



FINANCE COMMITTEE AGENDA

Tuesday, February 23, 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 January 12 Meeting

Attachments

Minutes

3. Amendment No. 5 to Professional Services Agreement with David Evans and Associates, Inc. for the Additional Design Work on the Tracks at Brea, Project 7873

Attachments

DEA PSA Amendment 5

DEA PSA Amendment 5 Proposal

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

4. Approval of a Professional Services Agreement with Kimley - Horn to Prepare an Environmental Assessment for a Proposed Mixed-Use Development Located at the Northwest and Northeast Corner of State College Boulevard and Birch Street

Attachments

Exhibit A

Professional Service Agreement (PSA)

DISCUSSION

5. Schedule Next Meeting: March 8, 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

FINANCE COMMITTEE COMMUNICATION

DATE: 02/23/2016

SUBJECT: Approval of Minutes of January 12 Meeting

Attachments

Minutes



FINANCE COMMITTEE MINUTES

Tuesday, January 12, 2016

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, Chris Emeterio, David Crabtree, Eric Nicoll, Bill Bowlus, Kathie DeRobbio, Steve Kooyman, Adam Loeser, Faith Madrazo, Sean Matlock, Lee Squire, Alicia Brenner, Keri Bullock, Ana Conrique and Mario Maldonado

1. Matters from the Audience – *None*

CONSENT

2. Approval of Minutes of December 8, 2015 Meeting – *Approved.*
3. Amendment to the Master Agreement with Paymentus Corporation to Provide Electronic Bill Payment Processing for the City's Utility Billing Customers – *Recommended for City Council approval.*
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 – *Recommended for City Council approval.*

DISCUSSION

5. Track Notification for On-Call As-Needed Professional Services, David Evans and Associates for Lagos De Moreno Park Upgrades – *The Committee received notification and agreed to proceed with David Evans and Associates for preparing plans, specifications and estimates for Lagos de Moreno Park upgrades.*
6. Update RFP for Brea/Fullerton Fire Feasibility Study (Oral Presentation) – *The Committee received an update from staff regarding the status of the RFP and discussed the recommendation to engage Citygate Associates, LLC to conduct a feasibility study and develop recommendations to provide fire services to the cities of Brea and Fullerton under a Joint Powers Authority jurisdiction. A staff report including a request for additional appropriation to be forwarded to City Council for consideration.*

7. Schedule Next Meeting: January 26, 2016

Meeting adjourned: 9:05 AM

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

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Honorable Chair and Committee Members

FROM: City Manager

DATE: 02/23/2016

SUBJECT: AMENDMENT NO. 5 TO PROFESSIONAL SERVICES AGREEMENT WITH DAVID EVANS AND ASSOCIATES, INC. FOR THE ADDITIONAL DESIGN WORK ON THE TRACKS AT BREA, PROJECT 7873

RECOMMENDATION

Approve Amendment No. 5 to the Professional Services Agreement (PSA) with David Evans and Associates, Inc. (DEA) to provide additional design services and construction administration for The Tracks at Brea trail project in an amount not to exceed \$58,700.

BACKGROUND/DISCUSSION

The Tracks at Brea project involves the development of a four mile dual tread bicycle trail with a separate pedestrian path along abandoned railroad rights-of-way, flood control channels and City-owned property. The first segment of the trail was completed in 2011, Segment 3 construction is nearly complete, and other segments will be completed as grant funds are available. So far, The Tracks at Brea has been awarded grants totaling over \$17 million.

DEA was selected as the project's landscape architecture and engineering firm via a competitive Request for Proposal (RFP) process that included the review of six well qualified firms by a multi-departmental staff team. Council approved DEA's Professional Services Agreement (PSA) on November 5, 2013. As the scope of work for the trail project has grown as more grant funding has been obtained, Council has approved a first amendment to the PSA on June 17, 2014, a second amendment on October 7, 2014, a third amendment on March 12, 2015 and a fourth

amendment on August 18, 2015.

DEA has proven to be an excellent fit for The Tracks project. They are responsive, creative, knowledgeable and work collaboratively with City staff and other consultants. So far they have met all deadlines and have exceeded expectations. DEA worked on The Tracks project in 2007 when they successfully completed the Master Plan for the trail, the Phase I environmental investigation and the Mitigated Negative Declaration. Their expertise was critical in originally determining the trail route, as well as identifying issues and opportunities to be considered in the development of the trail. As a large firm, DEA brings many resources to the project with over 37 years experience and 18 locations in seven states. Their multi-disciplinary staff includes landscape architects, engineers, surveyors and planners. DEA has designed trails for Los Angeles County, the City of Burbank and the City of Yucaipa, among others.

Based on the excellent work DEA has done to date, staff recommends that the fifth amendment to their PSA be approved.

The scope of the recommended amendment to the PSA includes moving from conceptual plans to bid ready construction documents for trail amenities on Segment 3. The specific amenities include a restroom, drinking fountain, seating area, decorative hardscape and bike rack. DEA's estimate for performing the needed work is \$55,910. Staff typically recommends adding a small contingency to the estimate and, in this case, we are recommending a 5% or \$2,790 contingency. The City will only be billed for work that is performed per the terms of the PSA.

Continuing to work with DEA will ensure consistency of the trail design and is expected to be more cost and time efficient than bringing a new firm on to the project. The time schedule is important as the grant funding for these improvements have stringent deadlines for completion. The grant funding for these amenities is part of a \$2.5 million grant that includes building Segment 2.

SUMMARY/FISCAL IMPACT

It is recommended that Council approve Amendment No. 5 to the Professional Services Agreement with David Evans and Associates, Inc. to provide additional design services for The Tracks at Brea Trail project. The not to exceed amount for the scope of work, including a 5% contingency, is \$58,700. The estimated construction cost, which is grant funded, is \$568,000; thus, DEA's estimate of \$55,910 is less than 10%.

It is recommended that the City's Park Development Fund 250 be used to cover this design expense. The Parks, Recreation and Human Services Commission will have discussed this expenditure at their meeting on February 22, 2016.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Kathie DeRobbio, Economic Development Manager

Concurrence: David Crabtree, Community Development Director

Attachments

DEA PSA Amendment 5

DEA PSA Amendment 5 Proposal

AMENDMENT NO. 5 TO PROFESSIONAL SERVICES AGREEMENT

This Amendment No. 5 to Professional Services Agreement is made and entered into this _____ day of _____, by and between **David Evans and Associates, Inc.** ("CONSULTANT") and the **CITY OF BREA** ("CITY").

A. Recitals.

(i) **On or about November 5, 2013**, CITY and CONSULTANT entered into an agreement for professional services, whereby CONSULTANT provides landscape design and engineering services for The Tracks at Brea project ("Agreement," hereinafter).

(ii) **On or about June 17, 2014**, CITY and CONSULTANT entered into an amendment for the professional services agreement, whereby CONSULTANT provides additional landscape design and engineering services for The Tracks at Brea project ("Amendment No. 1," hereinafter).

(iii) **On or about October 16, 2014**, CITY and CONSULTANT entered into a second amendment for the professional services agreement, whereby CONSULTANT provides additional landscape design and engineering services for The Tracks at Brea project ("Amendment No. 2," hereinafter).

(iv) **On or about March 12, 2015**, CITY and CONSULTANT entered into a third amendment for the professional services agreement, whereby CONSULTANT provides additional landscape design and engineering services for The Tracks at Brea project ("Amendment No. 3," hereinafter).

(v) **On or about August 18, 2015**, CITY and CONSULTANT entered into a third amendment for the professional services agreement, whereby CONSULTANT provides additional landscape design and engineering services for The Tracks at Brea project ("Amendment No. 4," hereinafter).

(vi) The parties hereto desire to amend Agreement, whereby CONSULTANT provide additional landscape design and construction administrative services for The Tracks at Brea project, thus increasing the contract amount from \$774,430 to \$833,130 ("Amendment No. 5," hereinafter).

B. Amendment.

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

1. Notwithstanding any other provision therein, the term of the Agreement is hereby increased from \$774,430 to \$833,130. Except as amended by this Amendment NO. 5, all other terms and conditions of the Agreement remain unchanged.

2. The persons executing this Amendment No. 5 warrant that they are authorized to execute this Fifth Amendment and that this Amendment is binding on the parties hereto.

NOW, WHEREFORE, the parties have executed this Amendment No. 5 as of the date first set forth above.

CITY OF BREA
A California municipal corporation

CONSULTANT

Christine Marick, Mayor

Kim Rhodes, Vice President

Attest:

City Clerk

Rob Bathke, P.E, Associate



DAVID EVANS
AND ASSOCIATES INC.

January 27, 2016

Ms. Kathie DeRobbio
City of Brea
One Civic Center Circle
Brea, CA 92821

**SUBJECT: PROPOSAL TO PROVIDE FINAL DESIGN PLANS FOR SEGMENT 3
"FUTURE AMENITIES"**

Dear Kathie:

On behalf of *David Evans and Associates, Inc.* (DEA), we are pleased to offer our proposal for final civil engineering and landscape architectural services related to Segment 3 of The Tracks at Brea. These amenities include a restroom, drinking fountain, butterfly garden, outdoor seating / plaza area, and fitness equipment areas. Following is our proposed scope of services based on the level of effort anticipated as of this date:

Task 1 - Agency Coordination / Project Team Meetings

DEA will coordinate with the City during the final design process. This task also includes 2 project team meetings at City Hall.

Task 2 – Revised Conceptual Plan

Utilizing initial plans developed during the planning for Segment 3, and amenities identified in the ATP grant application, DEA will prepare a revised conceptual plan indicating the location of the prefabricated restroom, plaza / shade / seating area, bike rack, interpretive and / or monument sign (design by others), and butterfly garden. Plans will also indicate the proposed location of the drinking fountain, guardrails and handrails, steps, decorative hardscape, and fitness equipment. The splashpad and children's playground areas are not included at this time. This task includes up to two revisions to the plan prior to moving forward with final construction documents.

Task 3 – Domestic Water and Sewer Improvement Plans

DEA will prepare domestic water and sewer improvement plans for final connection into the restroom building. DEA will coordinate with the restroom prefabricating company for the domestic and sanitary sewer connections to the plumbing chase within the building. A drinking fountain will be incorporated into the building design.

Task 4 - Precise Grading and Paving Plans

Utilizing the precise grading plans for Segment 3, DEA will prepare a 1"= 10' scale precise grading and paving plan for the project area depicting concrete and specialty hardscape areas, finish surface elevations, and the restroom building pad and finish floor elevations including

details for steps and access ramps. The plan will consider ADA requirements for accessibility. Minimal grading is expected based on the previous design for Segment 3.

Task 5 - Construction Details

DEA will prepare construction details for paving, overhead structures, and site amenities where appropriate. Please note, we have not included structural engineering calculations at this time.

Task 6 - Site Amenities Plan

This plan will designate features of the proposed plaza area improvements including placement, detail references, material and manufacturer callouts, general construction notes, and specific elements of the overall design which are necessary for the proper construction of proposed items including picnic areas/shelters, par/fitness equipment areas, public restroom, and decorative hardscape entry areas.

Task 7 –Restroom Building

DEA is proposing a prefabricated and/or pre-engineered structure. We have found increased flexibility with pre-engineered structures and are confident that we can provide structures that will satisfy Brea's concerns regarding vandal resistance, use of concrete masonry units, and the use of sustainable design/construction practices. We will coordinate with manufacturers and provide restroom building and picnic shelter drawings based on input and available budget. Building elevations, floor plans, general utility information, roofing information and sometimes general footing/foundation data (typically not site specific) are provided by the manufacturer during the design phase.

Structural calculations and full architectural drawings for pre-fabricated or even pre-engineered buildings are not typically provided until the manufacturer is under contract with either the agency or with the successful contractor. This becomes a deferred submittal that will take place once a contractor has been selected for the project and will be reviewed by the City for approval at that time.

If the City will not allow a deferred submittal and requires full architectural drawings to be submitted during the design phase but would still like the contractor to enter into an agreement with the manufacturer when the project is awarded, there may be a necessary fee in order to have the manufacturer provide those drawings. The fee for those drawings would then be deducted from the price of the building when / if ordered. Those fees for full architectural and structural drawings are not included in our scope of work at this time. It is difficult to determine what those fees will be until the design of said structures/buildings has been determined. Plans will be submitted to Brea's Fire Department for review and approval if necessary; however given the current use guidance it doesn't appear that the building will need to be sprinklered.

Task 8 – Planting Improvement Plans

DEA landscape architects will provide planting and seed mix information for the butterfly garden.

Task 9 - Irrigation Improvement Plans

The irrigation improvement plan will provide the necessary information for minor modifications in providing irrigation to the butterfly garden. The plans will indicate the point of connection, backflow prevention and pressure regulation (as necessary), and equipment size and type in the irrigation legend.

Task 10 - Electrical / Lighting Plans

Design West Engineering will prepare plans and specifications to include the design of new electrical / lighting service and meter pedestal to the restroom and entry monument sign.

- 1) (1) Pre-design site visit as required for verification of existing conditions
- 2) Electrical specifications provided in book format or on plan sheets
- 3) State of California Board of Professional Engineers & Land Surveyors Electrical stamp and signature
- 4) Completion of applicable governing agency comments (plan check comments)
- 5) Electrical plans including the following:
 - a) Site lighting layout, circuiting, and control wiring diagram for general lighting purposes
 - b) Point by Point of site lighting foot candle levels as necessary to comply with plan check requirements
 - c) Schedule of lighting fixtures
 - d) Lighting layout and circuiting
 - e) Title 24 lighting compliance forms
 - f) Lighting control wiring diagrams necessary for special control requirements
 - g) Reuse existing electrical service
 - h) Distribution and branch panel locations
 - i) Single line diagram
 - j) Load and panel schedules
 - k) Power requirements as programmed by user staff

Services Excluded:

- 1) Verifying locations of existing underground utilities which transit the site
- 2) Upgrade to the existing electrical service due to either insufficient capacity or inadequate condition.
- 3) Site lighting pole base structural calculations and associated fees
- 4) Public street lighting, traffic control and offsite utilities
- 5) Re-engineering of our documents after delivery of plans readied for plan check submittal as required to conform to revised design
- 6) Construction site visits
- 7) Printing of drawings and specifications for submission to bidding contractors
- 8) Calculation of plan check and/or building permit fees or payment thereof
- 9) Construction contract bid negotiation or review
- 10) Electrical Engineering services other than those listed in the scope of work and services included
- 11) Record drawings

Task 11- Project Specifications / Bid Documents

DEA will prepare project specifications and bid documents that will include the project description, bid schedule, bid item descriptions, payment method, special provisions, technical specifications and applicable detail references such as City of Brea standards.

Ms. Kathie DeRobbio
City of Brea
The Tracks at Brea – Segment 3
Plaza Improvement Area
Final Design Services
Page 4

Task 12 - Construction Cost Estimate

The project team will prepare construction cost estimates and bid schedule in a per unit basis (or lump sum) of proposed site improvements at 65%, 90% and 100% completion. This format will directly match the contractor bid schedule for ease of comparison. The estimate will be in tabular form for each construction item indicating quantity, unit, unit price, and total cost.

Task 13 - Plan Submittals and Approval Process

This task includes submittal of draft plans, specifications and estimates and subsequent review by the City at 75% and 100% completion.

Any service requested which does not fall within the scope of work listed herein, or any duplication of work due to changes desired by the City such as the creation of bid alternate packages or project phasing efforts, will be performed on an "Extra Services" basis in accordance with our hourly rate schedule. Items such as reproduction/ plotting services, mileage, and delivery costs (Federal Express, UPS, etc.) are considered reimbursable and will be billed at cost plus 15%. Invoices will be due and payable within 30 days and will be sent monthly based upon the percentage of work completed.

Please review this proposal with your team and let us know of desired modifications. Our team is readily available to assist once you provide a 'notice to proceed'.

Thank you again for the opportunity to be of assistance to the City of Brea.

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.



Kim S. Rhodes, L.A. 3867
Vice President

P:/B/BREA0004/Con/Proposals/ Second Revised Segment 3 Future Amenities

City of Brea
SEGMENT 3 FUTURE AMENITIES
 Project Fee Schedule

| Task & Description | SLA \$175 | PE \$160 | ENG \$125 | LA \$140 | IRR \$125 | LD \$125 | ADM \$85 | EE LS | Total \$ | Reim. \$ |
|---|-----------|----------|-----------|----------|-----------|----------|----------|-------|----------|----------|
| 1 Agency Coordination / Project Team Meetings | 12 | | 6 | | 4 | | | | \$ 3,350 | \$ 200 |
| 2 Revised Conceptual Plan | 10 | | | 6 | | 12 | | | \$ 4,090 | \$ 150 |
| 3 Domestic Water and Sewer Improvement Plans | 2 | 4 | 24 | | | | | | \$ 3,990 | - |
| 4 Precise Grading, Paving, and Drainage Plans | 2 | 6 | 40 | | | | | | \$ 6,310 | - |
| 5 Construction Details | 10 | | | | 4 | 25 | | | \$ 5,375 | - |
| 6 Site Amenities Plan | 6 | | 2 | | | 35 | | | \$ 5,675 | - |
| 7 Restroom Building | 12 | | | | | 16 | | | \$ 4,100 | - |
| 8 Planting Improvement Plans | 1 | | | 3 | | 4 | | | \$ 1,095 | - |
| 9 Irrigation Improvement Plans | 1 | | | | 14 | | | | \$ 1,925 | - |
| 10 Electrical / Lighting Plans | 2 | | | 6 | | | | 3,600 | \$ 4,790 | \$ 100 |
| 11 Project Specifications / Bid Documents | 8 | 2 | 6 | 10 | 4 | 8 | 4 | | \$ 5,710 | - |
| 12 Construction Cost Estimate | 2 | 1 | 4 | | | 8 | | | \$ 2,010 | - |
| 13 Plan Submittals and Approval Process | 8 | 4 | 8 | | 12 | 16 | | | \$ 6,540 | \$ 500 |

Legend:
 SLA=Senior Landscape Architect, PE=Professional Engineer, ENG=Civil Engineering Designer, LA=Landscape Architect, IRR/Irrigation Designer, LD=Landscape Designer, ADM=Administration, EE=Electrical Engineer

Please note that scope and fee are negotiable.

Sub-Total \$ 54,960 \$ 950
TOTAL: \$ 55,910
 (for budgetary purposes only)



City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Honorable Chair and Committee Members

FROM: David Crabtree

DATE: 02/23/2016

SUBJECT: Approval of a Professional Services Agreement with Kimley - Horn to Prepare an Environmental Assessment for a Proposed Mixed-Use Development Located at the Northwest and Northeast Corner of State College Boulevard and Birch Street

RECOMMENDATION

Approve Professional Services Agreement.

BACKGROUND/DISCUSSION

BACKGROUND

The proposed project is located at the northwest and northeast corner of State College Boulevard and Birch Street. The project includes the development of two detached, mixed-use buildings approximately 924,000 square feet in size on a 10-acre project site, and the addition of two new parking floor levels offering 462 stalls on an existing parking structure. Both are located on the northwest corner of Birch Street and State College Boulevard.

The project also includes the construction of a 96,000 square feet, 150-room hotel located on a 3-acre parcel on the northeast corner of Birch Street and State College Boulevard.

The project proponent is Hines. The City of Brea will be the lead agency. The proposed project will require Planning Commission approval of a Conditional Use Permit, Precise Development, and Tentative Tract Map. The Tract Map will require City Council review.

Discretionary projects require review under the California Environmental Quality Act (CEQA). As such, the project will require an environmental assessment to determine environmental impacts. As part of the environmental review, the consultant will assess cumulative project impacts and can concurrently and/or subsequently study any development alternate scenarios. The final environmental document will serve as the environmental clearance for the proposed mixed-use development. The project applicant is required to pay for any costs related to the environmental review. The applicant costs have been outlined in the Fiscal Impact section of this report.

DISCUSSION

The applicant has agreed for the City to pursue a sole source contract in order to expedite the environmental impact review associated with this project. Two consultant firms were reviewed for consideration. Of the two consultants, Kimley – Horn’s scope of work was determined to be comprehensive, reasonable for the work effort, high quality, qualified staff, and included lower hourly rates and the lowest cost proposal overall. Kimley - Horn’s proposal ensures most of the work effort will be conducted by associate level staff, billing at a lower rate than the project director or senior staff providing additional cost savings. Staff’s experience with Kimley - Horn has found them to be responsive and thorough in their work products, inclusive of competent and experienced staff and with pricing competitive in the marketplace. Staff recommends using Kimley - Horn and their team of sub consultants for this work effort based on their qualifications, experience, and competitive pricing.

SUMMARY/FISCAL IMPACT

The cost for Kimley – Horn to prepare the environmental assessment will not exceed \$59,981 (see proposal, attached as Exhibit A). The proposal is divided into several tasks as outlined in the table below:

| Task No. | Task | Cost | Project Applicant Cost |
|----------|--|-------------|------------------------|
| 1 | Project Definition: Support Assistance | \$16,900.00 | \$16,900.00 |
| | Technical Report Preparation | \$16,350.00 | \$16,350.00 |
| 2 | Environmental Document - Addendum | \$17,769.00 | \$17,769.00 |
| 3 | Project Coordination and Meetings | \$8,562.00 | \$8,562.00 |
| | Reimbursable Expenses | \$400.00 | \$400.00 |

The applicant will provide the funding for the environmental assessment for the proposed mixed-use development. The proposed cost has been shared with the project applicant. Work can commence upon City Council approval and securing of funds from the applicant.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Star Haro, Associate Planner

Concurrence: David Crabtree, Community Development Director

Attachments

Exhibit A

Professional Service Agreement (PSA)



December 23, 2015,
as revised February 16, 2016

Staro Haro
Associate Planner
City of Brea Planning Division
1 Civic Center Circle
Brea, CA 92821

RE: Proposal for the Brea Place Project

Thank you for the opportunity to submit this proposal to the City of Brea (City) for the preparation of California Environmental Quality Act (CEQA) documentation for the proposed Brea Place project. This Scope of Work assumes the preparation of an Addendum to the Brea General Plan Final Environmental Impact Report.

The Kimley-Horn Project Team would be led by Ms. Dana C. Privitt, AICP. Ms. Privitt has over 30 years of experience in the environmental planning field and has focused her career on CEQA environmental analyses, project management, and planning documentation for multi-issue development and infrastructure projects. She has managed the preparation of several recent Addendums. Ms. Privitt has extensive experience in communicating project and environmental issues having prepared and led public and agency scoping meetings, outreach programs, and presentations to decision-making bodies on a variety of projects including those with high community interest and controversy.

Our proposed Scope of Work and fees is provided as an attachment to this letter. We appreciate the opportunity to provide this proposal to the City. We are prepared to begin work upon receipt of your authorization to proceed. Please feel free to contact us if you have any questions or require additional information regarding our scope or fees.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "Dana C. Privitt". The signature is stylized and cursive.

By: Dana C. Privitt, AICP
Associate

Who We Are

Kimley-Horn and Associates, Inc. (Kimley-Horn) is a full service consulting firm recognized as a leader in providing comprehensive and innovative planning, environmental, transportation planning and engineering, and civil and structural services to public-sector and private-sector clients nationwide. Founded in 1967, we have grown from a small group of traffic engineers and transportation planners to a more than 2,500-employee, multidisciplinary firm in 80 offices nationwide. We are a privately-owned company with more than 300 employee-owners. Our continued growth and stability over the past 49 years is the direct result of our commitment to integrity and dedication to providing quality services to our clients. Our clients receive the local knowledge and responsiveness of a small firm backed by the resources only a national firm can provide.

Our key staff bring knowledge on local and regional development projects to deliver readable and defensible environmental documents that are sensitive to the public's concern regarding impacts on the community and for resource protection, as well as to the real-world issues associated with cost and feasibility of implementing development and infrastructure projects. We have a thorough understanding of local, State and federal regulations through both our experience and regular training on changes in environmental policy and applicable case law affecting the interpretation of current statutes. Our staff has an excellent track record of preparing thorough California Environmental Quality Act (CEQA) documents that are capable of withstanding challenge.

Project Team

When you choose a consultant, you are really choosing the people who offer you the technical expertise, hands-on experience with similar projects, and commitment to a high standard of quality and client service that will make your project as successful as you have envisioned. The people on our team are passionate about their work and do it well. Full resumes are provided in Appendix A. The proposed Brea Place Project would be managed by Dana C. Privitt, AICP, from our Orange office.

Project Understanding

The City of Brea (City) has requested proposals for preparation of CEQA documentation for the Brea Place Project. The Applicant, Hines, is requesting approval of a horizontally and vertically mixed use development integrated into the existing Brea Place office campus. Within the approximately 30-acre campus, Hines is proposing to develop approximately 768 residential units, a 150-key hotel, and 13,000 square feet (sf) of retail uses. As one of the few remaining large urban sites in the City, both the Applicant and the City envision the reuse and intensification of development on the property to serve as a gateway to downtown Brea. The General Plan notes that the "success of Downtown can be attributed to its integration of residential and commercial land uses. Brea residents and visitors from surrounding communities enjoy the shopping, entertainment, and dining available within a compact, pedestrian-friendly area. Linking surrounding neighborhoods to Downtown Brea is vital to the continued success of Downtown."

The project site is one of the opportunity areas identified in the General Plan for mixed use development to encourage the continued revitalization of the downtown. Mixed Use I encourages vertical integration of residential and commercial uses. Specific to the project site, Focused Development Site 3 is identified in the General Plan as a key opportunity site for high density residential adjacent to the Brea Mall and within walking distance to downtown Brea. Focused Development Site 4 is noted as a site suitable for high density mixed-use development located adjacent to the Trails at Brea and connecting the site to the downtown area.

Scope of Work

This Scope of Work assumes an Addendum to the Brea General Plan Final Environmental Impact Report (Final EIR) would be prepared pursuant to CEQA for the proposed Brea Place Project. The State CEQA Guidelines, Section 15164, provides general guidance regarding Addendums; however, it defers to CEQA Guidelines Section 15162 to determine whether circumstances warrant preparation of a Subsequent EIR. In other words, if the project fails to meet Section 15162 criteria, an Addendum may be appropriate. This finding must consider factors such as changes in the scope of the proposed project relative to the approved General Plan; changes in surrounding circumstances that have occurred since the Final EIR was certified; and the discovery of new information that was not known at the time the Final EIR was prepared. The Addendum test is the ability to provide substantial evidence showing that the proposed project would not create new significant adverse impacts or increase the severity of a significant adverse impact identified in the previous EIR.

The State CEQA Guidelines do not specify the content or format for an Addendum. Kimley-Horn recommends the Addendum include the following: (1) Purpose of the Addendum; (2) Project Background; (3) Project Description, which would include a project setting discussion; (4) Environmental Analysis; and (5) Conclusions.

For the environmental analysis, one must demonstrate that adequate consideration has been given to all environmental topics previously analyzed as part of the Final EIR and that sufficient documentation is provided to support the determination that the Addendum is the appropriate CEQA documentation. Therefore, we propose to use the CEQA Environmental Checklist as the basis for the analysis. For each topic on the checklist, a brief summary of the findings from the Final EIR will be provided. Unless otherwise noted, a qualitative evaluation of the impacts associated with the proposed project will be provided and State CEQA Guidelines Section 15162 criteria will be applied to substantiate the preparation of an Addendum. The Addendum will include a comparative evaluation of the proposed project to the assumptions in the General Plan, and will list applicable mitigation measures from the General Plan Final EIR as well as project-specific mitigation.

TASK 1: PROJECT DEFINITION AND PRE-CEQA REVIEW

The City has made a preliminary determination that an Addendum to the General Plan Final EIR can be prepared for the Brea Place Project. The City recognizes that should the facts including the

technical documentation find that the project will have one or more significant effects not discussed in the previous EIR or significant effects previously examined will be substantially more severe than shown in the previous EIR, then an Addendum would not be appropriate and either an Initial Study leading to a Mitigated Negative Declaration (IS/MND) or an EIR would be required.

As an initial step prior to expending the resources necessary to prepare comprehensive technical studies and a CEQA analysis, the Kimley-Horn Project Team will assist the City such that the scope of the necessary CEQA documentation can be further defined. This task is intentionally less specific than the subsequent tasks identified in this proposal. We anticipate that this task may include team meetings and the preparation of preliminary technical calculations to confirm that project assumption consistency with the Final EIR findings. This task could also include identifying potential project modifications to allow for greater certainty in the preparation of an Addendum.

As a separate effort, it is our understanding that the City is considering several options to supplement the technical data provided by the Applicant related to the topics of traffic and parking. Completion of the Traffic Impact Analysis (TIA) which may require assistance from Kimley-Horn. This Scope of Work assumes that the TIA provided by the Applicant, and any assistance provided by Kimley-Horn, will be reviewed by the City for technical adequacy. Our review of the Applicant's TIA will focus on its adequacy of the TIA for CEQA purposes only. Additionally, we will assist the City in a to-be-defined role related to traffic and parking.

TASK 2: TECHNICAL REPORT PREPARATION

Based on the assumption that an Addendum can be prepared, Landrum & Brown, as a subconsultant to Kimley-Horn, will prepare the air quality, greenhouse gas (GHG) emissions, and noise technical studies. Each of these studies will be prepared to address pertinent technical requirements, to provide significance determinations, and recommend mitigation measures as necessary. This information will be summarized in the Addendum with appropriate references to the corresponding technical study. For each study, our Scope of Work includes responses to two rounds of review by the City. Should changes be requested to one or more studies based on changes to the project, Kimley-Horn will provide a budget augment request to the City.

Air Quality

The project-specific technical study will evaluate air quality impacts associated with the proposed project relative to impacts identified in the Final EIR. Demolition, construction, and operational activities associated with the project will result in criteria pollutant emissions.

Air pollutant emissions associated with demolition and construction activities required for the project will be estimated using the California Emissions Estimator Model (CalEEMod). Construction information provided by the Applicant will be used for the modeling. Where complete data is not available or provided, estimates from the CalEEMod model will be used to calculate the emissions.

Construction emissions will be compared to both the SCAQMD Regional and Local Significance thresholds to determine significance, and then compared to the findings of the Final EIR.

The Final EIR found that General Plan implementation could result in carbon monoxide hot spots at four intersections in the City, including State College Boulevard at Lambert Road which is north of the project site. Peak hour traffic volumes and physical conditions will be used to assess if the proposed project could result in air pollutant concentrations exceeding the ambient air quality standards near intersections affected by project traffic. In the event that the traffic impact analysis predicts that intersection(s) would degrade to level of service E or F due to project traffic, a carbon monoxide (CO) “hot spots” analysis will be prepared.

Long-term emissions due to the project will be generated from increased traffic, combustion of natural gas, consumer products, and architectural coatings. Trip generation data from the traffic study will be used to estimate vehicular emissions associated with the project. CalEEMod default assumptions will be used to estimate emissions from the other sources. The emissions generated by the long-term operation of the project will be assessed and compared to the SCAQMD regional significance thresholds. On-site emissions will be compared with both the regional and localized thresholds and the incremental increase in criteria pollutant emissions associated with the project will be identified and compared to the assumptions set forth in the Final EIR.

Greenhouse Gas Evaluation

At the time of certification of the Final EIR in 2003, greenhouse gas (GHG) emissions were not part of the required CEQA analysis. Effective March 18, 2010, the State adopted amendments to the State CEQA Guidelines requiring the analysis and mitigation of the effects of GHG emissions in draft CEQA documents. However, it should be noted that the State CEQA Guidelines regarding GHG emissions do not specifically address situations involving subsequent implementation actions for a project with a previously certified EIR. GHG emissions and global climate change is not “new information” since these effects have been generally known for quite some time.

Prior court rulings have affirmed that, after an initial EIR is certified, CEQA establishes a presumption against additional environmental review. In the case of *San Diego Navy Broadway Complex Coalition v. City of San Diego*, the court held that the City of San Diego was not required to prepare a subsequent or supplemental EIR (SEIR) regarding the potential impact of the project on global climate change because the City action did not constitute a discretionary approval that would provide it with the authority to address the project’s impact on that environmental issue. The court determined that the key question was whether the City had the remaining authority to shape the project in any way that could respond to the concerns that might be identified in an SEIR (i.e., would it have the authority to require the project proponent to mitigate the environmental damage to some degree). The court found that the scope of the City’s remaining authority, which was principally related to an aesthetic issue, did not extend to potential impacts on global climate change; that is, the City did not have the authority to modify the project in order to reduce its impact on global climate change.

The circumstances related to the proposed project are dissimilar to those presented in the Navy Broadway Complex case in that Brea will have broader discretion with regard to subsequent approvals. Therefore, the preparation of GHG analysis is recommended. It should be noted should the GHG analysis find that the project will have one or more significant effects not discussed in the previous EIR, an Addendum may not be appropriate.

CalEEMod will be used to forecast the primary GHG emissions from operation of the project including vehicular usage, natural gas consumption, electrical generation, water consumption, solid waste generation and other operational activities. If specific usage rates are provided by the Applicant, this information will be used for the projections, otherwise general estimates from CalEEMod will be used. GHG emissions associated with demolition and construction will also be estimated. Per SCAQMD guidance, construction emissions will be amortized over 30 years and added to the operational emissions. The total change in emissions with the project over baseline conditions will be compared to the significance threshold to determine significance. The project's consistency with the *City of Brea Sustainability Plan: Leadership in Energy Efficiency* will be addressed. Mitigation will be developed as needed.

Noise and Vibration

The existing on-site noise environment will be quantified by short-term sound level measurements conducted during a peak traffic period at or near the project site and at the closest sensitive receptor location. These measurements will be used to determine and characterize the project site and noise sources from surrounding land uses. Simultaneous vehicle counts will be conducted during the measurements to calibrate the noise model.

Construction noise at off-site noise-sensitive receptors will be evaluated based on a preliminary construction equipment list and published construction data, or previously measured data. Noise levels anticipated by construction will be compared to the limits presented in the City of Brea Noise Ordinance. Construction noise impacts will be evaluated based on the length and duration of construction activities, type and number of equipment pieces, and the proximity of noise-sensitive receptors to construction activities. Standard practices that should be implemented during construction to minimize noise impacts will also be discussed, and additional mitigation will be identified as necessary.

Long-term impacts include those from activities occurring on the project site as well as changes in traffic noise levels caused by the project. Future vehicular traffic noise levels on the project site will be estimated using the Federal Highway Administration Traffic Noise Model. Traffic volumes will be obtained from the traffic report. The noise impacts associated with the project's traffic on noise-sensitive land uses along project access roadways will be assessed in terms of the CNEL noise scale and the increase in noise levels due to the project will be determined. Areas that will experience a significant noise increase will be identified. The absolute noise levels experienced in these areas will

then be determined, and the resulting land use/noise compatibility discussed. Specific recommendations to mitigate noise levels will be provided as necessary.

Deliverables

- Preparation of draft Technical Reports (one round of review is assumed)
- Preparation of revised Technical Reports (one round of review is assumed)

TASK 3: ENVIRONMENTAL DOCUMENT

Task 3.1: Draft Addendum

Project Description

The project description is a critical component of the EIR because it is the basis for the entire environmental analysis. Therefore, we believe that the draft Project Description should be an initial deliverable. Based on information provided by the City and the Applicant, Kimley-Horn will prepare the Project Description that articulates the characteristics of the project. The draft Project Description will be provided to the City for review prior to preparation of technical studies to ensure concurrence with the key elements of the project that will be carried through into the analyses.

The following describes the work effort proposed to assess the potential environmental effects relative to each topical issue.

Aesthetics and Visual Resources

The General Plan identifies the expected intensification of development on the project site. Changes in the visual character of the project will be addressed qualitatively using information provided by the Applicant. This Scope of Work assumes that visual simulations and a shade analysis, if deemed necessary by the City, would be provided by the Applicant. If that is not the case, Kimley-Horn can provide these resources in house. Kimley-Horn will conduct a site visit to photographically document the project site and surrounding area. The project's compliance with applicable development and design guidelines – including the Citywide Design Guidelines – to minimize or preclude potential adverse impacts will be addressed. As such, the project's compatibility with respect to massing, height, and building materials with the surrounding area will be evaluated.

Agriculture and Forestry Resources; Mineral Resources

The proposed project would not impact agricultural, forestry, or mineral resources. The project site is a developed urban area. The General Plan and the Farmland Mapping and Monitoring Program of the California Resources Agency will be referenced to note that the site contains no Prime Farmland, Unique Farmland, Farmland of Statewide Importance, or Forestry Resources, and that the site contains no mineral resources.

Biological Resources

The proposed project site is currently developed. The only vegetation is limited to ornamental trees and therefore this Scope of Work does not assume a biological assessment or tree survey. The

resources on the project will be addressed to ensure compliance with the analysis and mitigation requirements set forth in the General Plan EIR.

Cultural Resources

The project does not propose the demolition of existing structures on the project site. Consistent with the General Plan, no impacts to historic resources are assumed. The project does not require a General Plan Amendment which would triggering agency to agency consultations under Senate Bill (SB) 18 between Native American groups affiliated with the project area. Additionally, because an Addendum is proposed, Assembly Bill (AB) 52 does not apply. A literature review/records search with respect to archaeological and paleontological resources is not assumed in this Scope of Work but can be provided if requested by the City. The Addendum will address any potential impacts to cultural and paleontological resources associated with excavation activities and identify mitigation provided in the General Plan EIR.

Soils/Geologic Hazards

The proposed project would include surface grading and excavation to prepare the site for construction. This Scope of Work assumes that the Geotechnical Report provided by the Applicant, in addition to currently available information, will be adequate to assess the project for potential for impacts associated with seismic activity and site-specific soils/geotechnical conditions.

Hazards and Hazardous Materials

Kimley-Horn staff will review and summarize the findings of the Applicant's Phase I Environmental Site Assessment (ESA) and consistency with General Plan findings.

Hydrology and Water Quality

Given the project site is already covered by impervious surfaces, the project is not anticipated to result in a substantial increase in storm water runoff. Based on the Surface Drainage Study and Preliminary Water Quality Management Plan (WQMP) provided by the Applicant, the Addendum will address the project's potential impacts on the existing local drainage system and hydrology of the area, as well as potential surface and groundwater quality impacts. The mitigation measures will be designed to conform to Regional Water Quality Control Board (RWQCB) standards for construction site erosion and sediment control and will include best management practices (BMPs) as well as any City-specific requirements.

Land Use and Planning

The Land Use and Planning section will address both the physical changes to the project site and surrounding area associated with project implementation and the proposed project's consistency with applicable plans and policies. The review will be based, in part, upon the Applicant's project application as well as City ordinances and policies, including but not limited to the City General Plan and General Plan EIR, and the City's Zoning development standards.

Population, Housing, and Employment: Growth Inducement

The Addendum will discuss potential impacts associated with changes in population and housing anticipated by the implementation of the proposed project. The focus of the analysis will be a comparison of the amount and type of growth anticipated with implementation of the proposed project with the growth projected in the General Plan, and the policies addressing growth in the City's planning documents. In addition, the analysis will consider consistency with the goals and policies of the Housing Element of the General Plan and how the project addresses the City's jobs/housing ratio.

Public Services, Facilities, and Utilities

The proposed project will allow for the intensification of development on the site beyond what is currently present and beyond what was assumed in the General Plan. The utilities analysis will be based on information obtained by coordinating with the respective agencies and information provided by the Applicant responsible for addressing the provision of wet and dry utilities to the project site. Using this information, Kimley-Horn will assess whether the increase could have significant impacts. The evaluation will focus on the potential need to extend or expand utilities and the increased demand on services, including fire and police protection. We will evaluate the ability of the project to receive adequate service based on applicable City standards; where services cannot be adequately met, these deficiencies will be identified and mitigation will be recommended.

Deliverables

- Electronic transmittal of Draft Addendum. Print copies can be provided if requested. One round of review is assumed.

Task 3.2: Revised Addendum and Mitigation Monitoring and Reporting Program

Following the review of the Draft Addendum by the City, Kimley-Horn will revise the Addendum to incorporate all comments. The revised document will be provided in a version that shows all revisions in track-change for ease of review as well as a "clean" version of the revised document. If substantial new analysis is requested that has not previously been prepared or considered in the Addendum, and/or substantive changes to the Project Description are required to address comments from the City or Applicant, a budget augment may be required.

As a part of Task 3.2, will prepare a mitigation monitoring and reporting program (MMRP) for adoption by the City at the time of project approval. The MMRP will be designed to ensure compliance with adopted mitigation requirements during project implementation.

Deliverables

- Electronic transmittal of revised Addendum and MMRP. One round of review is assumed.
- 15 print copies of Addendum; 15 CDs of the Addendum with technical appendices; web-ready version of the documents.

TASK 4: PROJECT MANAGEMENT, ADMINISTRATION, MEETINGS, AND HEARINGS

Kimley-Horn will maintain regular communications with the City to ensure compliance with the Scope of Work, budget, and schedule and to disseminate project information in a timely manner. This coordination will include email communications and meetings at the City, the latter as needed. For cost purposes, we have assumed four project meetings, and four public hearings. Any meeting hours over the estimated hours will be invoiced at the hourly billing rate or can be incorporated into Task 1.

Kimley-Horn will also prepare and file the Notice of Determination (NOD) with the Orange County Clerk within five working days of action on the project. This Scope of Work assumes that the City or Applicant will provide us with receipt of payment of California Department of Fish and Wildlife (CDFW) fees in 2003 but does assume the payment of filing fees with the Clerk.

Deliverables

- Four project meetings
- Two Planning Commission and two City Council hearings

Project Schedule

It is our understanding that the Applicant wishes to be through the hearing process with the City by late Spring/early Summer. Kimley-Horn can complete the Addendum in the timeframe needed to meet this schedule. We will work with the City to establish a specific schedule. The schedule will need to reflect whether a traffic study and shared parking analysis is required.

Fee Estimate

Kimley-Horn proposes to complete the following Scope of Work for the total lump sum fee below. Individual task amounts are for informational purposes only, and are not intended to represent a firm budget for each task. Budget may be reallocated among tasks, as necessary, according to the requirements of the project.

| | | Project Manager | Traffic Engineer | Technical Analysis | Engineer | Analyst | Admin Support | Hours | SubTotal |
|------------------------------|--|-----------------|------------------|--------------------|----------|-----------|---------------|------------|--------------------|
| | | \$215 | \$225 | \$190 | \$115 | \$98 | \$100 | | |
| TASKS | | | | | | | | | |
| 1.0 | Project Definition | | | | | | | | |
| | Support Assistance | 40 | 20 | 20 | | 0 | 0 | 80 | \$16,900.00 |
| 1.0 | Technical Report Preparation | | | | | | | | |
| | Air Quality and Greenhouse Gas | | | | | | | | \$10,250.00 |
| | Noise and Vibration | | | | | | | | \$6,100.00 |
| 2.0 | Environmental Document | | | | | | | | |
| | Draft Addendum | 20 | 9 | | | 60 | 9 | 98 | \$13,105.00 |
| | Revised Addendum | 8 | | | | 28 | 2 | 38 | \$4,664.00 |
| 3.0 | Project Coordination and Meetings | | | | | | | | |
| | Project Management and Coordination | 6 | | | | | | 6 | \$1,290.00 |
| | Meeting and Hearing Attendance | 32 | | | | | | 32 | \$6,880.00 |
| | Notice of Determination | | | | | 4 | | 4 | \$392.00 |
| | Subtotal | 66 | | | 0 | 92 | 11 | 158 | \$59,581.00 |
| Reimbursable Expenses | | | | | | | | | |
| | Reproduction | | | | | | | | \$250.00 |
| | Deliveries, Postage, Fees, Other | | | | | | | | \$150.00 |
| | Subtotal | | | | | | | | \$400.00 |
| | TOTAL | | | | | | | | \$59,981.00 |

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 1st day of March 2016, between the City of Brea, a Municipal Corporation (hereinafter referred to as “CITY”) and Kimley - Horn (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 prepare an environmental assessment for a mixed – use development consultation (“Project” 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 A and by this reference made a part hereof.

(iii) CITY desires to retain CONSULTANT to perform professional services necessary to render advice and assistance to CITY.

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

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

B. Agreement

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

(a) Project: Hines proposed mixed – use development described in Exhibit A hereto including, but not limited to, the preparation of maps, surveys, reports and documents, the presentation, both oral and in writing, of such plans, maps, surveys, reports and documents to

CITY as required and attendance at any and all work sessions and other meetings conducted by CITY with respect to the project.

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

(c) Completion of Project: The date of completion of all phases of the Project, including any and all procedures, development plans, maps, surveys, plan documents, technical reports, meetings and oral presentations for the project as set forth in Exhibit A hereto.

2. CONSULTANT agrees as follows:

(a) CONSULTANT shall forthwith undertake and complete the Project in accordance with Exhibit "A" hereto and all in accordance with Federal, State and CITY statutes, regulations, ordinances and guidelines, all to the reasonable satisfaction of CITY.

(b) CONSULTANT shall supply copies of all maps, surveys, reports, plans and documents, including all supplemental technical documents (hereinafter collectively referred to as "documents"), as described in Exhibits A to CITY within the time specified by CITY's written notice to proceed with any assigned Tasks. Copies of documents shall be in such numbers as are required in CITY. 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 in said written notice to proceed may be extended upon written approval of CITY.

(c) CONSULTANT shall, at CONSULTANT's sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by

CONSULTANT, CONSULTANT hereby warrants that such persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no subcontractor shall be retained by CONSULTANT except upon the prior written approval of CITY.

3. CITY agrees as follows:

(a) To pay CONSULTANT a maximum sum of \$59,981.00 for the performance of the services required hereunder. This said sum(s) shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants and subcontractors to CONSULTANT, except as may otherwise be set forth in Exhibit A. Payment to CONSULTANT, by CITY, shall be made in accordance with the schedule set forth below. CITY must receive a written request from CONSULTANT to use any of the contingency amount prior to performing any work that is outside the Project scope as defined in Exhibit A. It will be the CITY's sole discretion to authorize the use of the contingency funds and the CITY must give this authorization to CONSULTANT in writing prior to the commencement of said work. Any work performed outside the Project scope as defined in Exhibit A that has not received prior written approval by CITY is assumed to have been performed in support of said Project and included within the not-to-exceed contract amount.

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates, time and materials, or lump sum amounts for individual tasks. Notwithstanding any provision herein or as incorporated by reference, (i) in no event shall the totality of said invoices exceed 95% of the individual task totals described in Exhibit A and (ii) further provided that in no event shall

CONSULTANT, or any person claiming by or through CONSULTANT be paid an aggregate amount in excess of \$59,981.00.

(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 "A". Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITY within a reasonable time after said invoices are received by CITY.

4. CITY agrees to provide to CONSULTANT:

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

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

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

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

5. Ownership of 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. In the event this Agreement is so terminated, CONSULTANT shall be paid on a pro-rata basis with respect to the percentage of the Project completed as of the date of termination. In no event, however, shall CONSULTANT receive more than the maximum specified in paragraph 3(a), above. CONSULTANT shall provide to CITY any and all documents, data, studies, surveys, drawings, maps, models, photographs and reports, whether in draft or final form, prepared by CONSULTANT as of the date of termination. CONSULTANT may not terminate this Agreement except for cause.

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

CITY REPRESENTATIVE

David Crabtree, Community Development Director
Community Development - City of Brea
1 Civic Center Circle
Brea, CA 92821

CONSULTANT REPRESENTATIVE

Kimley - Horn
Dana C. Privitt, AICP,
765 The City Drive, Suite 200
Orange, CA 92868

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

8. Insurance: The CONSULTANT shall not commence work under this contract until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONSULTANT allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. The CONSULTANT shall take out and maintain at all times during the life of this contract the following policies of insurance:

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

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

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

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

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

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

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

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

allow for any advancement of such retroactive date. Each such policy or policies shall include a standard “notice of circumstances” provision.

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

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

- (i) \$2,000,000 (Two Million Dollars) for bodily injury or death;
- (ii) \$2,000,000 (Two Million Dollars) for property damage;
- (iii) The total of the limits specified in subsections (i) and (ii),

above, where a combined single limit is provided.

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

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

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

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

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

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

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

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

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

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

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

(10) Otherwise be in form satisfactory to CITY.

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

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

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

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

11. Damages: In the event that CONSULTANT fails to complete an assigned Task, together with all documents and supplemental material required hereunder, in form to the reasonable satisfaction of CITY, within the time set forth in the notice to proceed, 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

City Manager

ATTEST:

City Clerk