



FINANCE COMMITTEE AGENDA

Tuesday, September 29, 2020
8:30 a.m.

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

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

This meeting is being conducted consistent with Governor Newsom's Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The Finance Committee Meeting will be held on September 29, 2020 at 8:30 a.m. via Zoom and the public is welcome to participate. To provide comments by teleconference (Zoom), members of the public must contact City Staff at (714) 990-7676 or arlenem@cityofbrea.net no later than 12:00 p.m. on Monday, September 28, 2020 to obtain the Zoom Meeting ID number and password. Participants will be muted until recognized at the appropriate time by the Committee. To provide comments in person, the Executive Conference Room will be open to a limited number of members of the public in observance of social distancing guidelines. Masks are required. Written comments may be sent to the Administrative Services Department at arlenem@cityofbrea.net no later than 12:00 p.m. on Monday, September 28, 2020. Any comments received via email will be summarized aloud into the record at the meeting.

The Finance Committee agenda packet can be viewed on the City of Brea website at: <https://www.ci.brea.ca.us/509/Meeting-Agendas-Minutes>. Hard copies of the agenda packet are available via USPS with proper notice by calling (714) 990-7676. Materials related to an item on this agenda submitted to the Finance Committee after distribution of the agenda packet are available for public inspection in the third floor lobby of the Civic & Cultural Center at 1 Civic Center Circle, Brea, CA 92821 during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

CALL TO ORDER / ROLL CALL

1. **Matters from the Audience**

CONSENT

2. **September 8, 2020 Finance Committee Regular Meeting Minutes** - Approve.

Attachments

09-08-2020 Draft Minutes

DISCUSSION

3. **Approve Amendment No. 1 to Bus Shelter Agreement with Clear Channel Outdoor, LLC for a Six-Month Pandemic Relief Plan** - Approve.

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

Attachments

Amendment

4. **Gas Mask Purchase for the Police Department** - Purchase 65 Avon C-50 Gas Mask First Responder Kits from Adamson Police Products of Los Alamitos.

Attachments

Adamsons Quote

Botach Quote

Curtis Quote

5. **Approve AB 2766/MSRC Local Government Partnership Program Contract ML 18100 and use of AB 2766 Discretionary and Subvention Funds** - Approve Contract ML 18100 for AB 2766/MSRC Local Government Partnership Program; and Authorize use of AB 2766 Discretionary and Subvention Funds for payment towards electrical charging stations at Parking Structure No.2.

Attachments

AB2766/MSRC Contract ML 18100

6. **Supercharger Agreement between the City of Brea and Tesla** - Approve the Supercharger Agreement.

Attachments

Approved Design Concept

Tesla Agreement

7. **Professional Services Agreement (PSA) with Bucknam Infrastructure Group, Inc. for Biennial Pavement Management Plan Update and Inspection** - Approve.

Attachments

PSA

COI

8. **Update on the Refunding of the 2014 Water Revenue Bonds - Oral Report** - Cindy Russell

9. **Schedule Next Meeting: Tuesday, October 13, 2020**

cc: Mayor Pro Tem Steven Vargas
Council Member Glenn Parker

Special Accommodations

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

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

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City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 09/29/2020

SUBJECT: September 8, 2020 Finance Committee Regular Meeting Minutes

RECOMMENDATION

Approve.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Alicia Brenner

Attachments

09-08-2020 Draft Minutes



FINANCE COMMITTEE MINUTES

Tuesday, September 8, 2020

8:30 AM

Executive Conference Room, Level Three
and Via Zoom Meeting

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

CALL TO ORDER / ROLL CALL

ATTENDEES: Mayor Marty Simonoff, Council Member Cecilia Hupp, Cindy Russell, David Dickinson, Faith Madrazo and Alicia Brenner

1. **Matters from the Audience** — *None*

CONSENT

2. **Action Minutes for August 11, 2020 Meeting** — *Approved*

DISCUSSION

3. **All City Management Services, Inc. Amended Agreement (School Crossing Guards)** -
Approve the first amended agreement with all City Management Services, Inc. for crossing guard services in the not-to-exceed amount of \$67,189.50 through July 31, 2021 -
Recommended for City Council approval.
4. **Schedule Next Meeting:** September 29, 2020

Meeting adjourned: 8:32 AM

cc: Mayor Pro Tem Steven Vargas
Council Member Glenn Parker

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 09/29/2020

SUBJECT: Approve Amendment No. 1 to Bus Shelter Agreement with Clear Channel Outdoor, LLC for a Six-Month Pandemic Relief Plan

RECOMMENDATION

Approve Amendment No. 1 to Bus Shelter Agreement to initiate a six-month pandemic relief plan with Clear Channel Outdoor, LLC.

BACKGROUND/DISCUSSION

The City has contracted with Clear Channel Outdoor, LLC (Clear Channel) for the provision and maintenance of bus shelters since 1978. Under their current contract, which expires June 2021, Clear Channel is obligated to supply the City with 28 bus shelters complete with benches and trash receptacles, as well as perform regular pressure washing and graffiti removal of shelter equipment; making necessary repairs; and regularly emptying trash receptacles.

The agreement also specifies that Clear Channel pay the City the greater of either \$93 per shelter per month, or 18% of gross revenues generated by allowing Clear Channel to use the bus shelter display cases for advertising. This currently equates to \$32,000 in annual City revenue equally supporting the Senior Transportation and Art in Public Places programs within the General Fund.

In April 2020, and in response to COVID-19 hardships, Clear Channel requested the City waive a full calendar years' worth of obligated revenue due to a decline in advertising interest from their clients. In June 2020, the City Council approved a 90-day deferral of Clear Channel's quarterly payments, consistent with other relief or payment extensions granted to other payees. Clear Channel countered with a modified request for the City to consider waiving only 50% of FY 2020-21 revenue which would include payments owed from July 1, 2020 through December 31, 2020. Clear Channel would resume regular payments in January 2021.

Staff gave a report on the status of Clear Channel's revised request at the August 18, 2020 City Council Study Session. Staff received support to proceed with drafting a six-month pandemic relief contract amendment with the condition that Clear Channel provide some advertising cost relief to Brea's struggling small businesses through a partnership with the Brea Chamber of Commerce. Staff negotiated this term with Clear Channel, which resulted in language that satisfied the City of Brea, Clear Channel Outdoor, Inc. and the Brea Chamber of Commerce.

The six-month COVID-19 Pandemic Relief Amendment terms include:

- Clear Channel will not make any payments to the City for the months of July 2020 through December 2020.
- Clear Channel will resume payments in January 2021 through the remainder of the contract term of June 2021.
- Clear Channel will sell advertising space to "Eligible Businesses" at only the cost of production and installation for the months of October 2020 through April 2021.
 - An "Eligible Business" is a businesses that possesses a valid Brea business license and is not a component of a franchise or multi-city conglomerate.
 - The Brea Chamber will serve as a partner to confirm and validate business eligibility
 - Clear Channel will provide the City with a written report of the businesses that participated in this program by May 31, 2021.

SUMMARY/FISCAL IMPACT

Authorizes six months of payment relief equating to \$15,624 in reduced City revenue for FY 2020-21. While annual Clear Channel revenues go towards equally supporting the Senior Transportation and Art in Public Places programs within the General Fund, staff is recommending that any Clear Channel revenues received in FY 2020-21 be applied to only the Senior Transportation Program funding, as these dollars serve as a match to existing Senior Mobility Program grants.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Jenn Colacion, Community Services Management Analyst

Concurrence: Chris Emeterio, Assistant City Manager and

Carrie Hernandez, Community Services Manager

Attachments

Amendment

**AMENDMENT NO. 1 TO
AGREEMENT BETWEEN THE CITY OF BREA
AND CLEAR CHANNEL OUTDOOR, INC.
TO MAINTAIN BUS SHELTERS WITHIN
THE CITY OF BREA, CALIFORNIA**

This Amendment No. 1 (“First Amendment”) to that certain Agreement Between the City of Brea and Clear Channel Outdoor, Inc. to Maintain Bus Shelters Within the City of Brea, California dated June 7, 2016 (“Agreement”) executed by the City of Brea (“City”), a California municipal corporation, and Clear Channel Outdoor, Inc., a Delaware corporation and predecessor in interest to Clear Channel Outdoor, LLC., a Delaware limited liability company (“Contractor”), is dated October 6, 2020 for reference purposes.

R E C I T A L S

A. The parties executed the Agreement to provide for Contractor’s maintenance and operation of bus shelters and associated amenities.

B. The parties desire to amend the Agreement to establish a COVID-19 pandemic relief plan.

NOW THEREFORE, the parties agree as follows:

1. Addition of Section 30. The Agreement is amended by adding a new Section 30 to read as follows:

“30. COVID-19 Pandemic Relief Plan

- a) Compensation Reduction. Notwithstanding anything to the contrary in this Agreement, no payment of any portion of the gross advertising revenues from the shelters shall be due from Contractor to City under Section 5(a) of the Agreement for the months of July, 2020 through December, 2020.
- b) Small Business Rate Discount Program. For the months of October, 2020 through April, 2021, Contractor shall implement a small business rate discount program as follows:
 - 1) Contractor shall sell shelter advertising space to Eligible Businesses (as defined below) at the cost of production and installation of advertising copy. The parties agree that the cost of production and installation for each four-week period shall be fixed at Two Hundred Twenty-Five Dollars (\$225.00) per shelter advertising panel.
 - 2) “Eligible Business” means a business that satisfies both of the following criteria: (i) the business possesses a valid business license issued by the City; and (ii) the business is not a component of a franchise chain or a multi-city conglomerate. In the event of uncertainty about whether a prospective advertiser is an eligible business, Contractor shall request a written

determination from the Brea Chamber of Commerce supported by documentary evidence.

- 3) On or before May 31, 2021, Contractor shall furnish to City a written report of the Eligible Businesses that participated in this program during the reporting period.

2. Effective Date. This First Amendment shall be effective upon execution.

3. Preservation of Agreement. Except as expressly modified or supplemented by this First Amendment, all of the provisions of the Agreement shall remain unaltered and in full force and effect. In the event of a conflict between the provisions of this First Amendment and the provisions of the Agreement, the provisions of this First Amendment shall control.

TO EXECUTE THIS FIRST AMENDMENT, the parties have caused their authorized representatives to sign below.

Clear Channel Outdoor, LLC.

Manager

Manager

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

City of Brea

Marty Simonoff, Mayor

Attest:

Lillian Harris-Neal, City Clerk

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members
FROM: Bill Gallardo
DATE: 09/29/2020
SUBJECT: Gas Mask Purchase for Police Department

RECOMMENDATION

Purchase 65 Avon C-50 gas mask first responder kits from Adamson Police Products of Los Alamitos at a cost of \$34,108.27.

BACKGROUND/DISCUSSION

The Brea Police Department currently has gas masks that are defective and past their service life. The gas mask filters have been expired for more than five years, exceeding their shelf-life. The City of Brea has never purchased gas masks for its officers. The current gas masks were issued to the Brea Police Department, as well as all agencies in Orange County, by the Anaheim/Santa Ana Urban Area Security Initiative (UASI) federal grant program in 2008. The masks were manufactured in 2006. Time and storage conditions have degraded the masks, rendering many of them unsafe or defective, and therefore unable to be issued to officers. The Anaheim/Santa Ana UASI has no plans to replace or purchase new gas masks or filters for Orange County law enforcement agencies.

Protests and incidents of civil unrest continue to be a concern for law enforcement, both nationally and locally. Officers from the Brea Police Department have been deployed to events in the City, as well as throughout Orange County for mutual aid requests in the past few months. In some of these events, chemical agents or "tear gas" have been used, requiring officers to wear gas masks to protect them from these chemical agents. With additional events anticipated in the upcoming months, the need for Brea Police officers to be protected will continue.

In addition, the Avon C-50 gas masks, also known as air purifying respirators (APRs), will provide limited protection against COVID-19. All Avon filters provide protection at a NIOSH P100 level of protection, where the U.S. Centers for Disease Control (CDC) recommends 95% filtration efficiency, also known as NIOSH P95. The protection is limited in that the Avon filter will trap the COVID-19 virus, not kill it.

Requests for quotes were sent to four companies, each an authorized vendor of Avon Protective Products. The lowest quoted price was received from Curtis Blue Line of Oakland, CA. however, their stated delivery time of 60-90 days was problematic as the need to get the gas masks quickly is critical. Adamson Police Products quoted the second lowest cost, has them in stock locally in Los Alamitos and can deliver them within two business days. One vendor refused to provide a quote and the fourth vendor quoted the highest cost, but also

has them in stock in Las Vegas, NV.

The recommendation to purchase the gas masks without a formal bid process is requested due to the time-sensitive need to acquire the masks prior to Brea Police officers being deployed again without this necessary protection.

SUMMARY/FISCAL IMPACT

The FY 2020-21 Adopted Budget includes funding of \$37,109 for this purchase. The proposed cost of \$34,108.27 results in a savings of approximately \$3,000. The gas masks have an average life span of 5-7 years, with requirements to replace the filters every five years, unless exposed to chemical agents. Replacement filter costs will be requested in a Decision Package request in FY 2025-26.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Kelly Carpenter, Lieutenant

Concurrence: Adam Hawley, Acting Police Chief

Attachments

Adamsons Quote

Botach Quote

Curtis Quote

Original

Botach Inc.

4775 West Harmon Ave
Las Vegas, NV 89103 US
+1 7862828680
Sales@Botach.com
<https://www.botach.com/>

Estimate

BOTACH

ADDRESS

Brea Police Department
ATTN:KELLY CARPENTER
1 CIVIC CENTER CIR
BREA, CA 92821-5792 US

SHIP TO

Brea Police Department
ATTN:KELLY CARPENTER
1 CIVIC CENTER CIR
BREA, CA 92821-5792 US

ESTIMATE #	DATE	
13798503	07/17/2020	

ACTIVITY	QTY	PRICE	AMOUNT
Sales AVON C50 First Responder Kits Complete Biological & Riot Protection	65	575.00	37,375.00

Chushim Botach
323.633.6009
Chushim@Botach.com

SUBTOTAL	37,375.00
TAX	2,896.56
SHIPPING	526.00
TOTAL	\$40,797.56

Accepted By

Accepted Date

Ph: 323-780-0254
TF: 866-557-0254
Fax: 714-522-5001
support@CurtisBlueLine.com
DUNS#: 00-922-4163



Pacific South Division
16821 Knott Avenue
La Mirada, CA 90638
www.CURTISBLUELINE.com
Quotation No. 155470

Quotation

CUSTOMER:

Brea City Police Department
Lt. Kelly Carpenter
1 Civic Center Circle
Brea CA 92821

SHIP TO:

Brea City Police Department
Lt. Kelly Carpenter
1 Civic Center Circle
Brea CA 92821

QUOTATION NO.	ISSUED DATE	EXPIRATION DATE
155470	06/03/2020	08/02/2020

SALESPERSON	CUSTOMER SERVICE REP
Bert Coutts bcoutts@curtisblueline.com 949-535-6382	Bert Coutts bcoutts@curtisblueline.com 949-535-6382

REQUISITION NO.	REQUESTING PARTY	CUSTOMER NO.	TERMS	OFFER CLASS
	Kelly Carpenter	C5196	Net 30	LE

F.O.B.	SHIP VIA	DELIVERY REQ. BY
SP	Standard Shipping	

NOTES & DISCLAIMERS

THANK YOU FOR THIS OPPORTUNITY TO QUOTE. WE ARE PLEASED TO OFFER REQUESTED ITEMS AS FOLLOWS. IF YOU HAVE ANY QUESTIONS, NEED ADDITIONAL INFORMATION, OR WOULD LIKE TO PLACE AN ORDER, PLEASE CONTACT YOUR SALESPERSON OR CUSTOMER SERVICE REP AS NOTED ABOVE.

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	65	EA	70501-556 AVON	Medium C50 First Responder Kit C50 APR, Clear Outsert Assembly, Sunlight Outsert Assembly, CBRNCF50 Canister, CTCF50 Riot Agent Canister, Universal Carrier & Storage Faceform	\$479.00	\$31,135.00

DUNS NUMBER: 009224163
SIC CODE: 5099
FEDERAL TAX ID: 94-1214350

THIS PRICING REMAINS FIRM UNTIL 08/02/2020. CONTACT US FOR UPDATED PRICING AFTER THIS DATE.

Ph: 323-780-0254
TF: 866-557-0254
Fax: 714-522-5001
support@CurtisBlueLine.com
DUNS#: 00-922-4163



Pacific South Division
16821 Knott Avenue
La Mirada, CA 90638
www.CURTISBLUELINE.com
Quotation No. 155470

Subtotal	\$31,135.00
Tax Total	\$2,412.96
Transportation*	\$280.00

*(to be added when order ships)

Total	\$33,827.96
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[View Terms of Sale and Return Policy](#)

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 09/29/2020

SUBJECT: Approve AB 2766/MSRC Local Government Partnership Program Contract ML 18100 and use of AB 2766 Discretionary and Subvention Funds

RECOMMENDATION

1. Approve Contract ML 18100 for AB 2766/MSRC Local Government Partnership Program;
2. Authorize use of AB 2766 Discretionary Funds in the amount of \$56,500 for payment towards electrical charging stations at Parking Structure No.2; and
3. Authorize use of AB 2766 Subvention Funds in the amount of \$39,500 for payment towards electrical charging stations at Parking Structure No.2

BACKGROUND/DISCUSSION

The City of Brea was awarded a grant in the amount of \$56,500 from the South Coast Air Quality Management District (SCAQMD). The grant utilizes funds collected from AB 2766 Discretionary Funds, which originate from motor vehicle fees for the purpose of reducing air pollution to implement the California Clean Air Act. This grant was initially awarded to support the installation of Level II chargers at Parking Structure No. 2 utilizing the Charge Ready Program offered by Southern California Edison (SCE). After working through the details of the Charge Ready Program with SCE, it became apparent that there would be a significant local match required to satisfy the matching requirements of the SCE program and staff looked for other alternatives.

As a results, staff contacted Tesla representatives, who agreed to leverage a few of their electrical vehicle (EV) charging programs to meet the matching requirements of the SCAQMD grant. Tesla proposed to use both their supercharger program and designation charging programs to install a total of 48 EV chargers. Tesla would install 24 wall chargers (also known as Level II or Universal Chargers for any EV user) and install 24 superchargers for Tesla vehicles only at Parking Structure No. 2 located at 175 S. Madrona Avenue. Tesla agreed to pay the entire cost of the superchargers and requested a one-time City contribution towards the total cost of the Level II chargers. To total estimated cost to install the Level II chargers is \$134,400. Tesla requested for the City to contribute \$4,000 per charger for a total contribution of \$96,000 and Tesla would pay the remaining \$38,400. The proposed agreement with Tesla is included under a separate item for City Council consideration.

For the City contribution of \$96,000, staff recommends using the mentioned \$56,500 from AB 2766 Discretionary Funds and \$39,500 from the AB 2766 Subvention Fund. AB 2766 Subvention Fund was adopted in 1990 to provide revenue to reduce air pollution from motor

vehicles. The revenue is generated from a registration surcharge collected by the Department of Motor Vehicles. The AB 2766 Subvention Fund has adequate funds available for this purpose, but requires City Council action to direct the funding towards this project.

The City Attorney has reviewed the contract from SCAQMD.

SUMMARY/FISCAL IMPACT

Approval of the contract ML 18100 with the Mobile Source Air Pollution Reduction Review Committee (MSRC), which is a part of the Local Government Partnership Program, will authorize the City to receive the grant in the amount of \$56,500. These funds would be utilized for a portion of the \$96,000 contribution required to install 24 wall chargers (Level II) in the Downtown Parking Structure No.2. The remaining \$39,500 will come from the AB 2766 Subvention Fund to cover the full cost of the contribution requirements with Tesla. There is no impact to the General Fund.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Brian M. Ingallinera, Environmental Services Coordinator

Concurrence: Rudy Correa, Interim Superinten and
Tony Olmos, P.E., Public Works Director

Attachments

AB2766/MSRC Contract ML 18100



AB 2766/MSRC LOCAL GOVERNMENT PARTNERSHIP PROGRAM CONTRACT

1. PARTIES

The parties to this contract ("Contract") are the South Coast Air Quality Management District (referred to here as "SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and the City of Brea (referred to here as "CONTRACTOR") whose address is 1 Civic Center Circle, Brea, California 92821.

2. RECITALS

- A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California (State). SCAQMD is authorized under State Health & Safety Code Section 44225 (AB 2766) to levy a fee on motor vehicles for the purpose of reducing air pollution from such vehicles and to implement the California Clean Air Act.
- B. Under AB 2766, SCAQMD's Governing Board has authorized the imposition of the statutorily set motor vehicle fee. By taking such action, the State's Department of Motor Vehicles (DMV) is required to collect such fee and remit it periodically to SCAQMD.
- C. AB 2766 further mandates that thirty (30) percent of such vehicle registration fees be placed by SCAQMD into a separate account for the sole purpose of implementing and monitoring programs to reduce air pollution from motor vehicles.
- D. AB 2766 creates a regional Mobile Source Air Pollution Reduction Review Committee (MSRC) to develop a work program to fund projects from the separate account. Pursuant to approval of the work program by SCAQMD's Governing Board, SCAQMD authorized this Contract with CONTRACTOR for equipment or services described in Attachment 1 - Statement of Work, expressly incorporated herein by this reference and made a part hereof of this Contract.
- E. CONTRACTOR has met the requirements for receipt of AB 2766 Discretionary Funds as set forth in CONTRACTOR's Local Government Partnership Program Proposal dated July 19, 2018.
- F. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
- G. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.

3. DMV FEES

CONTRACTOR acknowledges that SCAQMD cannot guarantee that the amount of fees to be collected under AB 2766 will be sufficient to fund this Contract. CONTRACTOR further acknowledges that payment under this Contract is contingent upon SCAQMD receiving sufficient funds from the DMV, and that SCAQMD assumes no responsibility for the collection and remittance of motor vehicle registration fees.

4. AUDIT AND RECORDS RETENTION

- A. CONTRACTOR shall, at least once every two years, or within two years of the termination of the Contract if the term is less than two years, be subject to an audit by SCAQMD or its authorized representative to determine if the revenues received by CONTRACTOR were spent for the reduction of pollution from motor vehicles pursuant to the Clean Air Act of 1988.
- B. CONTRACTOR agrees to maintain records related to this Contract during the Contract term and continue to retain these records for a period of two years beyond the Contract term, except that in no

case shall CONTRACTOR be required to retain more than the most recent five years' records. SCAQMD shall coordinate such audit through CONTRACTOR'S audit staff.

- C. If an amount is found to be inappropriately expended, SCAQMD may withhold funding, or seek reimbursement, from CONTRACTOR in the amount equal to the amount that was inappropriately expended. Such withholding shall not be construed as SCAQMD's sole remedy and shall not relieve CONTRACTOR of its obligation to perform under the terms of this Contract.

5. TERM

The term of this Contract is for fifty (50) months from the date of execution by both parties, unless terminated earlier as provided for in the TERMINATION clause of this Contract, the EARLY TERMINATION clause, or the term is extended by amendment of this Contract in writing. No work shall commence prior to the Contract start date, except at CONTRACTOR's cost and risk, and no charges are authorized until this Contract is fully executed, subject to the provisions stated in the PRE-CONTRACT COSTS clause of this Contract.

6. SUCCESSORS-IN-INTEREST

This Contract, and the obligations arising under the Contract, shall be binding on and inure to the benefit of CONTRACTOR and their executors, administrators, successors, and assigns.

7. REPORTING

CONTRACTOR shall submit reports to SCAQMD as outlined in Attachment 1 - Statement of Work. SCAQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.

8. TERMINATION

- A. In the event any party fails to comply with any term or condition of this Contract, or fails to provide services in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a breach of this Contract. The non-breaching party shall notify the breaching party that it must cure this breach or provide written notification of its intention to terminate this contract. Notification shall be provided in the manner set forth in the NOTICES clause of this Contract. The non-breaching party reserves all rights under law and equity to enforce this Contract and recover damages.
- B. SCAQMD reserves the right to terminate this Contract, in whole or in part, without cause, upon thirty (30) days' written notice. Once such notice has been given, CONTRACTOR shall, except as and to the extent or directed otherwise by SCAQMD, discontinue any Work being performed under this Contract and cancel any of CONTRACTOR's orders for materials, facilities, and supplies in connection with such Work, and shall use its best efforts to procure termination of existing subcontracts upon terms satisfactory to SCAQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any Work already in progress and to dispose of any property as requested by SCAQMD.
- C. CONTRACTOR shall be paid in accordance with this Contract for all Work performed before the effective date of termination under section B of the TERMINATION clause of this Contract. Before expiration of the thirty (30) days' written notice, CONTRACTOR shall promptly deliver to SCAQMD all copies of documents and other information and data prepared or developed by CONTRACTOR under this Contract with the exception of a record copy of such materials, which may be retained by CONTRACTOR.

9. EARLY TERMINATION

This Contract may be terminated early due to the following circumstances: The infrastructure identified in Attachment 1, Statement of Work, becomes inoperable, and is either not technically able to be repaired, or is too costly to repair, and such failure is not caused by CONTRACTOR's negligence, misuse, or malfeasance.

10. STOP WORK

SCAQMD may, at any time, by written notice to CONTRACTOR, require CONTRACTOR to stop all or any part of the Statement of Work tasks in this Contract. A stop work order may be issued for reasons including, but not limited to, the project exceeding the budget, out of scope work, delay in project schedule, or misrepresentations. Upon receipt of the stop work order, CONTRACTOR shall immediately take all necessary steps to comply with the order. CONTRACTOR shall resume the work only upon receipt of written instructions from SCAQMD cancelling the stop work order. CONTRACTOR agrees and understands that CONTRACTOR will not be paid for performing work while the stop work order is in effect, unless SCAQMD agrees to do so in its written cancellation of the stop work order.

11. INSURANCE

CONTRACTOR represents that it is permissibly self-insured and will maintain such self-insurance in accordance with applicable provisions of California law throughout the term of this Contract. CONTRACTOR shall provide evidence of sufficient coverage during the term of this Contract and any extensions thereof that meet or exceed the minimum requirements set forth by the SCAQMD below. The certificate of self-insurance shall be mailed to: SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765-4178, Attention: Cynthia Ravenstein, MSRC Contracts Administrator. **The SCAQMD Contract Number must be included on the face of the certificate.** If CONTRACTOR fails to maintain the required insurance coverage, SCAQMD reserves the right to terminate the Contract or purchase such additional insurance and bill CONTRACTOR or deduct the cost thereof from any payments owed to CONTRACTOR. Minimum insurance coverages are as follows:

- A. Worker's compensation insurance in accordance with either California or other state's applicable statutory requirements.
- B. General Liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in general aggregate.
- C. Automobile Liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage.

12. INDEMNIFICATION

CONTRACTOR agrees to hold harmless, defend and indemnify SCAQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action, judgments, attorney's fees, or any other expenses arising from or related to any third party claim against SCAQMD, its officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any actual or alleged act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract. This Indemnification Clause shall survive the expiration or termination (for any reason) of the Contract and shall remain in full force and effect.

13. DISCLAIMER OF WARRANTY

The purchase or lease of funded vehicles/equipment is the CONTRACTOR's decision. The SCAQMD does not make any express or implied warranty of merchantability, fitness for a particular purpose or otherwise, quality or usefulness of the technology or product. Without limiting the foregoing, the SCAQMD will not be financially responsible, or otherwise liable, for the installation or performance of the vehicle/equipment.

14. PAYMENT

- A. SCAQMD shall reimburse CONTRACTOR up to a total amount of Fifty Six Thousand Five Hundred Dollars (\$56,500) in accordance with Attachment 2 - Payment Schedule expressly incorporated herein by this reference and made a part hereof of the Contract.
- B. A withhold amount or percentage (if any) shall be identified in the Payment Schedule, and such amount shall be withheld from each invoice. Upon satisfactory completion of project and final acceptance of work and the final report, CONTRACTOR's invoice for the withheld amount shall be released. Proof of project completion shall include a Final Report detailing the project goals and accomplishments, data collected during project performance, if any, documentation of significant results, and emissions reduction input data needed for calculation of emissions reductions.
- C. Any funds not expended upon early Contract termination or Contract completion shall revert to the AB 2766 Discretionary Fund. Payment of charges shall be made by SCAQMD to CONTRACTOR within thirty (30) days after approval by SCAQMD of an itemized invoice prepared and furnished by CONTRACTOR.
- D. An invoice submitted to SCAQMD for payment must be prepared in duplicate, on company letterhead, and list SCAQMD's contract number, period covered by invoice, and CONTRACTOR's social security number or Employer Identification Number and submitted to:

South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Cynthia Ravenstein, MSRC Contracts Administrator

1. Charges for equipment, material, and supply costs, travel expenses, subcontractors, and other charges, as applicable, must be itemized by CONTRACTOR. Reimbursement for equipment, material, supplies, subcontractors, and other charges, as applicable, shall be made at actual cost. Supporting documentation must be provided for all individual charges (with the exception of direct labor charges provided by CONTRACTOR).
2. SCAQMD shall pay CONTRACTOR for travel-related expenses only if such travel is expressly set forth in Attachment 2 - Payment Schedule of this Contract or pre-authorized by SCAQMD in writing.
3. CONTRACTOR's failure to provide receipts shall be grounds for SCAQMD's non-reimbursement of such charges. SCAQMD may reduce payments on invoices by those charges for which receipts were not provided.
4. CONTRACTOR must submit final invoice no later than ninety (90) days after the termination date of this Contract or invoice may not be paid.

15. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR agrees to comply with all federal, state, and local laws, ordinances, codes and regulations and orders of public authorities in the performance of this Contract. CONTRACTOR must also ensure that the vehicles and/or equipment to be purchased, leased or installed in the performance of this Contract are in compliance with all applicable federal, state, and local air quality rules and regulations, and that it will

maintain compliance for the full Contract term. CONTRACTOR shall ensure that the provisions of this clause are included in all subcontracts.

16. MOBILE SOURCE EMISSION REDUCTION CREDITS (MSERCs)

- A. The MSRC has adopted a policy that no MSERCs resulting from AB 2766 Discretionary Funds may be generated and/or sold.
- B. CONTRACTOR has the opportunity to generate MSERCs as a by-product of the project if a portion of the air quality benefits attributable to the project resulted from funding sources other than AB2766. These MSERCs, which are issued by SCAQMD, are based upon the quantified vehicle miles traveled (VMT) by project vehicles or other activity data as appropriate. Therefore, a portion of prospective MSERCs, generated as a result of AB 2766 Funds, must be retired. The portion of prospective credits funded by the AB 2766 program, and which are subject to retirement, shall be referred to as "AB 2766-MSERCs."
- C. The determination of AB 2766-MSERC's is to be prorated based upon the AB 2766 program's contribution to the cost associated with the air quality benefits. In the case where AB 2766 Discretionary Funds are used to pay for the full differential cost of a new alternative fuel vehicle or for the retrofitting or repowering of an existing vehicle, all MSERCs attributable to AB 2766 Discretionary Funds must be retired. The determination of AB 2766-MSERCs for infrastructure and other ancillary items is to be prorated based upon the AB 2766 program's contribution to the associated air quality benefits. Determination of the project's overall cost will be on a case-by-case basis at the time an MSERC application is submitted. SCAQMD staff, at the time an MSERC application is submitted, will calculate total MSERCs and retire the AB 2766-MSERCs. CONTRACTOR would then receive the balance of the MSERCs not associated with AB 2766 funding.

17. NOTICES

All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by email, U.S. Mail, express, certified, return receipt requested, or a nationally recognized overnight courier service. In the case of email communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. Email communications shall be deemed to have been received on the date of such transmission, provided such date was a business day (Tuesday-Friday) and delivered prior to 5:30pm Pacific Standard Time. Otherwise, receipt of email communications shall be deemed to have occurred on the following business day. In the case of U.S. Mail notice, notice shall be deemed to be received when delivered or five (5) business days after deposit in the U. S. Mail. In the case of a nationally recognized overnight courier service, notice shall be deemed received when delivered (written receipt of delivery).

SCAQMD:
 South Coast Air Quality Management District
 21865 Copley Drive
 Diamond Bar, CA 91765-4178
 Attn: Cynthia Ravenstein, MSRC Contracts Administrator, email: cravenstein@aqmd.gov

CONTRACTOR:
 City of Brea
 1 Civic Center Circle
 Brea, CA 92821

Attn: Brian Ingallinera, email: BrianI@ci.brea.ca.us

18. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor. CONTRACTOR, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of SCAQMD, nor shall CONTRACTOR, its officers, employees, agents, representatives, or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by SCAQMD to its employees. SCAQMD will not supervise, direct, or have control over, or be responsible for, CONTRACTOR's or subcontractor's means, methods, techniques, work sequences or procedures, or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements.

19. SUBCONTRACTOR APPROVAL

If CONTRACTOR intends to subcontract all or a portion of the work under this Contract, then CONTRACTOR must first obtain written approval from SCAQMD's Executive Officer or designee prior to subcontracting any work. Such prior approval applies only to subcontractors not already included in Attachment 1, Statement of Work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or payment/cost schedule shall also require the prior written approval of the Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from SCAQMD.

20. OWNERSHIP

Title and full ownership rights to any equipment purchased under this Contract shall at all times remain with CONTRACTOR.

21. NON-DISCRIMINATION

In the performance of this Contract, CONTRACTOR shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, sex, sexual orientation, age, mental status, medical condition, physical or mental disability, or allow unlawful denial of family and medical care leave, denial of pregnancy disability leave, or reasonable accommodations. CONTRACTOR shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.

22. CITIZENSHIP AND ALIEN STATUS

A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations. Notwithstanding the above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.

- B. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless SCAQMD, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or SCAQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.

23. ASSIGNMENT AND TRANSFER OF EQUIPMENT

- A. The rights and responsibilities granted hereby may not be assigned, sold, licensed, or otherwise transferred by CONTRACTOR without the prior written consent of SCAQMD, and any attempt by CONTRACTOR to do so shall be void upon inception.
- B. CONTRACTOR agrees to obtain SCAQMD's written consent to any assignment, sale, license or transfer of Equipment, if any, prior to completing the transaction. CONTRACTOR shall inform the proposed assignee, buyer, licensee or transferee (collectively referred to here as "Buyer") of the terms of this Contract. CONTRACTOR is responsible for establishing contact between SCAQMD and the Buyer and shall assist SCAQMD in facilitating the transfer of this Contract's terms and conditions to the Buyer. **CONTRACTOR will not be relieved of the legal obligation to fulfill the terms and conditions of this Contract until and unless the Buyer has assumed responsibility of this Contract's terms and conditions through an executed contract with SCAQMD.**

24. NON-EFFECT OF WAIVER

The failure of CONTRACTOR or SCAQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.

25. TAX IMPLICATIONS FROM RECEIPT OF MSRC FUNDS

CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of MSRC funds.

26. ATTORNEYS' FEES

In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party in said action shall pay its own attorneys' fees and costs.

27. FORCE MAJEURE

A party shall not be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the party's reasonable control.

28. SEVERABILITY

In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.

29. HEADINGS

Headings on the clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.

30. DUPLICATE EXECUTION

This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.

31. GOVERNING LAW

This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.

32. PRE-CONTRACT COSTS

Any costs incurred by CONTRACTOR prior to CONTRACTOR receipt of a fully executed Contract shall be incurred solely at the risk of the CONTRACTOR. In the event that this Contract is not executed, neither the MSRC nor the SCAQMD shall be liable for any amounts expended in anticipation of a fully executed Contract. If this Contract is fully executed, pre-contract cost expenditures authorized by the Contract will be reimbursed in accordance with the Payment Schedule and payment provision of the Contract.

33. CHANGE TERMS

Changes to any part of this Contract must be requested in writing by CONTRACTOR and approved by MSRC in accordance with MSRC policies and procedures. CONTRACTOR must make requests a minimum of 90 days prior to desired effective date of change. All modifications to this Contract shall be in writing and signed by the authorized representatives of the parties. Fueling station location changes shall not be approved under any circumstances.

34. PUBLIC WORKS PROJECTS

CONTRACTOR is alerted to the prevailing wage requirements in California Labor Code section 1770 et seq., the working hours requirements in California Labor Code section 1810 et seq., and the compliance monitoring and enforcement of such requirements by the Department of Industrial Relations ("DIR"). CONTRACTOR and all of CONTRACTOR's subcontractors must comply with the California Public Works Contractor Registration Program and must be registered with the DIR to participate in public works projects. CONTRACTOR shall be responsible for determining the applicability of the provisions of California Labor Code and complying with the same, including, without limitation, obtaining from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, making the same available to any interested party upon request, paying any applicable prevailing rates, posting copies thereof at the job site and flowing all applicable prevailing wage rate requirements to its subcontractors. Proof of compliance with these requirements must be provided to SCAQMD upon request. CONTRACTOR shall indemnify, defend and hold harmless the SCAQMD against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.

35. ENTIRE CONTRACT

This Contract represents the entire agreement between CONTRACTOR and SCAQMD. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and

signed by the authorized representative of the party against whom enforcement of such waiver, alteration, or modification is sought.

36. AUTHORITY

The signator hereto represents and warrants that he or she is authorized and empowered and has the legal capacity to execute this Contract and to legally bind CONTRACTOR both in an operational and financial capacity and that the requirements and obligations under this Contract are legally enforceable and binding on CONTRACTOR.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)



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

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

CITY OF BREA

By: _____
Dr. William A. Burke, Chairman, Governing Board

By: _____
Name:
Title:

Date: _____

Date: _____

ATTEST:
Faye Thomas, Clerk of the Board

By: _____



APPROVED AS TO FORM:
Bayron T. Gilchrist, General Counsel

By: Daylene Ben

//MSRC Master Boilerplate
Revised December 27, 2019

**Attachment 1
Statement of Work
City of Brea
Contract Number ML18100**

1. Project

The City of Brea (hereinafter referred to as “CONTRACTOR”) shall partner with Tesla, Inc. (hereinafter referred to as Tesla) to install twenty-four “Level II” type EV charging stations at CONTRACTOR’s Parking Structure 2 which is located at 175 S. Madrona Avenue, Brea, California. CONTRACTOR states that Tesla shall own the charging stations. CONTRACTOR shall serve as lead agency and is responsible for completing this project and ensuring compliance by CONTRACTOR and Tesla with all legal requirements of this contract.

Stations shall be accessible to the public 24 hours per day, 7 days per week. Installations must include signage with information on whom to contact in the event that users encounter malfunctions. All stations shall meet current Society of Automotive Engineers J1772 standards. This location is understood to be tentative; CONTRACTOR shall notify MSRC staff of any location changes. CONTRACTOR shall be reimbursed according to Attachment 2 – Payment Schedule.

2. Operation Requirements and Reimbursement for Noncompliance

CONTRACTOR is obligated to comply with the Operational Availability requirements set forth as follows:

- A. CONTRACTOR commits to ensuring Level II charging stations remain operational in the original location for a period of no less than three (3) years from the date the station begins operations in either its initial or expanded capacity. Should CONTRACTOR or Tesla desire to deviate from this obligation, for reasons other than those stated in the EARLY TERMINATION clause of this Contract, CONTRACTOR shall reimburse SCAQMD for a prorated share of the funds provided for fueling/charging facilities as indicated in the table below:

3 year Operational Availability Obligation Termination Occurs	Percentage of MSRC Funds to be Reimbursed
Within Year 1	100%
Between Years 1-2	66%
Between Years 2-3	33%
After Year 3	0%

- B. The appropriate reimbursable amount shall be paid to SCAQMD within sixty (60) days from the date the station ceases operation. CONTRACTOR shall not be responsible for any reimbursement to SCAQMD if the obligation is terminated as a result of one or more reasons set forth in the EARLY TERMINATION clause of this Contract.
- C. The obligations of this section shall survive the expiration of the Contract and continue in full force and effect until the applicable operational availability period set forth above has been satisfied.

**Attachment 1
Statement of Work
City of Brea
Contract Number ML18100**

3. Promotion

CONTRACTOR shall prepare and submit a proposed Public Outreach Plan to promote the MSRC's co-funding of the EV charging stations. Acceptable outreach may include, but is not limited to, notices in CONTRACTOR mailings to residents, newspaper notices, flyers, and information items at CONTRACTOR Board meetings and community events. The Public Outreach Plan shall automatically be deemed approved 30 days following receipt by SCAQMD staff, unless SCAQMD staff notify CONTRACTOR in writing of a Public Outreach Plan deficiency. CONTRACTOR shall implement the approved Public Outreach Plan in accordance with the Project Schedule below.

4. Reports

Quarterly Reports: Until the EV charging stations commence operation, CONTRACTOR shall provide quarterly progress reports that summarize the project results to date including, but not limited to: tasks completed, issues or problems encountered, resolutions implemented, and progress to date. Progress reports that do not comply will be returned to the CONTRACTOR as inadequate.

Final Report: A Final Report shall be submitted by the CONTRACTOR in the format provided by SCAQMD staff. CONTRACTOR shall ensure that Tesla provides all necessary data to demonstrate the effectiveness of the project. The final report shall include, at a minimum: a) an executive summary; and b) a detailed discussion of the results and conclusions about this project. CONTRACTOR will identify any barriers encountered and solutions developed to overcome the barriers, and the impact of the project on future electric vehicle projects.

5. Project Schedule

CONTRACTOR shall comply with the increments of progress identified in the following chart. The completion month for each task is based on the date of Contract execution.

Task	Completion
Submit Public Outreach Plan	Month 7
Complete EV station installations and enter into service	Month 11
Implement Public Outreach Plan	Month 13
Quarterly reports	Quarterly beginning with Month 4 until equipment placed into service
Final Report	Month 14

**Attachment 2
Payment Schedule
City of Brea
Contract Number ML18100**

Cost Breakdown

Purchase Category	Maximum AB2766 Discretionary Funds payable under this Contract	CONTRACTOR AB2766 Subvention Funds Applied	Other Funds Applied to Match	Total Cost
EV Charging Stations	\$56,500	\$39,500	\$38,400	<u>\$134,400</u>

No funds shall be paid out to CONTRACTOR pursuant to this Contract, until the project described in Attachment 1 is completed and proof of completion is provided to SCAQMD. If the project described in Attachment 1 is not completed and satisfactory proof of completion is not provided to SCAQMD, no monies shall be due and payable to CONTRACTOR. Proof of completion shall include:

- Representative photos of completed stations;
- A report signed by a responsible official certifying that the station has been completed as described in Attachment 1; and
- Receipts for equipment and/or invoice(s) from subcontractor(s) performing the installations, if any.

If, at the completion of the Project, the expenditures are less than the Total Cost amount above, the actual amount of AB 2766 Discretionary Funds reimbursed to CONTRACTOR shall be adjusted on a prorated basis, so that the amount reimbursed to CONTRACTOR shall not exceed thrice the actual amount of AB 2766 Subvention and other funds applied.

Additional AB 2766 Discretionary Match Funds will not be available to fund project cost overruns. Any project cost overruns must be funded from other than AB 2766 Discretionary Funds.

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 09/29/2020

SUBJECT: Supercharger Agreement with Tesla to Install Charging Stations at Parking Structure No.2

RECOMMENDATION

Approve the Supercharger Agreement.

BACKGROUND/DISCUSSION

Tesla is proposing to utilize two of their charging programs (Supercharging & Destination Charging) to install a total of 48 electric vehicles (EV) chargers in Parking Structure No.2 located at 175 S. Madrona Avenue. The proposal includes installation of 24 wall chargers (also known as Level II or Universal chargers for any EV user) and installation of 24 superchargers that are only used for Tesla vehicles. The City Council, at their July 7, 2020 meeting, reviewed and approved the charging station design layout Option 2 that calls for the charging stations to be located one level below the Ground level of the parking structure (Attachment 1). After the attached formal agreement is approved, Tesla intends on completing the final design, starting construction in early 2021 and completing the installation by Summer 2021.

The following is a summary of the significant deal-points in the attached agreement (Attachment 2):

- Ten (10) year initial term and two additional five year extension renewal periods at the City's discretion.
- City to make a one-time contribution of \$96,000 towards the installation of 24 Level II EV chargers.
- If City does not extend the term, Tesla to remove all the equipment that relates to their supercharger technology and will leave the Wall Chargers (Level II) equipment to allow the City to continue to operate the system.
- Tesla will own, operate and maintain all electric chargers at their costs, including electrical costs
- Tesla will generate and supply all the necessary documentation to the City for compliance with the AQMD grant.
- Tesla shall comply with the prevailing wage laws for any public work performed pursuant to this Agreement.

In addition, Tesla will handle all transactions and will collect fees for use of the chargers. Tesla has committed to charge a competitive rate as compared to other charging facilities in

the vicinity. The City Attorney has reviewed the Tesla agreement and approves as to form.

SUMMARY/FISCAL IMPACT

Approval of this agreement will require the City to make a one-time payment of ninety-six thousand dollars (\$96,000) to Tesla as a one-time contribution towards the costs incurred by Tesla in providing and installing the twenty-four (24) Wall Chargers (Level II). Staff would utilize the Mobile Source Air Pollution Reduction Review Committee (MSRC), which is a part of the Local Government Partnership Program grant in the amount of \$56,500 and \$39,500 from the AB 2766 Subvention Funds to cover the full cost of the contribution requirements with Tesla. Tesla will be responsible for all the costs to own, operate and maintain the system. There is no impact to the General Fund.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Brian M. Ingallinera, Environmental Services Coordinator

Concurrence: Rudy Correa, Interim Superintendent

Tony Olmos, P.E., Public Works Director

Attachments

Approved Design Concept

Tesla Agreement

The site plan illustrates the proposed parking layout for the MM Brea LLC property. The plan includes the following details:

- Property Information:**
 - Owner: MM BREA LLC
 - APN: 296-161-28
 - Doc. No. 2004000559533
- Proposed Stalls:**
 - 24 Supercharger Stalls:** Indicated by a red rectangular area.
 - 4 Wall Connector Stalls:** Indicated by a green rectangular area.
 - 20 Wall Connector Stalls:** Indicated by a green rectangular area.
 - Standard Accessible Supercharger Stall:** Indicated by a red rectangular area.
 - Ambulatory & Van Accessible Wall Connector Stalls:** Indicated by a green rectangular area.
- Other Features:**
 - Parking Garage Level B2:** Located adjacent to the proposed stalls.
 - Entrance/Exit:** Marked with arrows and labels.
 - Signage:** Indicated by a label.
 - Surrounding Properties:**
 - Owner: MICHAEL & VALERIE MILES, APN: 296-431-36
 - Owner: RUBY SANTA ARMSTRONG, APN: 296-431-35
 - Owner: SONJA MAE NGUYEN, APN: 296-361-30
 - Owner: BIRCH STREET FOOD COURT LLC, APN: 296-362-26
 - Owner: ENTERTAINMENT, APN: 296-...

PLATE 100. *Phragmites*

SUPERCHARGER AGREEMENT

This Supercharger Agreement (this "Agreement") is effective as of the date last signed below (the "Effective Date") by and between the City of Brea, a California municipal corporation ("Counterparty") and Tesla, Inc., a Delaware corporation ("Tesla"). Tesla and Counterparty are each referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Tesla, through the provision of electric vehicle charging services at the Property (as defined in Section 2), will provide value to Counterparty by attracting electric vehicle drivers to the Property; and

WHEREAS, Counterparty is the sole owner of the Property and Counterparty acknowledges the value of having electric vehicle charging services at the Property.

NOW THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. CONTACT INFORMATION:

Counterparty:
City of Brea
1 Civic Center Circle
Brea, CA 92821
Attention: Tony Olmos
Phone: (714) 990-7691
Email: tonyo@ci.brea.ca.us

Tesla:
Tesla, Inc.
3500 Deer Creek Road
Palo Alto, CA 94304
Attention: Supercharger Team
Phone: (650) 681-5000

With a copy to:
Email: superchargerhost@tesla.com

24-hour Technical Support & Service:
877-79-TESLA (877-798-3752)

2. PREMISES: Counterparty hereby leases to Tesla, and Tesla hereby leases from Counterparty, fifty (50) parking spaces, up to nine (9) feet of additional parking width to provide disability access and approximately 590 square feet of space for equipment, all as depicted on Exhibit A attached hereto (the "Premises"), in order to build, install, operate, and maintain a Supercharger Station (as defined in Exhibit B), subject to the terms of this Agreement. The Premises are located on the property commonly known as Brea Downtown Parking Structure No. 2, located at 175 S. Madrona Ave., Brea, CA 92821 (the "Property").

3. FOOTPRINT: A total of forty-eight (48) parking spaces within the Premises shall be outfitted with Trade Fixtures (as defined in Exhibit B). Initially, twenty-four (24) of the parking spaces shall be outfitted with Superchargers (as defined in Exhibit B) to serve as dedicated electric vehicle charging stalls ("Dedicated Stalls"), and twenty-four (24) parking spaces shall be outfitted with Wall Connectors (as defined in Exhibit B) to serve as charging stalls for all electric vehicles ("Enabled Stalls"). Tesla shall have the option to upgrade the Trade Fixtures, at its sole cost, on ten (10) days written notice in order to satisfy demand for charging services, subject to Counterparty approval, which shall not be unreasonably withheld, conditioned or delayed.

4. CONSTRUCTION AND ALTERATIONS: Tesla shall, at its sole cost, make alterations to the Premises and construct the Supercharger Station ("Tesla's Work"). Tesla acknowledges that Tesla's Work shall only begin after: (a) Counterparty has approved the plans and specifications, including the location of the Supercharger Station and, if applicable, solar and/or an energy storage system (the "Approved Plans"); and (b) Tesla has obtained all permits and approvals required by applicable governing bodies. Any alterations to the Approved Plans or the Supercharger Station shall be approved in advance by Counterparty. Counterparty's approval of the plans and specifications, and of any alterations to the Approved Plans or the Supercharger Station, may be by e-mail and shall not be unreasonably withheld, conditioned or delayed. Tesla shall promptly repair any damage to the Premises or the Property caused by Tesla, its agents, contractors and employees while performing Tesla's Work.
5. POSSESSION DATE: The first date that Tesla may enter the Premises and Property to begin Tesla's Work is February 1st, 2021 (the "Possession Date").
6. DUE DILIGENCE PERIOD: Tesla shall have the option to terminate this Agreement within one hundred eighty (180) days following the Effective Date (the "Due Diligence Period") in the event that: (a) Tesla is unable to obtain all permits and approvals required by applicable governing bodies; (b) Tesla, in its reasonable business judgment, would incur substantial costs to bring utility services to the Premises or incur other unanticipated costs to construct the Supercharger Station; or (c) the environmental reports obtained by Tesla or delivered to Tesla from Counterparty, if any, reveal environmental contamination at the Property, provided that all such reports shall remain confidential. In the event that Tesla terminates this Agreement pursuant to this Section 6, Tesla shall deliver written notice of termination to Counterparty and this Agreement shall be of no further force or effect.
7. COMMENCEMENT DATE: Tesla shall open the Supercharger Station to the public (the "Commencement Date") within three hundred sixty-five (365) days following the Possession Date, provided that such time shall be extended to the extent a delay is due to permitting, utility, or other requirements beyond Tesla's control, or is due to Force Majeure (as defined in Section 33). Tesla shall deliver written notice to Counterparty promptly following the Commencement Date to confirm such date for recordkeeping purposes.
8. TERM: The initial term of this Agreement shall begin on the Commencement Date and shall expire ten (10) years from the last day of the month in which the Commencement Date occurs (the "Initial Term"). Counterparty shall have two (2) options to extend the term of this Agreement for an additional five (5) years each (each a "Renewal Term" and together with the Initial Term, the "Term"), upon the same terms contained in this Agreement. Counterparty may exercise the option for each Renewal Term by giving notice to Tesla at least one (1) year prior to the expiration of the Initial Term or Renewal Term, as applicable.
9. REMOVAL: Tesla shall, at its sole cost, remove the Trade Fixtures (as defined in Exhibit B) promptly following expiration or termination of this Agreement and restore the Premises to a condition commensurate with the rest of the Property, subject to exceptions for reasonable wear and tear and damage by casualty or condemnation. Counterparty agrees that all Trade Fixtures and related intellectual property are and shall remain the personal property of Tesla. Notwithstanding anything herein to the contrary, the Wall Connectors (specifically excluding the Superchargers) and the Infrastructure (as defined in Exhibit B) shall be left in a safe condition and,

without any further payment by Counterparty, shall become the property of Counterparty upon expiration or termination of this Agreement (except for Infrastructure that is upstream of the meter, which is and shall remain the property of the utility).

10. UTILITIES: Tesla agrees to arrange and pay the charges for all Tesla-related utility services provided or used in or at the Premises during the Term. Tesla shall pay directly to the utility company the cost of installation of any and all such Tesla-related utility services and shall arrange to have the utility service separately metered. Counterparty shall not be responsible for any damages suffered by Tesla in connection with the quality, quantity or interruption of utility service, unless the cause of the disruption or damage was Counterparty's gross negligence or intentional misconduct.
11. USE: Tesla shall use and occupy the Premises during the Term to install, operate and maintain a Supercharger Station and for incidental purposes, which may include generating photovoltaic electricity and operating an energy storage system ("Permitted Use"). Tesla is authorized to operate and collect payment for use of the Supercharger Station year round, twenty-four (24) hours per day and seven (7) days per week.
12. MAINTENANCE: Tesla shall be responsible for maintaining the Supercharger Station (including repair and replacement of equipment, as necessary) at its sole cost, and Counterparty shall have no liability for damage to the Supercharger Station unless caused by Counterparty's negligence or intentional misconduct. Notwithstanding the foregoing, Counterparty's normal responsibility to maintain the common areas of the Property shall also apply to the Premises, such as for repaving, restriping, snow removal and garbage collection, and Counterparty agrees to coordinate such maintenance with Tesla pursuant to Section 13. Tesla may, in its discretion and at its sole cost, install security cameras and other equipment to monitor the Premises from off-site.
13. TEMPORARY IMPAIRMENT: Tesla agrees that Counterparty shall have the right to temporarily access and/or temporarily restrict access to a portion of the Premises to perform routine parking lot maintenance, provided that Counterparty shall use commercially reasonable efforts to minimize any impairment of the Premises, including, without limitation, by limiting such impairment to times of day and days of the week that are not busy charging periods. Except in the case of snow removal, garbage collection or an emergency, Counterparty shall provide Tesla at least thirty (30) days advance written notice stating the date, time, duration and scope of the planned impairment.
14. COUNTERPARTY COVENANTS: Counterparty represents that: (a) it is the owner of the Property and has the power and authority to enter into this Agreement on the terms hereof; (b) it has obtained any required consents to enter into this Agreement; (c) the Property is subject to no conditions, restrictions or covenants incompatible with the Permitted Use; and (d) this Agreement does not violate any agreement, lease or other commitment by which Counterparty is bound. Counterparty shall not take any action that would impair or interrupt the use of the Premises or the Supercharger Station, except as permitted in Section 13. Counterparty agrees to notify Tesla within a commercially reasonable time if (x) Counterparty has knowledge of third-parties impairing or misusing the Supercharger Station, or (y) Counterparty obtains knowledge of a needed repair to the Supercharger Station. If non-Tesla motorists repeatedly park in the Dedicated Stalls or if internal combustion engine vehicles repeatedly park in the Enabled Stalls, then the Parties shall reasonably cooperate to allow Tesla to implement an appropriate and

effective strategy for preventing such impairment at Tesla's sole cost, which may include, without limitation, alternative signage and painted asphalt.

15. CONTRIBUTION: Counterparty shall make a one-time payment of ninety-six thousand dollars (\$96,000) to Tesla as a contribution to the costs incurred by Tesla in providing and installing the Wall Connectors. Tesla shall send Counterparty an invoice for such payment promptly following the Commencement Date, which Counterparty shall pay by electronic funds transfer within thirty (30) days of the invoice date. Counterparty shall be responsible for applying and complying with the South Coast Air Quality Management District's AB2766/MSRC grant program (the "Grant") to obtain the funding for the contribution; provided, that, upon request Tesla shall promptly provide Counterparty with the necessary information to satisfy the Grant's reporting requirements which include: (a) a progress report that summarizes the project results to date including, but not limited to the tasks completed, problems encountered, and resolutions implemented; and (b) promptly following the Commencement Date, a final report which shall include an executive summary of the project. Notwithstanding the foregoing, Counterparty acknowledges and agrees that Tesla shall have no obligation to provide any proprietary or otherwise confidential information related to the Supercharger Station, Wall Connectors or Tesla's customers.
16. PAYMENTS TO COUNTERPARTY: Other than parking fees charged to all users of the Property, Counterparty shall have no right to request or accept payment from Tesla, users of the Supercharger Station or any other third-parties in connection with the Supercharger Station.
17. SIGNAGE: Subject to applicable Laws (as defined in Section 35), Tesla shall install signage for the Dedicated Stalls and the Enabled Stalls substantially similar to the signage represented in Exhibit B (the "Signage"). Any material revisions or additions to the Signage shall be subject to Counterparty approval, which shall not be unreasonably withheld, conditioned or delayed.
18. DEFAULT: Each of the following shall constitute an "Event of Default" under this Agreement:
 - A. Breach: The failure by either Party to perform or observe any material term or condition of this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, that if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period and the defaulting Party commences to cure within the thirty (30) day period and proceeds with diligence and continuity, then such Party shall have additional time to cure as is reasonably required.
 - B. Bankruptcy; Insolvency: The appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tesla located at the Premises if possession is not restored to Tesla within sixty (60) days; or a general assignment by Tesla for the benefit of creditors; or any action or proceeding is commenced by or against Tesla under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors and, in the case of actions filed against Tesla, is not discharged within sixty (60) days.
19. REMEDIES: Counterparty and Tesla acknowledge and agree that each Party shall have all remedies available at law or in equity if an Event of Default by the other Party has occurred and is continuing. In addition, if an Event of Default by Tesla has occurred and is continuing, then

Counterparty may: (a) continue this Agreement in effect by not terminating Tesla's right to possession of the Premises and thereby be entitled to enforce all Counterparty's rights and remedies under this Agreement; or (b) bring an action to recover and regain possession of the Premises in the manner provided by Laws of eviction then in effect.

20. EXCLUSIONS: Notwithstanding anything herein to the contrary, each Party expressly releases the other from any claims for speculative, indirect, consequential or punitive damages, including any lost sales or profits of the other Party.
21. ASSIGNMENT: Tesla shall not assign this Agreement voluntarily or by operation of law, or any right hereunder, nor sublet the Premises or any part thereof, without the prior written consent of Counterparty, which consent may be granted or withheld in Counterparty's discretion; provided, however, that (1) the foregoing prohibition shall not limit Tesla's ability to transfer this Agreement to a Tesla Affiliate and (2) the Permitted Use remains the same. "Affiliate" of a Party is an entity that controls, is controlled by or is under common control with that Party, where "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, through ownership of voting securities, by contract or otherwise.
22. INDEMNIFICATION:
 - A. Counterparty: Except to the extent a claim arises from any negligence or willful misconduct of a Counterparty Indemnified Party, Tesla hereby agrees to indemnify, hold harmless and defend Counterparty, its Affiliates and their respective directors, officers, managers, members, employees, agents and representatives (each a "Counterparty Indemnified Party") from all losses and liabilities, including court costs and reasonable attorneys' fees, on account of or arising out of or alleged to have arisen out of any third party claim directly related to: (i) Tesla's Work; (ii) the use of the Premises by Tesla, its agents, contractors, or employees; (iii) Tesla's breach of this Agreement (including without limitation Tesla's failure to comply with Laws or the PWL (each as defined below); or (iv) bodily injury or damage to real or tangible personal property caused by the Trade Fixtures or the Infrastructure downstream from the meter.
 - B. Tesla: Except to the extent a claim arises from any negligence or willful misconduct of a Tesla Indemnified Party, Counterparty hereby agrees to indemnify, hold harmless and defend Tesla, its Affiliates and their respective directors, officers, managers, members, employees, agents and representatives (each a "Tesla Indemnified Party") from all losses and liabilities, including court costs and reasonable attorneys' fees, on account of or arising out of or alleged to have arisen out of any third party claim directly related to: (i) Counterparty's entry onto the Premises; or (ii) Counterparty's breach of this Agreement.
23. LIENS: Tesla shall promptly remove or bond any liens placed on the Property as a result of any claims for labor or materials furnished to Tesla at the Premises.
24. DESTRUCTION: Any total destruction of the Premises shall, at Counterparty's or Tesla's written election within thirty (30) days of such destruction, terminate this Agreement.

25. INSURANCE: Tesla shall carry commercial general liability insurance with limits of not less than Two Million Five Hundred Thousand dollars (\$2,500,000) per occurrence for bodily injury or death and property damage and an umbrella insurance policy with a limit of not less than Five Million dollars (\$5,000,000) per occurrence. The total limits required above may be met by any combination of primary and excess liability insurance. A certificate evidencing such insurance shall be delivered to Counterparty upon the execution of this Agreement and from time to time thereafter as may be requested by Counterparty. Upon request, Tesla shall include Counterparty as additional insured on its commercial general liability and umbrella insurance policies. Tesla will also carry worker's compensation insurance in accordance with state and federal law.
26. CONFIDENTIALITY AND PUBLICITY:
- A. Confidentiality: Tesla and Counterparty agree that any non-public, confidential or proprietary information or documentation provided to one Party by the other Party in connection with this Agreement is confidential information, and the Parties agree not to disclose such confidential information to any person or entity during the Term and for a period of three (3) years thereafter.
 - B. Permitted Disclosures: Notwithstanding the foregoing, the Parties may disclose confidential information (i) to their respective Affiliates, subcontractors, lenders, employees, financial, legal and space planning consultants, in each case that have a "need to know" such confidential information and have committed to treat the information as confidential under terms no less protective than the terms of this Section 26, provided that the Party disclosing such confidential information shall be liable for any disclosure by such authorized recipients and (ii) as required by law, including but not limited to the California Public Records Act (California Government Code §§ 62550 et seq.) ("CPRA"). In the event Counterparty receives a CPRA request for this Agreement, then Counterparty will promptly notify Tesla to enable Tesla to seek a protective order or other appropriate remedy.
 - C. Publicity: Neither Party will use the other Party's name, trademark or logo without obtaining the other Party's prior written consent.
27. ENVIRONMENTAL MATTERS: Counterparty represents and warrants that the Premises shall be delivered free of environmental contamination that violates any applicable environmental law. Notwithstanding any provision in this Agreement to the contrary, Counterparty agrees that it will indemnify and hold Tesla harmless from all costs from, and Tesla shall have no liability for, any environmental contamination of the Property, unless caused by Tesla, its agents, employees or contractors. During the Term, Counterparty is responsible for remediating any pre-existing contamination and any contamination not caused by Tesla, its agents, contractors or employees, but only to the extent required by applicable environmental law.
28. NOTICES: All notices, demands and approvals shall be in writing and shall be delivered by prepaid first class certified mail, or by a reputable overnight delivery service, to the addresses of the respective Party as specified in Section 1. Notice given by certified mail shall be deemed given on the second business day after deposit in the United States Mail, and any notice given by overnight delivery service shall be deemed given on the next business day after deposit with such overnight delivery service. Copies of notices, demands and approvals shall also be delivered if a "copy to" e-mail or other address is specified in Section 1. Notwithstanding the foregoing, as provided in

Section 4, Counterparty may approve the plans and specifications by e-mail. Either Party may change its respective address for notices by giving written notice of such new address in accordance with the provisions of this Section 28.

29. BROKERS: Each Party represents to the other Party that it has not dealt with any broker and each Party hereby agrees to indemnify and hold the other Party harmless from all losses and liabilities, including court costs and reasonable attorneys' fees, arising out of any claims for commissions or fees related to any broker, finder or similar person with whom the indemnifying Party has dealt, or purportedly has dealt, in connection with this Agreement.
30. SALE OR TRANSFER: In the event of a sale or transfer of all or a portion of Counterparty's interest in the Property or the Premises while this Agreement is in effect, Tesla's rights shall be conveyed with the Property or the Premises and Counterparty warrants that any transferee shall be bound by all terms and conditions of this Agreement, and shall obtain any necessary documents to confirm such assignment.
31. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and shall inure to the benefit of Counterparty and Tesla and their respective successors and assigns.
32. SUBORDINATION: Subject to Section 14 above, this Agreement is subject to and subordinate to all ground or superior leases and to all mortgages which may now or hereafter affect such leases or the real property of which the Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such ground or superior leases and mortgages; provided that Tesla's rights under this Agreement shall not be disturbed by such subordination so long as no Event of Default by Tesla exists. This Section 32 shall be self-operative and no further instrument of subordination or non-disturbance shall be required by any ground or superior lessor or by any mortgagee, affecting any lease or the Property.
33. FORCE MAJEURE: If either Party's performance of its obligations under this Agreement is delayed by Force Majeure, then such Party's time of performance will be extended by a corresponding number of days. As used in this Agreement, "Force Majeure" means an act, event, condition or requirement beyond such party's reasonable control, including, without limitation, labor disputes, governmental restrictions, natural disasters, fire, flood, inclement weather, pandemic, disease or other outbreak of infectious disease or any other public health crisis, inclusive of quarantine, shelter order or similar restrictions on employees or travel, declaration of national, regional or local state of emergency, explosion, embargoes, war, terrorism, civil disturbance or other similar events.
34. INCENTIVES: Counterparty agrees that Tesla shall own and receive the benefit of all Incentives derived from the construction, ownership, use or operation of the Supercharger Station, including, without limitation, from electricity delivered through, stored at or generated by the Supercharger Station. Counterparty will cooperate with Tesla in obtaining all Incentives, provided that Counterparty is not obligated to incur any out-of-pocket costs in doing so unless reimbursed by Tesla. If any Incentives are paid directly to Counterparty, Counterparty agrees to immediately pay such amounts over to Tesla. "Incentives" means (a) electric vehicle charging or renewable energy credits or certificates, carbon credits and any similar environmental or pollution allowances, credits or reporting rights, (b) rebates or other payments based in whole or in part on the cost or size of equipment, (c) performance-based incentives paid as periodic payments, (d)

tax credits, grants or benefits, and (e) any other attributes, commodities, revenue streams or payments, in each of (a) through (e) under any present or future law, standard or program and whether paid by a utility, private entity or any governmental, regulatory or administrative authority. For the avoidance of doubt, Incentives shall not include Mobile Source Emission Reduction Credits.

35. COMPLIANCE WITH LAW: Each Party shall comply with all applicable codes, laws and ordinances ("Laws") in fulfilling its respective obligations under this Agreement. Each Party represents that it is in good standing under the Laws of the state of its organization. To the extent Tesla's Work constitutes a "public work," as defined in the state prevailing wage law (California Labor Code §§ 1720 et seq. and 8 CCR § 16000 et seq.) (the "PWL"), Tesla shall comply with the PWL for any "public work" (as that term is defined in the statutes) performed pursuant to this Agreement. Compliance with the PWL includes, without limitation, payment of at least prevailing rates as determined by the Director of Industrial Relations, overtime and working hour requirements, apprenticeship obligations, payroll record-keeping requirements, and other obligations as required by law.
36. GOVERNING LAW: This Agreement shall be governed by the Laws of the State of California.
37. WAIVER OF JURY TRIAL: COUNTERPARTY AND TESLA EACH WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT.
38. INTERPRETATION: The headings and defined terms in this Agreement are for reference purposes only and may not be construed to modify the terms of this Agreement. Neither Party shall have the right to unilaterally revoke or terminate this Agreement, unless such revocation or termination is pursuant to the explicit terms of this Agreement.
39. SEVERABILITY: If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected, and each provision shall be valid and enforceable to the fullest extent permitted by law.
40. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one agreement. Electronic signatures and other signed copies transmitted electronically in PDF or similar format shall be treated as originals.

Signature page follows.

IN WITNESS WHEREOF, the Parties have each caused an authorized representative to execute this Agreement as of the date signed below.

COUNTERPARTY:

City of Brea
a California municipal corporation

By: _____

Name: Marty Simonoff

Title: Mayor

Date: _____

TESLA:

Tesla, Inc.
a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

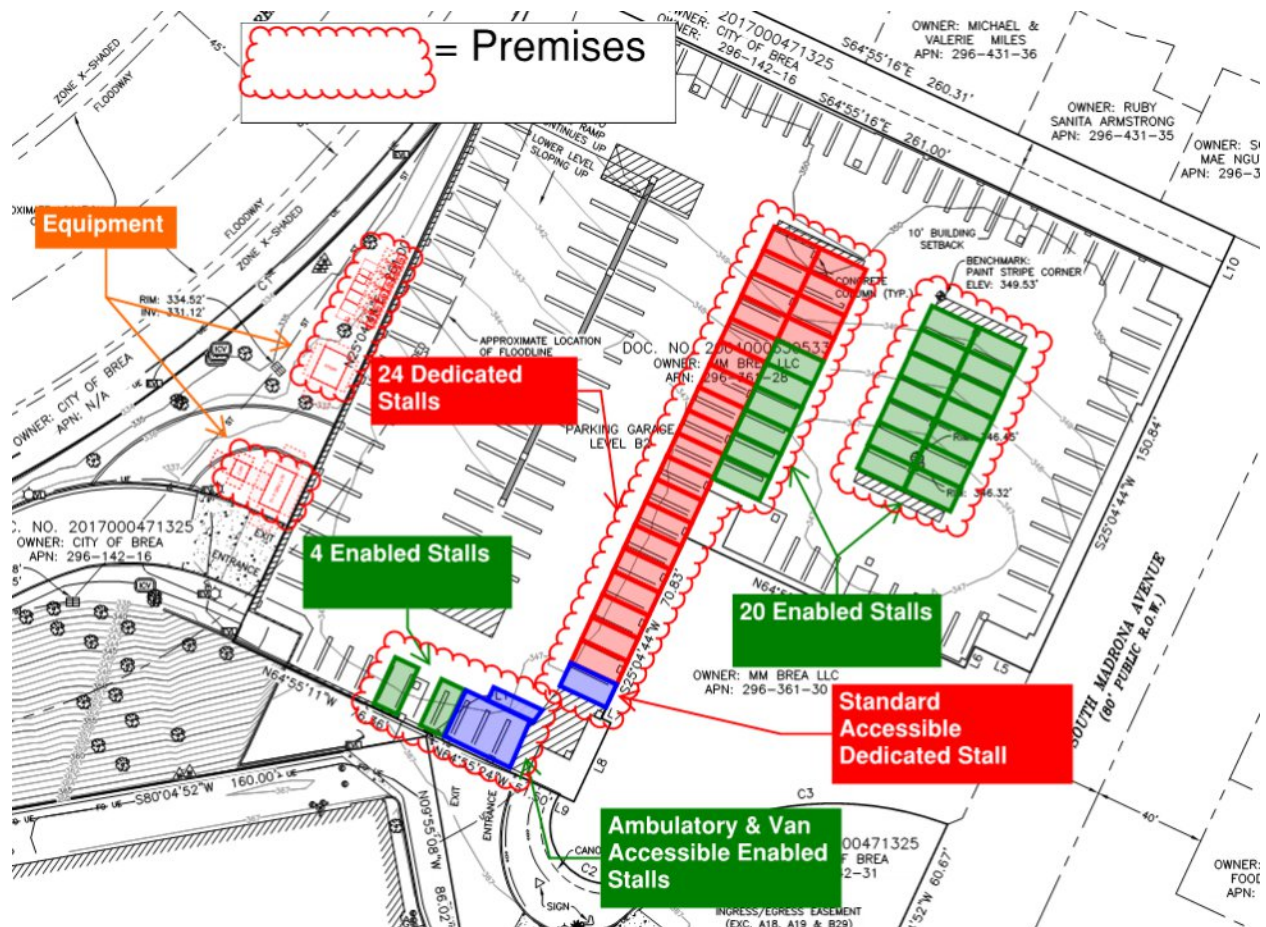


EXHIBIT B

Supercharger Station

Tesla shall install the Supercharger Station on the Premises pursuant to the terms of this Agreement and the Approved Plans.

The “Supercharger Station” shall consist of: (a) necessary utility infrastructure, which may include a utility transformer, metering equipment, conduit, wiring and concrete pads (collectively, the “Infrastructure”); and (b) certain trade fixtures as determined by Tesla, which shall include twenty-four (24) charge posts (“Superchargers”), twenty-four (24) Tesla-branded J1772 level 2 chargers (“Wall Connectors”), power electronics equipment, switchgear and Signage, and may also include, without limitation, fence or other visual barriers, a canopy, solar panels and an energy storage system (collectively, the “Trade Fixtures”).

Signage

Dedicated Stall Sign Example



Enabled Stall Sign Example



City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 09/29/2020

SUBJECT: Professional Services Agreement (PSA) with Bucknam Infrastructure Group, Inc. for Biennial Pavement Management Plan Update and Inspection

RECOMMENDATION

Approve the Agreement with Bucknam Infrastructure Group, Inc. to provide pavement inspection and pavement management plan services in an amount not-to-exceed \$32,795.

BACKGROUND/DISCUSSION

For the past several years, Bucknam Infrastructure Group, Inc. has provided the City of Brea with a pavement management system to assist staff with managing pavement needs including forecasting budgetary needs; planning rehabilitation projects; tracking rehabilitation histories; and providing information that meets OCTA funding requirements for paving projects.

OCTA guidelines require a Pavement Management Plan update every two years for arterial streets and every six years for residential streets. Spreading the residential street inspection over the six-year period is more cost effective since there are many more residential street miles than arterial streets. The last arterial and residential street survey was completed in fall 2018. To be compliant with OCTA requirements, the pavement survey work needs to be completed prior to June 2021. The pavement survey follows the Army Corps of Engineers standards in defining the pavement condition rating index (PCI) and the area of the streets (square footage).

Bucknam Infrastructure Group takes this information and provides staff with a breakdown of recommended maintenance and rehabilitation methods, locations, and cost estimates for future street maintenance/improvement projects. Bucknam Infrastructure Group worked with OCTA in the development of the Countywide Pavement Management Program in 2008 and has met the OCTA's pre-qualified pavement inspection requirements. Staff recommends using this vendor based on their extensive knowledge of the County reporting requirements. This experience will ensure the City meets the Renewed M2 requirements, and continue to be eligible for Measure M funds.

To prepare the Pavement Management Report requires extensive fieldwork to survey street conditions, followed by entry into the program database. Public Works has considered performing this work, but does not have the expertise, equipment, or manpower to complete this type of work without hiring additional staff or purchasing additional equipment. OCTA has specialized reporting and inspection requirements that make contracting this service the

most economical choice. Bucknam Infrastructure Group provides PMP services and has worked with over half of Orange County's local agencies including Brea, Costa Mesa, Cypress, Orange, Huntington Beach, and Irvine, to name a few.

SUMMARY/FISCAL IMPACT

There is no impact to the General Fund. Funding in the amount of \$35,000 will come from the 260 Measure M Transportation Fund. This amount was not included in the FY 2020-21 Adopted Budget. If approved, Finance will include this item in the next round of quarterly budget adjustments.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Will Wenz, Public Works Superintendent

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

Attachments

PSA

COI

PROFESSIONAL SERVICES AGREEMENT # 2020091601
for Pavement Inspection and Pavement Management Plan Services ("Services")

This Agreement is dated **October 6, 2020** for reference purpose and is executed by the
City of Brea ("City"), a California municipal corporation, and
Bucknam Infrastructure Group, Inc., a **California Corporation** ("Contractor").

City and Contractor are sometimes individually referred to as "Party" and
collectively as "Parties" in this Agreement

RECITALS

A. City requires provision of the Services, all as more fully described in this Agreement.

B. Contractor submitted its proposal dated **August 18, 2020**, attached hereto as **Exhibit A** and incorporated by reference herein ("Proposal").

C. Contractor represents that is is duly licensed and/or otherwise fully authorized by law and has the necessary experience and qualifications to provide such Services, City enters this Agreement in substantial reliance on such experience and qualifications.

D. The Parties enter this Agreement in order to set forth terms and conditions governing Contractor's performance of the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Scope of Services

A. Contractor shall perform the Services more specifically described in the Proposal, and as otherwise required by this Agreement, all to City's satisfaction (collectively, "Services" herein.)

2. Term

A. Contractor shall commence performance of the Services **upon being given a written notice to proceed from City** and shall continue until **acceptance and final payment for the Services**, unless sooner terminated as provided herein ("Term").

B. This Agreement may not be extended except by written amendment executed by both parties.

3. Compensation

A. Subject to the limitations herein, City shall pay Contractor for Services satisfactorily rendered according to prices set forth in **the Proposal** and in the manner set forth in **Section 8, Payment**.

B. The Parties agree that full and complete payment for all Services satisfactorily performed shall be the TOTAL, NOT-TO-EXCEED amount of **\$32,795.00** including any and all reimbursables ("Contract Amount").

C. Any work performed in excess of the Services, as set forth in **Section 1, Scope of Services**, without City's prior written approval shall be deemed to have been performed in fulfillment of the requirements of this Agreement and included within the not-to-exceed Contract Amount.

D. Payment for any approved additional work is set forth in **Section 8, Payment**.

PROFESSIONAL SERVICES AGREEMENT # 2020091601
for Pavement Inspection and Pavement Management Plan Services ("Services")

4. Minimum Insurance Requirements

A. **Section 21, Insurance** shall govern in the event of any conflict with the following requirements.

- i. A.M. Best's Rating minimum of A:VII
- ii. \$2,000,000 Commercial General Liability (per occurrence) ^{1, 2}
- iii. \$2,000,000 Automobile Liability (per occurrence) ^{1, 2, 3}
- iv. Statutory Limits Workers' Compensation ^{1, 2, 4}
- v. \$1,000,000 Employer's Liability (per occurrence) ^{1, 2, 4}
- vi. \$1,000,000 Professional Liability (per claim)
- vii. Not required Cyber General Liability (per occurrence) ^{1, 2}

B. Stipulations for the preceding requirements: ¹ Additional Insured required; ² Waiver of Subrogation required; ³ not required if no vehicles are used for Services; ⁴ not required if sole proprietor or if no employees used for Services.

5. Compliance with Law and Industry Standards

A. Contractor shall forthwith undertake and complete Services in accordance with this Agreement, including all attached Exhibits, all Federal, State and City statutes, regulations, ordinances and guidelines, and industry standards, and to the reasonable satisfaction of City.

6. Documents, Reports, Photographs, Drawings

A. Contractor shall supply copies of all required maps, surveys, reports, plans and documents (hereinafter collectively referred to as "documents"), as described in **Exhibit A**, to City within the time specified by City and in such numbers as required by City.

7. Subcontracting

A. Contractor shall not subcontract any required performance without City's prior, written consent. In the event any such other persons are authorized by the City to be retained by Contractor, Contractor hereby warrants that such persons shall be fully qualified to perform the Services. Contractor further agrees that Contractor shall remain fully responsible for the performance of this Agreement, whether or not any subcontractor is utilized by Contractor.

8. Payment

A. City agrees to pay Contractor up to the Contract Amount for the satisfactory performance of the Services. This sum shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees and subcontractors to Contractor. Payment to Contractor shall be made in accordance with the schedule set forth below. Notwithstanding any other provision herein, City shall retain five percent (5%) of each invoiced amount, pending receipt of all deliverables.

B. Payments to Contractor shall be made by City in accordance with the invoices submitted by Contractor, on a monthly basis for work satisfactorily performed, and such invoices shall be paid within a reasonable time after said invoices are received by City. All charges shall be in accordance with Contractor's proposal either with respect to hourly rates or lump sum amounts for individual tasks. Notwithstanding any provision herein, (i) in no event shall the total of said invoices exceed the Contract Amount; and (ii) further provided that in no event shall Contractor, or any person claiming by or through Contractor be paid an aggregate amount in excess of the Contract Amount.

PROFESSIONAL SERVICES AGREEMENT # 2020091601
for Pavement Inspection and Pavement Management Plan Services ("Services")

C. Final payment shall be made not later than 60 days after presentation of final documents and acceptance thereof by the City.

D. Additional Services: Any agreement to provide additional services must be in writing, executed by both parties, prior to any work being initiated. 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.

9. Information and Assistance

A. City will provide: (i) information and assistance as reasonably requested by Contractor; (ii) photographically reproducible copies of maps and other publicly available documents which Contractor considers necessary in order to perform the Services; (iii) such information as is generally available from City files applicable to the Services; and (iv) assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be Contractor's responsibility to make all initial contact with respect to the gathering of such information.

10. Ownership of Work Product

A. Unless otherwise agreed upon in writing, all concepts, ideas, reports, documents, plans, specifications, and/or other original written material, including any original images, photographs, video files, digital files, and/or other media created or developed for the City by Contractor in the performance of this Agreement, including any and all known and unknown intellectual and/or proprietary rights arising from their creation (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of City. All Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City upon final payment being made. Any use of the Work Product by City outside of the scope of this Agreement, shall be at City's risk. Contractor shall not obtain or attempt to obtain copyright or other protection as to any of the Work Product.

B. Contractor hereby assigns to City all ownership rights, including any and all known and unknown intellectual property rights, to the Work Product that are not otherwise vested in the City pursuant to **subsection A**, above.

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

PROFESSIONAL SERVICES AGREEMENT # 2020091601
for Pavement Inspection and Pavement Management Plan Services ("Services")

or by procuring a license or licenses for City; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. This covenant shall survive the termination of this Agreement.

11. Termination

A. This Agreement may be terminated by City upon the giving of a written "Notice of Termination" to Contractor at least fifteen (15) days prior to the date of termination specified in said Notice. In the event this Agreement is so terminated, Contractor shall be paid for services satisfactorily rendered up to the date of service of the Notice, and for any documented out of pocket expenses reasonably incurred by Contractor pursuant to this Agreement. In no event, however, shall Contractor receive more than the Contract Amount. Contractor 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 Contractor as of the date of termination. Contractor may not terminate this Agreement except for cause.

12. Indemnity

A. Contractor and City agree that City, its elected officials, officers employees, agents and volunteers should, to the fullest extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, defense costs, court costs or any other cost arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct in performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City.

B. **For Other Than Design-Professional Services.** To the fullest extent permitted by law, Contractor shall defend (with counsel reasonably approved by City), indemnify and hold the City, its elected and appointed officials, officers, attorneys, agents, employees, servants, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees" in this subsection free and harmless with respect to any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages, stop notices and/or injury of any kind, in law or equity, to property or persons, including bodily injury, wrongful death, personal injury and property damage, in any manner arising out of, pertaining to, or incidental to any acts, errors, omissions, or willful misconduct of Contractor, its owners, officials, officers, employees, servants, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, and/or this Agreement, including, without limitation, the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, or by the City or any of the other Indemnitees.

C. **For Design Professional Services.** If Contractor's Services hereunder include the performance of design professional services by a "design professional", (as defined below), then to the extent permitted by law, Contractor shall, at its sole cost and expense, indemnify and hold the City and other Indemnitees, and each of them, harmless with respect to any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense, to the extent arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, and/or its officers, agents, employees, servants, subcontractors, contractors or their officers, agents, employees, servants, contractors or subcontractors (or any entity or individual for whom the Contractor shall bear legal liability) in the performance of design professional services under this

PROFESSIONAL SERVICES AGREEMENT # 2020091601
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Agreement. Notwithstanding the foregoing and as required by Civil Code Section 2782.8(a), in no event shall the cost to defend the Indemnitees that is charged to Contractor pursuant to this subsection, exceed Contractor's proportionate percentage of fault.

D. For purposes of **subsection C**, above, and in accordance with Civil Code Section 2782.8(a), "design professional" means only the following and only while performing professional design services: (i) an individual licensed as an architect pursuant to Business and Professions Code Section 5500, et seq., and a business entity offering architectural services in accordance with that Code section; (ii) an individual licensed as a landscape architect pursuant to Business and Professions Code Section 5615, et seq., and a business entity offering landscape architectural services in accordance with that Code section; (iii) an individual registered as a professional engineer pursuant to Business and Professions Code Section 6700, et seq., and a business entity offering professional engineering services in accordance with that Code section; and (iv) an individual licensed as a professional land surveyor pursuant to Business and Professions Code Section 8700, et seq., and a business entity offering professional land surveying services in accordance with that Code section.

E. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The indemnification obligations set forth herein are binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this Section.

F. These Indemnification provisions are independent of and shall not in any way be limited by the Insurance Requirements of this Agreement. City approval of the Insurance contracts required by this Agreement does not in any way relieve the Contractor from liability under this Section.

13. Assignment and Subcontracting

A. No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, nor shall any required performance be subcontracted, either in whole or in part, by Contractor without the prior written consent of City.

14. Work Delays

A. In the event that Contractor fails to submit to City all required deliverables, together with all documents and supplemental material required hereunder, in public hearing form to the reasonable satisfaction of City, within the time required herein, or as may be extended by written consent of the parties hereto, then Contractor shall be in default.

15. Independent Contractor

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

B. All work and other Services provided pursuant to this Agreement shall be performed by Contractor or by Contractor's employees or other personnel under Contractor's supervision, and Contractor and all of Contractor's personnel shall possess the qualifications, permits, and licenses required by State and local law to perform the Services, including, without limitation, a City of Brea business license as required by the Brea City Code. Contractor will determine the means, methods, and details by which Contractor's personnel will perform the Services. Contractor shall be solely responsible for the satisfactory work performance of all

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personnel engaged in performing the Services and compliance with the customary professional standards.

C. All of Contractor's employees and other personnel performing any of the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor and Contractor's personnel shall not supervise any of City's employees; and City's employees shall not supervise Contractor's personnel. Contractor's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as an employee of City; and Contractor's personnel shall not use any City e-mail address or City telephone number in the performance of any of the Services under this Agreement. Contractor shall acquire and maintain at its sole cost and expense such vehicles, equipment and supplies as Contractor's personnel require to perform any of the Services required by this Agreement. Contractor shall perform all Services off of City premises at locations of Contractor's choice, except as otherwise may from time to time be necessary in order for Contractor's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Contractor's performance of any Services under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform such Services. City may make a computer available to Contractor from time to time for Contractor's personnel to obtain information about or to check on the status of projects pertaining to the Services under this Agreement.

D. Contractor shall be responsible for and pay all wages, salaries, benefits and other amounts due to Contractor's personnel in connection with their performance of any Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, State, or federal policy, rule, regulation, statute or ordinance to the contrary, Contractor and its officers, employees, agents, and subcontractors providing any of the Services under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by City, including but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") or any other retirement program, as an employee of City, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits or any other retirement benefits.

E. To the maximum extent permitted by law, Contractor shall indemnify, defend and hold harmless the City, its elected officials, officers employees, agents and volunteers, from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Contractor's violation of any provision of this Section, or any of Contractor's personnel practices. In addition to all other remedies at law, City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification obligation arising under this Section. The duty of indemnification set forth in this Section is in addition to all other indemnification provisions of this Agreement.

16. PERS Compliance and Indemnification

A. The Parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Contractor agrees that, in providing its employees and any other

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personnel to City to perform any work or other Services under this Agreement, Contractor shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code § 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Contractor shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. To the maximum extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected officials, officers employees, agents and volunteers from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Contractor's violation of any provision of this Section.

17. Governing Law and Venue

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

18. Attorneys' Fees

A. In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party shall be entitled to recover attorneys' fees, experts' fees, and all other costs of litigation from the opposing party in an amount determined by the court to be reasonable.

19. Entire Agreement

A. 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. The following order of documents shall govern in the event of any inconsistency or conflict between this Agreement and any Exhibit: this Agreement, then Exhibits.

20. Accounting Records of Contractor

A. During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, Contractor shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of Contractor's costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make the records available for inspection and audit by representatives of the City upon reasonable written notice.

21. Insurance

A. General

i. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

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ii. Without limiting the Agreement Indemnity provisions, Contractor shall procure and maintain in full force and effect for the Term of Contract, the following policies of insurance.

iii. For all insurance required in this contract, if a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

iv. If the Contractor maintains broader coverage and/or higher limits than the minimums required herein, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

B. Coverages

i. Commercial General Liability (CGL)

a. CGL affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury.

b. Limits shall be no less than \$2,000,000 per occurrence unless otherwise stated in **Section 4, Minimum Insurance Requirements**.

ii. Products-Completed Operations (PCO)

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

iii. Automobile Liability Insurance (ALI) if required in **Section 4, Minimum Insurance Requirements**.

a. ALI with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) for each accident for bodily injury and property damage with limit no less than \$2,000,000 per occurrence unless otherwise stated in **Section 4, Minimum Insurance Requirements**.

b. If Contractor does not own any vehicles, Contractor may satisfy this requirement by providing the following:

i) A personal automobile liability policy for the contractor's own vehicle; and

ii) A non-owned & hired auto liability endorsement to the commercial general liability policy if the contractor may lease, hire, rent, borrow, or use vehicles of others (e.g., employee-owned vehicles).

iv. Workers' Compensation (WC) if required in **Section 4, Minimum Insurance Requirements**.

a. Workers' Compensation as required by the State of California with statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.

b. If Contractor does not have any employees who will be performing work on behalf of the City, Contractor must provide the following:

i) A Self-Employment Affidavit Letter that Contractor is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance

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in accordance with the provisions of that code, and that Contractor will comply with such provisions before commencing the performance of the work of this contract; and

ii) A certification that Contractor does not employ any individual(s) in the course and scope of business operations.

v. Professional Liability Insurance (PLI)

a. Covered Professional Services shall specifically include all work to be performed under this contract and delete any exclusion that may potentially affect the work to be performed.

b. Limits shall be no less than \$2,000,000 per claim; \$2,000,000 aggregate unless otherwise stated in **Section 4, Minimum Insurance Requirements**.

vi. Cyber Liability if required in **Section 4, Minimum Insurance Requirements**.

a. Cyber liability insuring against any and all financial loss to the City or any other of the Additional Insureds, including bank charges, resulting from unauthorized access to, or theft or destruction of, City data including financial information of any kind, and/or personally identifiable information (PII) controlled, processed, stored, handled, or otherwise utilized by Contractor, with limits not less than \$1,000,000 per occurrence unless otherwise stated in **Section 4, Minimum Insurance Requirements**. This coverage may be provided as part of a professional liability policy.

C. Endorsements

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

ii. Commercial General Liability

a. Additional Insured

i) The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

ii) Additional Insured Endorsements shall not:

- a) Be limited to "Ongoing Operations"
- b) Exclude "Contractual Liability"
- c) Restrict coverage to the "Sole" liability of Contractor
- d) Exclude "Third-Party-Over Actions"
- e) Contain any other exclusion contrary to the Agreement

iii) Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 2010 and CG 20 37.

b. Primary Insurance

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

iii. Auto Liability

a. Additional Insured

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

b. Primary Insurance

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

iv. Workers' Compensation

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

D. Insurance Obligations of Contractor

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

E. Notice of Cancellation

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

F. Waiver of Subrogation

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

G. Evidence of Insurance

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

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ii. 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 City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

H. Deductible or Self-Insured Retention

i. Any deductible must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

I. Contractual Liability

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

J. Failure to Maintain Coverage

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

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

K. Acceptability of Insurers

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

L. Claims Made Policies

i. If "design professional" services include structural design services, and professional liability coverage, including coverage for Construction Defect claims, is written on a claims-made basis, then the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Agreement with the City and an extended reporting period shall be provided for a period of at least 10 years from termination or expiration of this Agreement. For all other professional liability coverage provided on a claims-made basis, the extended reporting period shall be not less than three (3) years following termination or expiration, or such other period as approved in writing by the City's Risk Manager.

M. Insurance for Subcontractors

i. Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this

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Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

22. California Labor Code Compliance

A. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with the Prevailing Wage Laws. Contractor is aware of the requirements of California Labor Code Sections 1720, et seq. and 1770, et seq., which require the payment of prevailing wages and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). These rates may be obtained at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

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

ii. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code Section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

B. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of this Agreement and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

C. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of the Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and

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harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

23. Notices and Designated Representatives

A. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the below individuals and shall be effective upon receipt thereof:

City OF BREa - Project Manager:

Tony Olmos
Public Works Director
1 Civic Center Circle
Brea, CA 92821
(714) 990-7698 phone
TonyO@CityofBrea.net

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

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

Contractor - Representative:

Peter Bucknam - President
Bucknam Infrastructure Group, Inc.
3548 Seagate Way, Suite 230
Oceanside, CA 92056
(760) 216-6529
peter@bucknam-inc.com

[SIGNATURES ON FOLLOWING PAGE]

PROFESSIONAL SERVICES AGREEMENT # 2020091601
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TO EXECUTE THIS AGREEMENT, the parties have caused their authorized representatives to sign below. Digital Signatures are acceptable if they conform to all requirements of California Government Code Section 16.5.

Bucknam Infrastructure Group, Inc.

[use this signature block if contractor is a corporation]

Peter Bucknam Digitally signed by Peter Bucknam
Date: 2020.09.22 10:45:02 -07'00'

Signature

- ☒ Chairperson
☒ President
☒ Vice President

Peter Bucknam Digitally signed by Peter Bucknam
Date: 2020.09.22 10:51:34 -07'00'

Signature

- ☒ Secretary
☒ Asst. Secretary
☒ Chief Finance Officer
☒ Asst. Treasurer

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

[use this signature block if contractor is a limited liability company]

Signature

☐ Manager

Signature

☐ Manager

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

City of Brea

By: _____
Mayor

Attest: _____
City Clerk

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EXHIBIT A
CONTRACTOR'S PROPOSAL

August 18, 2020

Mr. Will Wenz
Maintenance Services Superintendent
City of Brea
1 Civic Center Circle
Brea, CA 92821-5732

Subject: Proposal for Infrastructure Management and Services (FY 2020-2021)

Dear Will:

It is our pleasure to submit our proposal to assist the City in continuing the proactive management of your Pavement Management Program (PMP). With the City Brea's PMP moving toward automation through condition survey updates, Capital Improvement reporting (CIP), and GIS development, *Bucknam Infrastructure Group, Inc.* has identified a proactive and cost efficient method to assist the City in the continued success of the PMP program. Our team will focus our high-end pavement management expertise, annual working knowledge of Brea's MicroPAVER v7 dataset and GIS technology to optimize the City's management of the essential infrastructure management programs.

Our services will build upon the earlier success of our 2004 through 2019 pavement management program services with cost-conscience pavement inspections, annual work history updates, additional CIP reporting, alternative budgetary reporting, GIS support for the PMP and general database management. Our proactive PMP services will provide quality services such as:

- ❖ Relevant and accurate PMP services based on our ongoing work with the Orange County Transportation Authority (OCTA), Measure M2 compliance (**Bucknam has assisted sixteen (16) OC agencies comply with Renewed Measure M in the past year;**
- ❖ OCTA Renewed Measure M compliant surveying, reporting and pavement analysis; in January of 2020, Bucknam staff was certified by OCTA as having "**qualified inspectors and firm through 2022**" to prepare Pavement Management Plans compliant with the 2020 OCTA Countywide Pavement Management Guidelines;
- ❖ Local-Orange County knowledge and experience gained through our management of 70 local agency PMP's within Southern California; **Mr. Peter Bucknam is currently serving as Project Manager for numerous Orange County PMP projects (i.e. San Clemente, San Juan Capistrano, Fullerton, La Habra, Costa Mesa, Brea, Fountain Valley, Huntington Beach, Tustin, RSM, Laguna Beach, Laguna Hills, Westminster and Aliso Viejo)** and he has personally managed over 300+ PMP projects over the past twenty-two years;



- ❖ Project/engineering experience that brings the understanding that PMP software results are not set in stone; we proactively use the available data to enhance budget forecasting, PCI maintenance triggers, project planning and zone development;
- ❖ Cost effective management methodologies, from the project kickoff through final reporting, gained through our Project Manager's experience and use of GIS tablet-based / digital roadway imaging surveys / ArcGIS Online dynamic PMP-GIS link;
- ❖ Alternative Pavement CIP funding scenario generation and presentation (Bucknam will recommend numerous alternative PMP CIP budget recommendations to the City to identify the greatest ROI for the City);
- ❖ Professional Engineering experience through our Principal/Project Engineer, Mr. Steve Bucknam, P.E. who brings 40+ years of public/private local agency experience. Mr. Bucknam has served as City Engineer, Deputy City Manager, Design Engineer and Utilities Director for numerous public agencies.

As Project Manager, my goal is not just to meet the requirements of this project but establish a living document (Arterial & Local pavement CIP / **Renewed Measure M submittal**) that will be used throughout the term of the CIP as well as implement achievable long-term infrastructure management goals in coordination with City schedules. Our deliverables will be used to strategize and improve upon the City's Pavement CIP for Arterial and Locals.

By selecting *Bucknam Infrastructure Group, Inc.*, the City of Brea will continue to receive a strong, knowledgeable, innovative, and communicative team with the experience to implement a cost-effective pavement management program. Our handpicked pavement management professionals are committed to delivering quality services to the City. Mr. Peter Bucknam will represent our firm for this project and can be contacted at 760-216-6529 (work) 714-501-1024 (cell) or email at peter@bucknam-inc.com.

In order to streamline project management and work schedules, all work efforts will be conducted through our office in Oceanside, CA.

Respectfully submitted,

Bucknam Infrastructure Group, Inc.



Peter J. Bucknam
President/Project Manager



Project Understanding / Approach

We have defined detailed phases to the scope of work;

1. Project Implementation
2. Client Satisfaction
3. Project Schedule
4. Scope of Work (Major Tasks)
5. Optional Services (i.e. Cloud-Based AI Learning Tech – AC/PCC SF Calculations)

1) Project Implementation

TASK 1.1: Management & Administration - Project Kickoff

The first step in implementing a successful pavement management program truly resides in frequent communication and timely scheduled data updates. For the City of Brea it will be essential to establish, up front, the Public Works/Maintenance pavement management priorities. Our team will set a Project Kickoff meeting to further discuss and review in detail the expectations of the project, technical approach, section ID management & street and parking lot surveys, Orange County Transportation Authority (OCTA) compliance, finalization of the scope of work and the review of schedule.

This effort will build consensus between the Street Maintenance and Engineering departments as well as build stronger ARTERIAL and LOCAL maintenance programs. The first key topics to be discussed will include the review and assessment of the existing MicroPAVER pavement plan/data, OCTA compliance, and survey areas based on recent maintenance work and schedules, new construction, data quality and condition, current pavement procedures, historical expenditure levels, and desired service levels.

Deliverable: Meeting minutes, revised project schedule (if necessary)

TASK 1.2: Project Status Meetings - Quality Control Program

Status Meetings and Progress Reports

- Minimum of three meetings during the project (kickoff, field, and status meetings) – minimum of eight (8) hours;
- Field review meetings;
- Monthly progress status reports will be delivered to City project manager.

Quality Control (QC)

We will use a statistical sampling approach for measuring the quality of our field technician's work.

Project Understanding / Scope of Work



In this manner, for the FY 2020 surveys, 10 percent of the original surveys (6 of the 60 section miles) will be re-surveyed by an independent survey crew, supervised by a field supervisor, and the results will be compared to the original surveys.

Our QC process, performed annually, involves checking the field crews' work in a "blind study" fashion. Quality control checks will be performed at the end of each survey week. This will ensure that all field personnel are properly collecting distresses and pavement quantities for all street segments. **Since we are collecting distress information on our field Tablets with the Brea MicroPAVER database live, our staff will perform several quality control tests within the pavement management software using a sample set of the City of Brea's street distress data.** This will ensure that all system and analysis settings as well as City recommendations and standards are being followed.

As shown within the OCTA "Countywide Pavement Management Program, Guidelines Manual (April 2020)", our staff will follow and deliver on the requirements stated on Section 2.4, page 8 which require specific QA/QC data. All general draft and final reporting will follow the Chapter 3 guidelines. Our QA/QC plan will be approved by the City prior to the start of any inspections. **Over the past two years, Bucknam has already submitted sixteen (16) OCTA Measure M2 compliant reports for OC municipalities, they include:**

Orange County PMP Clients		
Brea	Irvine	RSM
Costa Mesa	Aliso Viejo	Tustin
Laguna Hills	Laguna Beach	Westminster
Fountain Valley	San Juan Capistrano	La Habra
Huntington Beach	San Clemente	Fullerton
La Palma		

Our surveys follow the accepted OCTA windshield/walking requirements (slow 5-10 mph). A copy of the QA/QC plan utilized by our staff during the project will be submitted along with the PMP certification documents.

Every year our staff has attended the OCTA MicroPAVER Distress Training Classes held from 2011 thru 2019. **In March, 2020 our staff was acknowledged as having "qualified inspectors and firm" to prepare Pavement Management Plans compliant with the OCTA Countywide Pavement Management Guidelines (this compliance runs through June 2022).**

Registered Engineer / Lead Engineer

Mr. Steve Bucknam, P.E. will supervise all operations, review all completed data and prepare and sign a final report incorporating the results of our pavement evaluation and conditions. We will provide engineered recommendations for pavement rehabilitation and replacement based upon field data and analysis.



2) Client Satisfaction

TASK 2.1: Project Deliverables

Shown throughout our Scope of Work, each Task is summarized with project deliverables. Client satisfaction will derive from frequent communication with the Project Manager and key staff members from the Engineering and Street Maintenance departments. Project success is created by delivering on three main factors;

1. Adherence to scope tasks and deliverables
2. Performing to the standard set by the Project Schedule; and
3. Controlling costs. Our Project Manager will follow each of these factors throughout the duration of the project

Deliverable: Project Status Updates, as stated in Task 1.2

3) Project Schedule

TASK 3.1: Work Flow / Project Schedule

Our project schedule shows each major task identified in our scope of work, as well as quality control milestones and meetings. Bucknam currently has ample staff to apply to this project in order to meet an aggressive schedule (two field technicians will drive the proactive schedule).

See key milestone dates from the project schedule below:

- Project Kickoff – September 28, 2020
- Survey Completion – January 15, 2021
- Delivery of draft PMP – January 22, 2021
- City comments returned to Consultant – February 5, 2021
- Delivery of City CIP Final Report – February 12, 2021
 - Brea CIP data/Final Report, reporting and revenue projections will be submitted by February, 2021
 - All necessary OCTA data, reporting and revenue projections will be submitted prior to June 28, 2019 (February, 2021)
- Submittal to OCTA of MicroPAVER Certification conforming to Renewed Measure M2 Eligibility Guidelines – February, 2021 (Will comply with April, 2020 OCTA PMP Guidelines)
- Implementation of MicroPAVER version 7.0.11 – Any time after acceptance of Final PMP
 - One copy (.e70 file) of the MicroPAVER database will be delivered



4) Scope of Work (Major Tasks)

TASK 4.1: Update Maintenance and Rehabilitation Activities

Based on the pavement maintenance and rehabilitation that has been performed by in-house staff as well as contractual maintenance, our staff will review all street activities that have been performed during the past two years. This data will be entered into MicroPAVER to enhance the recommendations for the upcoming budgetary analysis and CIP reporting.

Deliverable: Citywide Work History Report

TASK 4.2: Conduct Pavement Condition Survey

With two plus years since the City performed inspections it will be essential to verify that all MPAH / Local segmentation is up-to-date and that section SF quantities are accurate and reliable (see **Task 4.3; Bucknam-Fuscoe**).

Once the pavement segmentation has been assessed and verified, the inspection of 29 MPAH Arterial miles and 31 miles of Locals will be performed. Our survey will ensure that all Master Plan of Arterial Highways (MPAH) routes are surveyed and up-to-date for OCTA compliance.

Our survey methodologies will include the following approach based on the City's cost and benefit analysis:

1. **Walking/Windshield** - All sections are surveyed through walking/windshield methodologies. Distress types will be collected based upon actual surface conditions and physical characteristics of the segment. Surveying methods will be conducted by remaining consistent with MicroPAVER & the ASTM D6433-20 sampling guidelines while being flexible to current City requirements.

All sample locations are observed through walking surveys; additional street factors such as unique distress areas found outside our sample areas will be recorded. According to the OCTA guidelines, Brea MPAH pavement sections are to be surveyed for the upcoming 2020 PMP update:

- The inspection of approximately 29 miles of MPAH Arterial segments and 31 miles of Locals will be performed – OCTA compliance requirement (based on last inspection dates)
 - Recent slurry seal and overlay maintenance will reduce total mileage of survey - TBD
2. **Automated Digital Roadway Imaging** (see **Optional Task 4.10**) survey; Bucknam has recently performed this service for the cities of Bellflower, Culver City, Fountain Valley, Cypress, RSM, Santa Ana, La Habra Heights, National City and Palm Desert for PMP and ROW inspections.

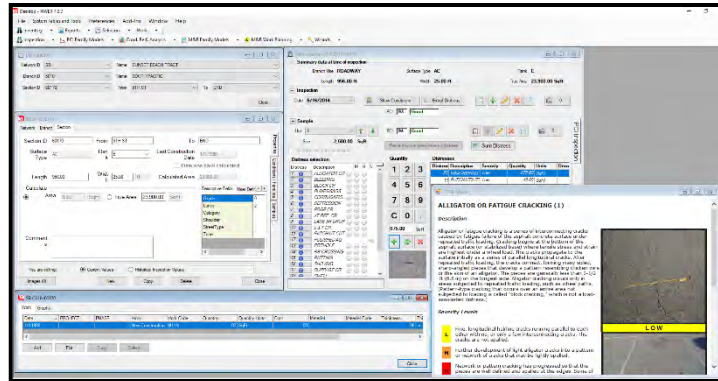
Project Understanding / Scope of Work



Our staff will establish all inspection sample locations for survey based on ASTM/OCTA PMP guidelines; **this effort replaces the walking field operations; all pavement inspections are completed in-house through our automated data collection processes. Surveys are quality controlled with field operations.**

Our use of **MicroPAVER-Tablet units** allows our staff to collect pavement data with the City of Brea's MicroPAVER database **live in the field**. At the end of the day all electronic data is transferred to our office for quality control and management.

Our Tablet methodology sets us apart from the competition since we are using a paper-less inventory process to enter data; this in turn generates cost savings to enhance the project schedule and other portions of the project such as CIP reporting, MicroPAVER training and on-call services.



Roadway Verification Survey - A listing of the field attribute data that is updated/verified during the survey for the pavement management database is listed below:

1. Field Attribute Data (updated and/or verified)

- ❖ From/to, indicating the assigned limits of the section, sample test areas, street name,
- ❖ Street ranking indicating local, arterial, collector, # of lanes, surface type
- ❖ Historical PCI tracking from previous inspections and 2020 PCI inspections
- ❖ Segment quantities, indicating the length, width, and total true area of the section
- ❖ Pavement segment and PCI "Variance" analysis and report
- ❖ ADT volumes (if available from previous reports or current City documents)

2. Conditional data will be evaluated for all street segments and will include:

- ❖ MicroPAVER 20 AC & 19 PCC distresses by type, severity and sample area
- ❖ PCI ratings (0-100), taking into account the surface condition, level of distress

We welcome staff from the City to join our surveys. All pavement data will be entered into the City's most current licensed software (version 7). All items listed above will be maintained by our staff for the duration of this project. Data management will be performed in-house at our Oceanside office. At the completion of the project, the MicroPAVER database will be placed within your information services network. Additionally, all distress data will be submitted in paper form to the City.

Project Understanding / Scope of Work



3. Section Distress and PCI Reporting

Upon 50% and 100% completion of the required condition surveys, we will prepare draft PCI Reports and PCI GIS maps that document the conditions of all pavement segments. This report will provide the necessary information within MicroPAVER for the City to use and manipulate projected street rehabilitation and maintenance projects.

Included in the report will be updated pavement performance curves and maintenance decision models. The City and our staff will review the PCI reports to ensure that all inventory data is correct and the project is running smoothly.

Our Report that will include:

- ❖ PCI report - Sorted by Name (A to Z), PCI Order (0-100), Zone (1, 2, 3, etc.)
- ❖ Pavement segment and PCI "Variance Report"
- ❖ Condition Report Analysis for each segment
- ❖ Work history report
- ❖ GIS Maps presenting PCI finding by zone and by section

Once the City has reviewed, assessed and commented on the draft report, we will address all comments made and deliver the final reports.

Deliverable: Citywide PCI reports, compliant OCTA PCI reports, updated MicroPAVER database

TASK 4.3: Optional – AC / PCC SF Cloud-based AI Technology Calculation

With two years between major inspections it will be essential to verify that all Arterial, Collector and Local segmentation is up-to-date and that section SF quantities are verified, accurate and reliable. This will be completed by utilizing the Bucknam-Fusco cloud-based learning technology (AI) to correct quantify square footages for each pavement section (see sample below).

Bucknam (powered by Fuscoe's unique use of cloud-based learning technology technology) allows our staff to provide the AI with the City of Brea's most recent aerial image or Bucknam's access to NearMap aerials. In doing so, all AC and PCC pavement areas are immediately calculated.





This instant calculation is possible due to the cloud-based learning tech's inherent working knowledge of how to recognize pavement surfaces and asphalt types. This ability will allow Bucknam to obtain the necessary quality control measurements for all Brea PMP segments and to perform segment SF variance reports. This will in turn create a more accurate total centerline / square footage of the Brea network as well as for each unique pavement segments.

This solution addresses the City's request for verification of all AC/PCC within the street and ROW!

DEVELOP RECOMMENDED IMPROVEMENT PROGRAM

TASK 4.4: Maintenance & CIP/Budgetary Analysis

We will assist the City in developing the most cost-effective preventative maintenance, repair and rehabilitation strategies possible. This will be accomplished by meeting with the City to discuss and strategize maintenance activities that are currently being used by the City. Based on the City's current AC & PCC applications, Geotech reports and other maintenance practices used we will conduct an historical and prospective analysis on the conditional and financial impact these practices have on the pavement network. Based on our fiscal and deterioration analysis, we will present our results and recommendations to City staff. This analysis will become an essential building block for the projected seven-year CIP/maintenance programs. The City is required to submit OCTA compliant, seven-year projections by June 30, 2021; Bucknam will deliver all necessary reporting by February, 2021.

We will establish/update a maintenance "decision tree" that will be used to generate pavement recommendations that match current fiscal year maintenance approaches/City practices. This will be accomplished by assessing/updating the unique and individual PCI ranges and deterioration curves within MicroPAVER based on functional class (i.e. arterial, collector, local) and age.

Our staff will review the Brea's deterioration curves that have been developed based on historical pavement condition, inspection, surface type, and road class. The curves will be modified based on current pavement conditions. The strategies that are typically reviewed are rehabilitation and reconstruction (R&R), localized maintenance, slurry seals, and various overlay types, the expected improvement in pavement condition, the life-cycle extension that would result and the unit costs for maintenance.

All maintenance practices/unit costs will be integrated into MicroPAVER and will be derived from the most recent construction bids for pavement rehabilitation. We will account for inflation rates when long-term revenues projections are made.

Our Project Manager and Principal will work closely with City in defining repair and rehabilitation strategies during each fiscal year and within each Zone defined by the City. Once the repair/rehabilitation strategies have been defined, the identification of a seven year Forecasted Maintenance schedule will be generated.

Project Understanding / Scope of Work



The recommended budget scenarios will be identified on the basis of several criteria:

- Assessment and review of the City's Pavement CIP
- Present pavement conditions; Desired levels of service and available resources
- Projected / Forecasted PCI's per section
- Cost benefit of individual strategies (e.g. maintain PCI in 7-years, etc.)
- Scheduling with the City's major CIP projects (water, sewer, etc.)
- Budgetary recommendations that satisfy OCTA Local Match Reduction guidelines
- Future routine maintenance needs based on projected deterioration rates
- Renewed Measure M and AHRP objectives and improving citywide weighted PCI

The primary emphasis of this task is to maximize the scheduling of street maintenance using the most cost-effective strategies available and taking into account a life-cycle cost analysis. A working "draft" Final Report will be generated for City staff to review. The report will include an executive summary, the PCI Report as well as draft budgetary findings and recommendations.

Deliverable: Two copies of the Draft Pavement Management Program Report

TASK 4.5: Citywide CIP / OCTA Compliance Reports

We will deliver the Final Report to the City which will be essential for staff reference and use as well as presented in a way that is beneficial for elected officials/upper management.

This report will assist the City in complying with OCTA and its most recent Countywide PMP Guideline requirements (April 2020).

The report will be prepared in a format that uses the information delivered by MicroPAVER in conjunction with the information and analysis performed by our team (identical to the report we delivered to OCTA every odd year). The report will provide the City with information on:

- Current inventory and pavement conditions indices (PCI) for all road classes
- Projected annual rehabilitation programs for street maintenance for a 7-yr period (ARTERIAL and LOCAL Forecast Maintenance Reports) that show the largest return on investment and acceptable levels of service;
- Modeling and comparison of budget scenarios typically include:
 - Current / Actual budget 7-year projection (citywide approach)
 - Identification of annual funding to maintain current PCI after 7-years
 - Increase current PCI within 7-years
 - Gradual, Frontloaded, Constrained and Unlimited funding analysis
- Strategies and recommendations for the City's maintenance programs and procedures, including a preventative maintenance schedule;

Project Understanding / Scope of Work



- Supporting documentation required by OCTA; and
- A detailed breakdown of deferred maintenance (backlog).

We will make a presentation of the results from the 2020 PMP update to City personal and/or City Council if necessary-pro bono.

Registered Engineer

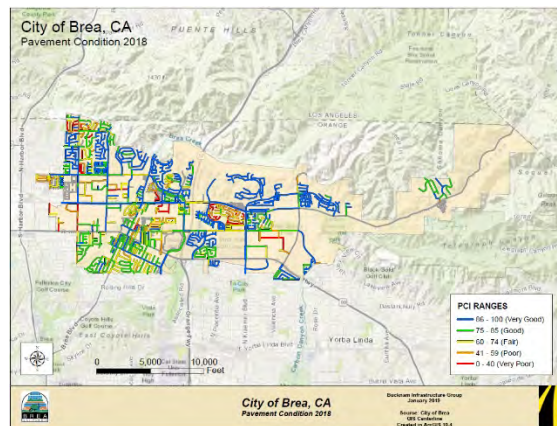
Mr. Steve Bucknam, P.E. will supervise all operations, review all completed data and prepare and sign a final report incorporating the results of our pavement evaluation and conditions. We will provide engineered recommendations for pavement rehabilitation and replacement design based upon field data and analysis.

Deliverable: Two (2) bound copies of the Final Pavement PMP Report (plus one original signed by our Registered Engineer, CA No. 20903) and electronic form (.pdf), will be sent to the City. Bucknam will provide one (1) electronic copy of MicroPAVER .e70 PMP database and GIS files.

TASK 4.6: Mapping and GIS

As an enhancement and proactive approach to this project, our staff will update the existing Pavement-GIS link between MicroPAVER and the City's GIS system. Our staff established this link in 2004 and has updated the unique PMP-GIS layer every year. Our staff will review, with City staff, all ongoing upcoming capital projects that may impact the GIS mapping delivered for this project.

The maps described below will be incorporated into the City's Final PMP report:



- PCI values for every section
- Work History identifications
- 7-yr Arterial / Local Rehabilitation and Slurry Seal Programs
- Functional classification maps

Once the City has approved the Pavement Condition Report, we will update the necessary MicroPAVER-GIS linkages (street names will be shown on all maps).

Project Understanding / Scope of Work



By using the unique ID's within the PMP and the City's ESRI street shapefile ID's, we will create a one-to-one match for each pavement section in the GIS. Our staff will coordinate all project deliveries with the Public Works and the GIS division to ensure that the most current and accurate PMP-GIS maps are represented within the City's GIS enterprise (see 2017 Brea PMP map above).

Deliverable: Complete GIS files/themes based on list above (shapefiles).

TASK 4.7: Brea My Roads PMP Web-Portal

Brea My Roads Web-Portal

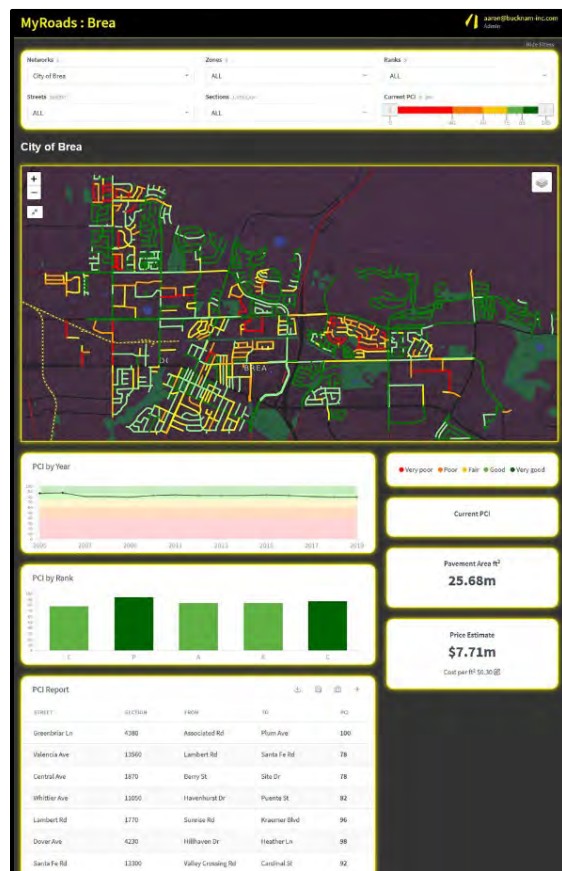
Bucknam now provides all our PMP clients with a unique and agency driven "MyRoads" web-portal that provides instantaneous access to your PMP database.

This "dashboard" allows users to toggle through individual sections via GIS mapping or queries, zone selection, rank selection, etc. to review all section metrics, latest/previous inspections, work histories generate filtered PCI reports and identify potential maintenance costs based upon your unique needs.

Bucknam has shown to the right the current Brea "My Roads" actively working! This tool will be accessed by City staff simply through a Username/Password methodology. As changes are made to the Brea PMP database the My Roads dataset is changed to reflect work history edits, PCI inspections and section changes.

In summary, MyRoads allows the user perform the following dynamic functions:

- Query for a specific pavement segment to view its inspection PCI, work history and inspection history on one dashboard;
- Filter for pavement sections within a defined zone, PCI range and/or functional class;
- Select a pavement section or grouping of section through the on-board GIS tool;
- Displays all final GIS project maps (PCI, work history, forecasted maintenance, etc.)



Project Understanding / Scope of Work



OCTA PMP QUALIFICATIONS / CERTIFICATIONS

Shown below is OCTA's verification that Bucknam Infrastructure Group, Inc. is prequalified to prepare Pavement Management Plans. Bucknam is "qualified" until June, 2022.

Re: **OCTA** C-9-1099

Dragos Andrei <dandrei@westcoastec.com>
To: shaun@bucknam-inc.com
Cc: Peter Bucknam; Harry Thomas

Attachments: Aaron Cohodas.pdf (90 KB), Cade Bucknam.pdf (90 KB), Joshua Logsdon.pdf (91 KB)

Hi Shaun,

Below please find a summary of results for all BIG inspectors that participated in the program this year. NRMSE is the normalized root mean square error expressed in standard deviations from the baseline survey with a maximum of 1.40 allowed. BIAS is the sum of all deviations from the baseline survey in PCI points. A positive bias indicates overall over-estimation, a negative value indicates overall under-estimation.

	Aaron Cohodas	Joshua Logsdon	Cade Bucknam
Survey	Manual	Manual	Manual
NRMSE	0.95	0.74	1.14
BIAS	92	70	130

Since all NRMSE values are below 1.40, all inspectors are pre-qualified.

Thank you for your participation in the program. Attached please find pre-qualification certificates for all inspectors. Please make sure each inspector receives a copy of their certificate. Let us know if you have any questions.

Dragos

Additional Services (Optional)

TASK 4.8: MicroPAVER Training

With PMP software use being one of the key components to a successful PMP implementation, we will provide City staff with quality, certified training and the necessary skills needed to maintain the PMP. Bucknam will provide City staff with all collected pavement/GIS data, as well as updated operation manuals for both field data collection and software use. Based on the number of future users, our staff will deliver as many copies as needed by City staff to facilitate the program. Peter Bucknam, who is certified in the use of MicroPAVER, will conduct comprehensive multi-day training sessions covering implementation, interfacing with the system, PMP methodologies, field survey practices, PCI calculations, budget needs analysis and editing/updating the database. This is estimated to consist of a minimum of 8 hours of training.

Training typically involves one (1) day of training on the PMP software and GIS linkages. There is no minimum or maximum amount of people that can be trained under this methodology. We can train one key individual or an entire classroom using a City training facility pending on your needs; the intent of this training is to empower and allow City staff to continue updating the PMS database on their own after this project is completed.



TASK 4.9: As-Needed PMP Services

Pavement Management Program Support

With the City implementing a biennial PMP management schedule Bucknam will provide annual PMP support that will cover data previously submitted by our staff. If additional services outside the identified scope of work above are requested Bucknam will provide timely and proactive services to the City. Additional As-Needed services typically include:

- Review of geotechnical, PS&E plan sets or other PMP related studies from outside agencies (i.e. OCTA, etc.);
- Additional budget scenarios, general reporting, deterioration studies
- Additional visual inspections above the mileage amount indicated in Task 4.2
- Additional pavement management – GIS mapping
- Additional MicroPAVER training, operation use

Also, if requested, Bucknam will assess and review the City's upcoming maintenance schedule for that fiscal year. The agreement will continue to include the provision of onsite and telephone support for the City staff.

TASK 4.10 Automated Digital Roadway Imaging

Bucknam has performed numerous digital roadway imaging survey throughout Southern California over the past ten years. Based on the City's infrastructure / GIS data collection priorities we have performed digital imaging surveys for local agencies that complement our pavement inspections. Our services are a proactive and cost efficient GPS survey methodology that will allow for the collection of numerous GPS locations using "one" set of digital imagery (e.g. five citywide infrastructure surveys for the cost of one).



Beyond the pavement survey capabilities, the City will be able to collect other infrastructure assets in the future such as signs, manholes, driveways, catch basins and other ROW features; a tremendous costs savings that could reach \$400,000 over the next 3 years.

Several of our current clients have used this technology to include sign inventories with the pavement management survey in order to remain proactive with regulatory sign inspections.

With verification of street segmentation, the inspection of approximately 125 centerline miles will be surveyed (or citywide). MicroPAVER - Army Corp of Engineers AC and PCC distress types will be collected based upon actual surface conditions and physical characteristics of the segment while being flexible to current City practices.

Project Understanding / Scope of Work



Our automated digital imaging allows technician to collect the following:

- Continuous pavement imaging (images taken every 5 meters, competition typically surveys at every 8 meters/25 feet intervals)
- Surface roughness ratings (IRI)
- Rutting depth (full width of lane or street)
- Imaging captures 100% of each pavement segment (not just one lane)
- Data transfers seamlessly to MicroPAVER
- Optional Ground Penetrating Radar (GPR) for arterials and collectors
- 2mm pixel images allows for centimeter horizontal and vertical accuracy

The first survey process will involve the mobile GPS vehicle taking approximately three-week's time to survey the Brea's street network; additionally, the vehicles drive the posted speed limits. The images that are collected are taken by using Sony digital stereographic cameras (6 cameras) positioned on the vehicle. The images have a resolution of 2,880 X 2,000 and are geo-referenced by means of inertial GPS equipment contained within the van; images are taken every 4 to 6 meters, 15 ft intervals.

The quality of the imagery and its GIS / record collecting capabilities within the software provided allows the technician to accurately identify the required pavement distresses defined by the pavement software and the project (distresses are collected in-house).

All pavement GIS data associated with each pavement section will be entered into the City's working infrastructure and GIS software.

Survey vehicles are equipped with digital measuring instrumentation (DMI) that will be used to verify all pavement section lengths and widths. Our vehicles can be equipped with road roughness rating equipment, strip mapping cameras and are set to record 360 degree street imaging.

The survey will be performed by the *Bucknam* team that is experienced and trained in infrastructure condition assessment using LambdaTech's "Feature Extraction" software. We have performed this service for the cities of Fountain Valley, RSM, Cypress, Lake Elsinore, National City, Palmdale, Palm Desert, La Habra Heights, Murrieta, Lomita and Santa Ana).

Through these projects we have collected the following infrastructure data sets and established GIS layering for:

- Sign Inventory (MUTCD compliant)
- Catch Basins
- Sewer and Storm Drain manholes
- Fire Hydrants
- Sidewalk Curb Markings
- Street Striping, Legends, Crosswalks

Project Understanding / Scope of Work



- Street Lighting
- Pavement roughness and rutting
- Pavement Management surveys (based on County requirements)

Project Understanding / Scope of Work



Proposed Fee

Task Items 1 through 4 can be accomplished on a **time and materials not to exceed** basis in accordance with the standard hourly rate schedule attached. Our anticipated fee including labor and reimbursable expenses is projected to be \$32,795 for a six-month period. Should the City desire to increase the service level above the hours outlined above for the Task items 1 through 4 or require other services not described herein, a fee adjustment would be negotiated and mutually agreed upon by both parties. We have included our fee schedule below for the City consideration.

	Description	Principal	Project Manager	GIS Planner	Field Technician(s)	Admin	Total by Task
	2020 Base Fee	\$295/hr	\$185/hr	\$145/hr	\$90/hr	\$75/hr	
Task 1	Project Implementation						
Task 1.1	Project Kickoff		2	1			\$515
Task 1.2	Project Status Meetings - Quality Control	1	4	6	16		\$3,345
Task 2	Client Satisfaction						
Task 2.1	Project Deliverables		2			1	\$445
Task 3	Project Schedule						
Task 3.1	Work Flow / Project Schedule		2	4			\$950
Task 4	Scope of Work						
Task 4.1	Update Maintenance and Rehabilitation Activities		1		8		\$905
Task 4.2	Pavement Condition Survey (60 miles-Walking)		6	8	114		\$12,530
	29 Arterial MPAH miles						
	31 Local miles						
Task 4.3	AC/PCC SF Cloud-based AI Technology Calculation	(see Optional Services below)					
Task 4.4	Maintenacne & CIP / Budgetary Analysis		8	4			\$2,060
Task 4.5	Citywide CIP / OCTA Compliance Reports	1	30	8		1	\$7,080
Task 4.6	Mapping and GIS Update		3	12	8		\$3,015
Task 4.7	Brea My Roads PMP Web-Portal						\$500
	Reimbursables (mileage, printing, materials)						\$1,450
	All deliverables will become property of the City of Brea						
	All Tasks are negotiable						
	Total Hours per Staff	2	58	43	146	2	
	2020 Total Base Fee	\$ 590	\$ 10,730	\$ 6,235	\$ 13,140	\$ 150	\$32,795
	Optional Tasks						
Task 4.3	AC/PCC SF Cloud-based AI Technology Calculation (60 miles)						\$4,100
	- OR Citywide calculation (125 miles)						\$7,200
Task 4.7	MicroPAVER Training		2		10		\$1,270
Task 4.8	As-Needed PMP Services (Annual)						T&M
Task 4.9	Automated Digital Roadway Imaging (Citywide)						\$14,100
	Mobilization* (LambdaTech)						\$1,000
	Signs (approx. 4,000)						\$15,600
	Curb Markings (approx. 2,000)						\$6,600
	Crosswalks (approx. 1,000)						\$3,300
	Legends (approx. 1,500)						\$4,950
	Catch Basins (approx. 1,000)						\$3,300
	Traffic Signals (approx. 250)						\$825
	Curb Ramps (approx. 2,000)						\$6,600
Additional services outside of this contract will be negotiated with the City where we will use the Standard Hourly Rate Schedule shown							



CERTIFICATE OF LIABILITY INSURANCE

APPROVED
By Nicole Andrews at 11:20 am, Sep 09, 2020

DATE (MM/DD/YYYY)
9/9/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER WILLIS TOWERS WATSON MIDWEST INC 233 S WACKER DR, SUITE 2000 CHICAGO IL 60606		CONTACT NAME: PHONE: (888) 780-5381 (A/C No. Ext): E-MAIL: Certificate@Hanover.com ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Citizens Ins Co of America INSURER B: Hanover Insurance Co INSURER C: Hanover American Ins Co INSURER D: INSURER E: INSURER F:		FAX: (866) 828-2424 (A/C No.):
INSURED BUCKNAM INFRASTRUCTURE GROUP INC 3548 SEAGATE WAY STE 230 OCEANSIDE CA 92056		NAIC # 31534 22292 36064		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PERU-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	OBC A399956 06	09/16/2020	09/16/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	OBC A399956 06	09/16/2020	09/16/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$	Y	Y	OBC A399956 06	09/16/2020	09/16/2021	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	WZC A399946 06	09/16/2020	09/16/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Architects & Engineers Prof Liab	N	N	LHC H023717 01	09/16/2020	09/16/2021	Claims-Made: \$2M Ea Claim/\$2M Agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Brea, its elected officials, officers, employees, attorneys and agents, and any other parties, including subcontractors, specified by the City of Brea are Additional Insured on the General Liability pursuant to the terms and conditions by form 391-1586. Additional Insured is primary to the extent provided by form 391-1586. Waiver of Subrogation as provided by form 391-1003 (pg 80 of 81) & WC040306. Cancellation Notice will be provided to the Certificate Holder pursuant to endorsement: 401-1235. Such notice is solely for the purpose of informing the Certificate Holder of the effective date of cancellation and does not grant, alter, or extend any rights or obligations under this policy.

CERTIFICATE HOLDER

CANCELLATION

CITY OF BREA ATTN: WILL WENZ, PUBLIC WORKS SUPERINTENDENT 1 CIVIC CENTER CIRCLE BREA CALIFORNIA 92821	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

A. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured:**

Additional Insured by Contract, Agreement or Permit

a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit including "bodily injury" or "property damage" included in the "products - completed operations hazard" only if this Coverage Part provides such coverage.
- (2) Premises you own, rent, lease or occupy; or
- (3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.
- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

c. This provision does not apply:

- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal

injury and advertising injury".

- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage", or "personal and advertising injury" arises out of sole negligence of the lessor
- (4) To any:
 - (a) Owners or other interests from whom land has been leased if the "occurrence" or offense takes place or the offense is committed after the lease for the land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

B. Aggregate Limits of Insurance per Project or per Location

The following changes are made to **SECTION II - LIABILITY**:

1. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance**, paragraph 4:

The Aggregate Limits of Insurance apply separately to each of "your projects" or each "location" listed in the Declarations.

2. For the purpose of coverage provided by this endorsement only, the following is

added to **SECTION II - LIABILITY, F. Liability And Medical Expenses Definitions**:

1. "Your project" means:
 - a. Any premises, site or "location" at, on, or in which "your work" is not yet completed; and
 - b. Does not include any "location" listed in the Declarations.
2. "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

insured's rights against all those other insurers.

- c. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

- (2) The total of all deductible and self-insured amounts under all that other insurance.

- d. We will share the remaining loss, if any, with any other insurance that is not described in this provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage.

e. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Insurance to the total applicable limits of insurance of all insurers.

- f. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so; but we will be entitled to the insured's rights against all those other insurers.

I. Premiums

- 1. The first Named Insured shown in the Declarations:
 - a. Is responsible for the payment of all premiums; and
 - b. Will be the payee for any return premiums we pay.
- 2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the

premium in accordance with our rates and rules then in effect.

- 3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:

- a. Paid to us prior to the anniversary date; and

- b. Determined in accordance with paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

- 4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that is not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

J. Premium Audit

- 1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
- 2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- 3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

K. Transfer of Rights of Recovery Against Others to Us

- 1. Applicable to **SECTION I - PROPERTY** Coverage:

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
 - (1) Someone insured by this insurance;
 - (2) A business firm:
 - (a) Owned or controlled by you; or
 - (b) That owns or controls you; or
 - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

2 Applicable to SECTION II - LIABILITY Coverage:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair such rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

We waive any right of recovery we may have against any person or organization with whom you have a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".

This condition does not apply to Medical Expenses Coverage.

L Transfer of Your Rights and Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured. If you die, your rights and duties will be transferred to your legal representative but only while that legal representative is acting within the scope of their duties as your legal representative. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

BLANKET AS REQUIRED BY

C O N T R A C T

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No. WZC-A399946-06

Endorsement No.

Insurance Company THE HANOVER AMERICAN INSURANCE COMPANY

Countersigned By _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO DESIGNATED ENTITY(S)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
HANOVER COMMERCIAL FOLLOW FORM EXCESS AND UMBRELLA POLICY
COMMERCIAL PROPERTY COVERAGE PART
BUSINESS AUTO COVERAGE FORM
BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Name of Designated Entity Mailing Address or Email Address	Number Days Notice
CITY OF BREA, CA CIVIC & CULTURAL CENTER 1 CIVIC CENTER CIRCLE BREA, CA 92821	30

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

If we cancel this policy for any reason other than nonpayment of premium, we will give written notice of such cancellation to the Designated Entity(s) shown in the Schedule. Such notice may be delivered or sent by any means of our choosing. The notice to the Designated Entity(s) will state the effective date of cancellation.

Unless otherwise noted in the Schedule above, such notice will be provided to the Designated Entity(s) no more than the number of days in advance of the effective date of cancellation that we are required to provide to the Named Insured for such cancellation.

Such notice of cancellation is solely for the purpose of informing the Designated Entity(s) of the effective date of cancellation and does not grant, alter, or extend any rights or obligations under this policy.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

City of Brea

FINANCE COMMITTEE COMMUNICATION

FROM: Bill Gallardo

DATE: 09/29/2020

SUBJECT: Update on the Refunding of the 2014 Water Revenue Bonds - Oral Report -
Cindy Russell
