporting guidelines. In a typical situation, DEA could have been used for multiple projects with reporting provided as the 75% level was gradually reached.

Preparation of the plans, specifications and estimates for the upgrades at Lagos will cost an estimated \$197,100. As this will use the majority of the not to exceed amount of \$200,000, staff will return to add additional funding if needed for any additional work that can't be accommodated by the other PSA's.

### **SUMMARY/FISCAL IMPACT**

Using David Evans and Associates under the existing PSA will expedite the design work for the Lagos de Moreno Park upgrades. Funding for the preparation of the plans, specifications and estimates will cost an estimated \$197,100 of the previously approved \$200,000. This expenditure will be tracked on the bi-annual spending report for the six consultants.

### **RESPECTFULLY SUBMITTED**

Bill Gallardo, City Manager

Prepared by: Bill Bowlus, Public Works Superintendent

Concurrence: Eric Nicoll, Public Works Director

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### **Attachments**

PSA Tracking Memo

Tracking Sheet\_DEA


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## MEMORANDUM

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**TO:** Bill Gallardo, City Manager  
City Council Members

**FROM:**  Eric Nicoll, Public Works Director

**DATE:** September 30, 2015

**SUBJECT: TRACKING ANNUAL ON-CALL AS-NEEDED PROFESSIONAL SERVICES AGREEMENTS – ENGINEERING SERVICES**

At the September 16, 2015 City Council meeting six (6) Professional Services Agreements were approved for engineering and design work up to an amount of \$200,000 each. Council Member Parker requested a process to track expenditures through the City Council's Finance Committee. Staff presented the attached process and example of a tracking form which the Finance Committee approved at their meeting on September 28, 2015.

The Engineering Division of Public Works will begin using this process. Feel free to contact me or Steve Kooyman, City Engineer, should you have any questions.

cc: Steve Kooyman, City Engineer



## Attachment A

### **PROCEDURES FOR TRACKING ANNUAL ON-CALL AS-NEEDED PROFESSIONAL SERVICES AGREEMENTS – ENGINEERING SERVICES**

#### **A. Staff Review and Tracking System**

- Step 1. Staff will develop a Scope of Work to complete the required engineering work within the specific CIP Project.
- Step 2. Staff will submit the Scope of Work to all or some of the consulting firms on the list, depending on the specific need of service, to obtain their work plan and cost proposals to complete the Scope of Work.
- Step 3. Staff will evaluate the consultants work plan and cost proposals to complete the Scope of Work as well as assess the project budget and PSA not-to-exceed threshold amount of \$200,000.
- Step 4. Staff will select the preferred engineering firm and initiate a Purchase Order for the Scope of Work if the CIP Project budget is sufficient to cover the work and if the proposed cost does not exceed the available un-encumbered PSA balance (See Exhibit A for a proposed cost tracking summary report). If the CIP Project budget is insufficient to cover the Scope of Work, staff will evaluate the funding and Scope of Work options with Administrative Services, which might require additional Finance Committee and/or City Council action.
- Step 5. Staff will submit the Purchase Order request with back-up Scope of Work and selected firm's proposal to Administrative Services – Purchasing to obtain an approved Purchase Order.
- Step 6. Staff will submit the approved Purchase Order and a Notice to Proceed with the work to the selected firm.

#### **B. Finance Committee Review and Reporting**

- Step 1. Staff will prepare a Bi-Annual Spending Report for the six (6) firms for review by the Finance Committee (See Exhibit A for an example of this Report).
- Step 2. Staff will set a 75% contingency threshold amount (75% of \$200,000 or \$150,000) within the tracking system for each firm as part of the checks and balances for PSA threshold controls. If a cost proposal or accumulative approved encumbered Purchase Orders with new cost proposal from a preferred firm exceeds this 75% contingency amount but not the \$200,000 not-to-exceed threshold amount, staff will prepare a Finance Committee agenda report for a subsequent meeting to brief the Committee on the remaining budget and scope for the firms.

# EXHIBIT A

9/22/2015

## Work Order Summary Report

AS NEEDED ON-CALL CIVIL DESIGN SERVICES					
Company	FUNDS		P.O. No.	Contact	Address
	Max/Yr.	Design Cost			
Kreuzer	PN 7318 - Kraemer/Lambert Rehabilitation	\$100,000	66756	Rick Kreuzer, PE 714-656-0165 rick@kruezercons ulting.com	320 Main Street, Unit D Seal Beach, CA 90740
	PN...				
	PN...				
	PN...				
	PN...				
	PN...				
	<b>Subtotal</b>	<b>\$100,000</b>			
	<b>Remaining Funds</b>	<b>\$100,000</b>			

# EXHIBIT A

1/5/2016

## Work Order Summary Report

<b>AS NEEDED ON-CALL CIVIL DESIGN SERVICES</b>					
<b>Company</b>	<b>FUNDS</b>		<b>P.O. No.</b>	<b>Contact</b>	<b>Address</b>
	<b>Max/Yr.</b>	<b>= \$200,000</b>			
	<b>Project No./Name</b>	<b>Design Cost</b>			
<b>David Evans and Associates</b>	PN 7929 - Lagos de Moreno Park Upgrades	\$197,100		Gregory Clark, 909-912-7352 gclark@deainc.com	4200 Concoors, Suite 150, Ontario, CA 91764
	PN...				
	PN...				
	PN...				
	PN...				
	<b>Subtotal</b>	\$197,100			
	<b>Remaining Funds</b>	\$2,900			

City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**FROM:** City Manager

**DATE:** 01/12/2016

**SUBJECT:** UPDATE RFP FOR BREA/FULLERTON FIRE FEASIBILITY  
STUDY - ORAL PRESENTATION

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