



## Finance Committee

**Tuesday, July 12, 2022**

**8:30 a.m.**

Executive Conference Room and via Zoom  
Brea Civic & Cultural Center

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

The Finance Committee meeting will be held on July 12, 2022 at 8:30 a.m. and the public is welcome to participate. To provide comments in person, the Executive Conference Room will be open to a limited number of members from the public. 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. Monday, July 11, 2022 to obtain the Zoom information. Participants will be muted until recognized at the appropriate time by the Committee. Written comments may be sent to the Administrative Services Department at arlenem@cityofbrea.net no later than 12:00 p.m. on Monday, July 11, 2022. Any comments received via email will be summarized aloud into 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 the agenda submitted to the Finance Committee after distribution of the agenda packet are available for public inspection during normal business hours in the Administrative Services Department located on the third floor of the Civic & Cultural Center at 1 Civic Center Circle, Brea, CA 92821. 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. **June 14, 2022 Finance Committee Regular Meeting Minutes - Approve.**

#### Attachments

Draft Minutes 06-14-2022

### DISCUSSION

3. **Self-Contained Breathing Apparatus Replacement** - Authorize Purchasing Agent to issue a purchase order to AllStar Fire Equipment Inc. for Scott Air-Paks, SCBA bottles, masks, and voice amplifiers in the amount of \$289,829.49 including sales tax.

4. **Agreement with Carbon Solutions for Upgrades to Electric Charging Stations at the Brea Civic & Cultural Center** - Authorize the Mayor to execute the agreement with Carbon Solutions.

**Attachments**

CSG Agreement

5. **Annual Vehicles and Equipment Purchase Plan for Fiscal Year 2022-23** - Authorize the Purchasing Agent to issue purchase orders in an amount not-to-exceed \$1,532,000 for various City vehicles and equipment described in the Annual Vehicles Replacement Plan for Fiscal Year (FY) 2022-23.

**Attachments**

Purchase Plan

6. **Accept a \$133,244.52 California Highway Patrol Cannabis Tax Fund Grant Program Award for DUI Enforcement Training** - Adopt a resolution accepting a State of California Cannabis Tax Fund Grant Program (CTFGP) Award for training in the areas of education, prevention, and enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis, in the amount of \$133,244.52, for the one-year grant program which began July 1, 2022 and ends June 30, 2023.

**Attachments**

Resolution

7. **Authorization to Execute Contractual Services Agreement Between City of Brea and NEOGOV for Recruitment and Onboarding Software Services** - Approve recommendation that the City Council execute contractual services agreement between the City of Brea and GovernmentJobs.com, Inc. ("NEOGOV") and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360). This new Human Resources Information Management software agreement would significantly improve the City's recruitment and hiring process and allow for further efficiencies by creating an electronic onboarding process.

**Attachments**

Agreement - NEOGOV

Contract Order Form

8. **Approval of Fiscal Year 2022-23 Property Tax Rate to Fund the City's Paramedic Program** - Approve resolution.

**Attachments**

Paramedic Tax Resolution

9. **Schedule Next Meeting: Tuesday, July 26, 2022**

cc: Mayor Pro Tem Glenn Parker and Council Member Steven Vargas

**Special Accommodations**

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

City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**TO:** Finance Committee Members  
**FROM:** Bill Gallardo  
**DATE:** 07/12/2022  
**SUBJECT:** June 14, 2022 Finance Committee Regular Meeting Minutes

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**RECOMMENDATION**

Approve.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager  
Prepared by: Alicia Brenner, Senior Fiscal Analyst  
Concurrence: Kristin Griffith, Administrative Services Director

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**Attachments**

Draft Minutes 06-14-2022

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# DRAFT FINANCE COMMITTEE MINUTES

Tuesday, June 14, 2022

8:30 AM

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

## CALL TO ORDER / ROLL CALL

ATTENDEES: Council Member Christine Marick, Council Member Marty Simonoff, Bill Gallardo, Jason Killebrew, Bill Bowlus, Ryan Chapman, Faith Madrazo, Sean Matlock, Alicia Brenner and Anthony Godoy

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

## CONSENT

2. **May 31, 2022 Finance Committee Special Meeting Minutes – Approved**

## DISCUSSION

3. **Release Warranty Bond for Tract 17160; Accept Certificate of Correction and Release Subdivision and Warranty Bonds for Tract 17160 for La Floresta Development Village Site – Recommended for City Council approval**
4. **Renewed Measure M (M2) Eligibility Submittal Package for Fiscal Year 2022-23 - Recommended for City Council approval**
5. **Public Works Consumer Price Index (CPI) Contract Increases - Recommended for City Council approval**
6. **Award Design Services for Arovista Park Modernization, CIP 7978 - Recommended for City Council approval**
7. **Set the Employer Medical Health Benefit Contribution Amount to the Public Employees' Medical and Hospital Care Act (PEMHCA) Minimum for Employees and Retired Annuitants Effective August 1, 2022 - Approve Resolution No. 2022-XXX FIXING THE EMPLOYER CONTRIBUTION UNDER THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT AT AN EQUAL AMOUNT FOR EMPLOYEES AND ANNUITANTS – City Manager Bill Gallardo informed the Committee that staff would modify the PEMHCA resolution to include the 004 Executive Managers (Directors) Group along with the other employee groups. Committee discussed the item, approved this modification and recommended for City Council approval. Staff will also come back at a later date to amend the current Executive Compensation resolution to provide clarifying PEMCHA language prior to the August 1, 2022 effective date.**

Meeting adjourned: 8:32 AM

**City of Brea**

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**FINANCE COMMITTEE COMMUNICATION**

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**TO:** Finance Committee Members  
**FROM:** Bill Gallardo  
**DATE:** 07/12/2022  
**SUBJECT:** Self-Contained Breathing Apparatus Replacement

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**RECOMMENDATION**

Authorize Purchasing Agent to issue a purchase order to AllStar Fire Equipment Inc. for Scott Air-Paks, SCBA bottles, masks, and voice amplifiers in the amount of \$289,829.49 including sales tax.

**BACKGROUND/DISCUSSION**

SCBAs (Self-contained Breathing Apparatus) are an OSHA (Occupational Safety and Health Administration) requirement for all fireground operations performed in or around any environment considered to be immediately dangerous to life and health, or IDLH. This includes all active fire incidents, hazardous materials incidents, confined space incidents, certain biological medical calls, etc.

As the Fire Department continues to regularly inspect and maintain its inventory of SCBAs, extra bottles, SCBA masks, and voice amplifiers, Staff has identified (50) SCBAs that require replacement. NFPA 2018 (National Protection Standard Association) states that when SCBAs have passed four edition updates, they should be replaced to meet the current industry specification standard. The current SCBAs were purchased in 2008 utilizing the 2007 NFPA industry specification standard.

By year 2023, the current inventory of SCBAs will be 15 years old and out of NFPA compliance causing an increase in maintenance and repair costs due to age, parts availability, and being out of warranty.

Staff also identified (40) bottles that will be out of compliance in 2023. Per DOT, NFPA, OSHA and the manufacturer, these bottles must be taken out of service and replaced.

Per OSHA, DOT and NFPA, Firefighters are not permitted to use SCBA bottles past the manufacturer's listed service life. The Fire Department has just enough SCBA bottles to outfit every on duty firefighter with a primary bottle and two spares. The department will be short of that inventory if a timely replacement doesn't occur.

After careful research and effort to keep the Fire Department's response readiness at the highest priority, this personal protective equipment was earmarked several years ago to make sure they were replaced in a timely manner. Staff determined that the Fire Department can piggyback on a CAL FIRE purchase order which will save the City approximately 40%.

This situation is limited in time and supply.

The new SCBA specification has enhanced safety features, updates, and changes that will allow our Firefighters to maintain compliance and interoperability with other Orange County fire departments. In addition, the current equipment profile has been streamlined to help reduce our firefighters from becoming entangled and entrapped when performing interior search and rescue operations. Below are several other important improvements to this valuable life safety equipment:

- NFPA compliance - The Fire Department's current SCBAs are 15+ years old and therefore will have passed the last four NFPA specification updates. This presents safety issues as there have been many NFPA safety enhancements such as an earlier operational time indicator (Vibralert now activates at 33% of air pressure remaining as opposed to 25%) providing more time for Firefighters to egress a hazardous, interior environment. Also, better water intrusion standards, higher heat rating on the mask, and a Universal EBSS (Emergency Breathing Safety System).
- Universal EBSS (Emergency Breathing Safety System) - The NFPA 2018 edition made the EBSS a universally compatible system so that any SCBA by any manufacturer has the same fittings for interoperability. This improves safety and compatibility during mutual aid incidents. Many Orange County fire departments have upgraded to the 2018 edition.
- Decontamination - The new Scott X3 Pro SCBA comes standard with removable shoulder straps and waist pad which can be removed without tools and placed in an extractor with firefighter's turnout gear where the carcinogens can be purged from both the equipment and the turnout gear. This accessibility of the soft, material components of the SCBA are an important health benefit for our Firefighters as we know that off-gassing of personal protective equipment is a major contributor to cancer in the Fire Service.
- Maintenance savings - The new Scott X3 Pro SCBA comes with an "as long as you own it" warranty. This comprehensive warranty also covers all the soft goods and consumables like straps, headsets, etc. as long as it remains with the purchasing fire department.

### **SUMMARY/FISCAL IMPACT**

The fire department requires (50) new SCBAs along with (50) SCBA bottles (to replace the (40) bottles that expired and some that have been condemned). The City can realize a 40% savings if it goes with the CAL FIRE purchase order which would include for every SCBA purchased, (1) bottle, (1) mask, and (1) voice amplifier. This will provide essential life safety equipment to keep the Brea Fire Department at a high level of readiness and safety.

As a result, the cost would be **\$289,829.49** for (50) SCBA-Paks, bottles, masks, and voice amplifiers versus the cost of **\$497,132.64** if purchased individually and outside the CAL-Fire order. This equates to \$207,303.15 in savings by utilizing the CAL-Fire contract.

The new SCBAS will have a lifetime warranty eliminating the rising cost of maintenance and repairs. NFPA 2023 edition Scott X3 Pro-Pak SCBA would provide an improved level of safety to our Firefighters and would enable interoperability with our mutual aid partners within Orange County.

The pricing for these items is based on the State of California contract # 1-17-42-04 as

awarded to AllStar Fire Equipment Inc. The current contract expires on June 30, 2022 and the State has not rebid and awarded these items. AllStar Fire Equipment Inc. has informed the City of Brea that it will honor the prior contract prices.

Funds have been appropriated in the Public Safety Augmentation Fund (172) in the amount of \$289,830 for this expenditure. The Public Safety Augmentation Fund (172) is restricted for use on public safety needs; hence there is no General Fund (110) cost.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: George Avery, Interim Fire Chief

Concurrence: Monica Lo, Deputy Director of Administrative Services

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**City of Brea**

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**FINANCE COMMITTEE COMMUNICATION**

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**TO:** Finance Committee Members

**FROM:** Bill Gallardo

**DATE:** 07/12/2022

**SUBJECT:** Agreement with Carbon Solutions for Upgrades to Electric Charging Stations at the Brea Civic & Cultural Center

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**RECOMMENDATION**

Authorize the Mayor to execute the agreement with Carbon Solutions.

**BACKGROUND/DISCUSSION**

City staff worked with Clipper Creek to install 3 Level II Electric Vehicle (EV) chargers in the parking structure at City Hall, which replaced several 1st generation EV chargers that were only able to charge a specific vehicle and was not universal. As EV car manufacture technology has advanced, a universal charging plug was incorporated into all the new vehicles being built. The Clipper Creek manufacturer offered this new technology, which allowed the City to continue to provide EV charging at the Civic Center to the public. However, when the City installed the Clipper Creek units, technology was limited and there was no ability to charge the EV user for their charging sessions. It was not an uncommon practice to charge the EV user for their usage throughout Southern California.

Over the past few years, there has been a significant increase in EV users on the road. With the increase of EV users, the chargers located at City Hall has been used more frequently. Now that it has become common practice to charge the EV user for their charging session, staff is recommending to remove the three (3) free chargers and replace the EV chargers with three (3) Level 2 Chargepoint CT4000 units. These new EV chargers would be managed by Carbon Solutions Group LLC (CSG). CSG would be responsible for all the installation costs to upgrade the chargers and manage the charger interface to charge the EV user for their charging session.

This agreement is for an initial 5-year term with a renewable extension for an additional two (2) consecutive terms of five (5) years. To extend the agreement, both parties would have to mutually agree to extend for the additional terms. If the term is not extended by the either party, then both parties would need to discuss either the removal of the stations, or for the units be sold to the City for fair market value at the time of termination. The City Attorney has reviewed the agreement and is amenable to the terms. CSG will be responsible for reimbursing the City for electricity consumed on a quarterly basis at a rate equivalent to the City's commodity cost of electricity.

**SUMMARY/FISCAL IMPACT**

CSG will be responsible to reimburse the City for electricity consumed on a quarterly basis at a rate equivalent to the City's commodity cost of electricity. Approval of this agreement will result in cost savings to the General Fund for electricity costs. Since the EV chargers are not currently monitored, the amount of additional savings is unknown.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Brian M. Ingallinera, Environmental Services Coordinator

Michael Ho, P.E., Public Works Director/Acting City Engineer

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**Attachments**

CSG Agreement

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## ELECTRIC VEHICLE CHARGING STATION LICENSE AGREEMENT

This ELECTRIC VEHICLE CHARGING STATION LICENSE AGREEMENT (this “Agreement”), dated as of \_\_\_\_\_, 2022 (the “Effective Date”), is between Carbon Solutions Group LLC, a Delaware limited liability company, d/b/a (“CSG”), and the City of Brea, a California municipal corporation (“Host”). Each of CSG and Host is a “party,” and together they are the “parties,” to this Agreement.

### BACKGROUND

- A. CSG provides a variety of vehicle charging and support services to owners of electric plug-in vehicles (“EVs”);
- B. Having Electric Vehicle Charging Stations onsite allows Host to promote sustainable and environmentally-sound transportation;
- C. Host desires to participate in CSG’s network of Electric Vehicle Charging Stations; and
- D. This Agreement sets forth the parties’ agreement with respect to Host’s grant of a revocable license to CSG.

### AGREEMENT

In consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

#### 1. LICENSE;

- 1.1. Host Property. Host is the Owner of the property described in Exhibit A, attached hereto and made a part hereof (the “Host Property”).
- 1.2. Grant of License. Host, for good and valuable consideration, the sufficiency of which is acknowledged, grants to CSG a revocable license (the “License”) to use a certain portion of Host Property specifically identified in Schedule I of Exhibit A and herein referred to as (the “Licensed Space”) for the purposes described in this Agreement, including but not limited to those described in Section 1.3 below.
- 1.3. Use of Licensed Space. The License includes use of the Licensed Space and the areas of Host Property that are reasonably necessary to provide ingress and egress to and from the Licensed Space and the Electric Vehicle Charging Stations (as defined below) for the purposes of the construction, installation, maintenance, repair and operation of the grid integrated Electric Vehicle Charging Stations by CSG; and for any ancillary uses permitted herein, all in accordance with this Agreement) (collectively the “Necessary Space”);
- 1.4. Host Obligations. Subject to limitations contained herein, Host agrees to, at all times, make the Licensed Space and Necessary Space available to CSG, its subcontractors and vendors, and all users of the Electric Vehicle Charging Stations.

#### 2. TERM; TERMINATION

- 2.1. License Term.
  - 2.1.1. The term of the License (“License Term”) shall commence on the Effective Date and, subject to the provisions of Section 2.2 below, end on the date that is five (5) years from the Commencement Date (as extended from time to time, the “License Expiration Date”). The “Commencement Date” shall mean the date on which a CSG Electric Vehicle Charging Station is first operational on the Host Property. Within one (1) day after the Commencement Date, CSG shall give Host written notice of such date.
  - 2.1.2. Host and CSG shall have the right to extend the Term of this Agreement for two (2) consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (collectively “Extended License Term”) by mutual consent, which consent may be granted or denied in each party’s absolute discretion, within one hundred eighty (180) days of the end of the existing License Term. The Extended License Term shall begin immediately following the end of the 5-year term.
- 2.2. Termination.
  - 2.2.1. Upon Certain Events. This Agreement may be terminated upon thirty (30) days’ written notice to either party without penalty or fee in any of the following circumstances:

- 2.2.1.1. In the case of termination by CSG, in the event that the Commencement Date has not yet occurred.; and
- 2.2.1.2. In the case of termination by Host, in the event the Commencement Date has not occurred within twenty-four (24) months following the Effective Date; provided that the foregoing right shall terminate upon the Commencement Date.
- 2.2.2. For Cause. This Agreement may be immediately terminated for cause by either party in the event of the following circumstances:
  - 2.2.2.1. *Breaches*. The other party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for forty-five (45) business days after receipt of written notice.
  - 2.2.2.2. *Assigns*. The other party attempts to assign or otherwise transfer its rights, obligations, or duties under this Agreement except as provided in Section 8.6 below.
- 2.2.3. Licensed Space on Termination. Within a reasonable time following the expiration of the License Term or termination under Section 2.2, CSG shall remove the Electric Vehicle Charging Stations and any other supporting or ancillary equipment installed by CSG from the Licensed Space and restore the affected area to its former condition, excluding ordinary wear and tear; *provided, however,* that any underground electrical wiring shall be capped off and secured, but not removed. For the avoidance of doubt, CSG will not remove any equipment installed by a utility, which may include but may not be limited to: transformers, junction boxes, primary cable and conduit and electric meters and panels.
- 2.2.4. No Further Obligations. Upon any termination pursuant to this ARTICLE 2, both parties are relieved of any further obligations contained in this Agreement, except for those that by their nature survive or may require performance after termination (e.g., indemnity).

### 3. ELECTRIC VEHICLE CHARGING STATIONS

- 3.1. Electric Vehicle Charging Stations; Ancillary Facilities.
  - 3.1.1. The design, make, model, and manufacturer of the Electric Vehicle Charging Stations (each an “Electric Vehicle Charging Station” or “Charging Station”) and their number and approximate locations are specified in Exhibit A. CSG, at any time and for any reason during the License Term, may elect to upgrade, revise, alter, or swap any Charging Station installed in the Licensed Space at its sole discretion and Host shall provide CSG access to the Licensed Property as necessary to do so.
  - 3.1.2. For purposes of this Agreement, “Electric Vehicle Charging Station” shall mean all electrical equipment, hardware, and software installed by CSG, the Charging Stations, all CSG signage and all supporting equipment and structures, including without limitation concrete pads and protective bollards.
- 3.2. Access. CSG, its subcontractors, vendors and customers shall have access to the Licensed Space and Necessary Space twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year. CSG and its employees and vendors may, at any time during the Term, access the Licensed Space and Host Property to maintain, inspect, repair or replace any portion of the Electric Vehicle Charging Stations pursuant to its obligations under this Agreement. Signage at minimum will include what is legally required per law for electric vehicle charging stalls. Additionally, CSG may paint, place, erect, or project signs, marks, or advertising devices in, on, or about the Licensed Space or elsewhere on the Host Property upon obtaining Host’s written consent (which may be granted or denied in Host’s absolute discretion). CSG shall, at its own cost and expense, obtain any and all permits necessary for the installation of its signs, and CSG shall be solely responsible for all costs and expenses associated with such permitting, the erection of such sign(s), and the maintenance and operation thereof. Further, CSG and Host also agree to place signage on or around the Electric Vehicle Charging Station, designating the area as “Electric Vehicle Charging Only,” and will take reasonable measures to discourage non-EVs from parking in the Licensed Space, including, without limitation, towing. Host agrees that it shall not place any signs, marks or advertising devices on any portion of the Electric Vehicle Charging Station or in the Licensed Space without CSG’s prior written consent (which may be granted or denied in CSG’s commercially reasonable discretion).
- 3.3. Installation.
  - 3.3.1. CSG, at its sole cost, is solely responsible for supervising or conducting the construction and installation activities for the Electric Vehicle Charging Stations, and, as between the parties, has sole control over construction, construction schedule, and installation means, methods, techniques, sequences, and procedures, including the coordination of all work.

- 3.3.2. Host warrants that the site includes an existing 32 Amp electrical supply with a 40 Amp breaker that CSG will utilize for the new stations to be installed.
- 3.3.3. Before beginning activities to install the Electric Vehicle Charging Stations in the Licensed Space, CSG shall give a copy of the tentative construction schedule and installation plans to Host. No work will begin until all applicable permits and certifications have been obtained. Once all insurance coverages required by this Agreement are in place, CSG will oversee and manage the installation of the Electric Vehicle Charging Stations, including the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping; and installation of all CSG branded signage.
- 3.3.4. CSG, at its sole cost, will obtain from applicable governmental authorities all licenses, permits, or other approvals required to install the Electric Vehicle Charging Stations, and Host will reasonably cooperate upon request with CSG's efforts to do so.
- 3.3.5. Host grants to CSG and its employees and vendors the non-exclusive right to use and occupy the Licensed Space and Host's adjacent property for the construction and installation of the Electric Vehicle Charging Station. CSG shall confine its operations strictly to those sites permitted by applicable law, ordinances, permits, Host, and the terms of this Agreement. Only those materials and equipment that are being used directly in the construction and installation of Electric Vehicle Charging Stations shall be brought to and stored on the Licensed Space and its adjacent areas. CSG shall ensure that, subject to reasonable and unavoidable interruptions, all work is performed in a manner that affords continuous, reasonable access to Host Property.
- 3.3.6. CSG will not permit or suffer any mechanic's or materialmen's liens to attach to the Host Property as a result of the installation of the Electric Vehicle Charging Stations. If such a lien attaches to the Host Property, CSG shall remove or bond over such lien at CSG's sole cost and expense, within twenty (20) days of CSG receiving written notice thereof from Host.
- 3.3.7. Ownership of Intellectual Property and Charging Stations. CSG owns all worldwide right, title, and interest in and to its Electric Vehicle Charging Stations, their related hardware, software, commodities and all derivatives thereof; any processes, relationships, and contracts associated therewith; all related graphics, user interfaces, logos, and trademarks reproduced during their operation; and all Intellectual Property rights therein. Host hereby assigns all such rights to CSG and agrees to execute any documents desirable to effectuate or evidence the foregoing. The foregoing rights shall vest with CSG upon the Effective Date and shall remain with CSG in perpetuity absent CSG's disposing or transferring of such rights at its sole discretion. CSG shall have the right to temporarily remove all or a portion of the Electric Vehicle Charging Stations at any time during the License Term, whether or not such items are considered fixtures and attachments to the Licensed Space under applicable laws. CSG shall have sole right and title to any government grants, rebates, incentives and credits awarded as a result of the construction and/or operation of the Electric Vehicle Charging Stations.
- 3.4. Operation and Maintenance. CSG will, at its sole cost and expense, maintain and operate the Electric Vehicle Charging Stations, including making all necessary repairs, arrange for appropriate remote monitoring, and obtaining and installing appropriate software and hardware upgrades. CSG shall, other than expressly stated herein, be the sole beneficiary of all revenues and costs associated with the foregoing.
- 3.5. Host Obligations. Host shall, at its sole cost and expense, take all actions necessary to maintain the Licensed Space in a clean, safe, and orderly condition, to at least the same standard as it customarily maintains the common areas at the Host Property, including, without limitation, parking lot sweeping, parking lot repaving and restriping, and maintenance and repair of curbs, gutters and landscaping features within the Licensed Space. In addition, Host shall take reasonable precautions to protect the Electric Vehicle Charging Stations from graffiti and other vandalism. For the avoidance of doubt, Host shall be under no obligation to maintain the Electric Vehicle Charging Stations, signage or any other equipment installed by CSG within the Licensed Space. To the extent Host has actual knowledge of the same, Host shall promptly notify CSG and, as appropriate, emergency response personnel regarding any malfunction of the Electric Vehicle Charging Stations. Host shall make commercially reasonable efforts to accommodate any reasonable request by CSG in connection with the operation of the Charging Station.
- 3.6. Utility Availability.
  - 3.6.1. CSG shall be responsible for all electricity costs of the Electric Vehicle Charging Stations. CSG will reimburse Host for the electricity used by the Electric Vehicle Charging Station according to the Electricity Cost Reimbursement table in Exhibit A. Electricity usage shall be determined based on the charger internal metering devices which measure in kWh the electricity used by the Electric Vehicle Charging Stations.

- 3.6.2. Host shall reasonably cooperate with CSG to obtain electricity and any other utilities necessary to operate the Electric Vehicle Charging Stations, including by granting appropriate easements to local utility providers and/or obtaining necessary easements from adjacent property owners for the location of necessary utilities; *provided, however*, that Host is not required to pay money to satisfy the requirements of the utility, the adjoining landowner or CSG associated with the provision of such utilities.
- 3.6.3. Neither Host nor CSG has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of utilities furnished to facilities or equipment located in the Licensed Space, unless the cause of the interruption is covered by the party's indemnity provided for in ARTICLE 7.
- 3.7. Taxes. CSG is solely responsible for personal property taxes imposed on the Electric Vehicle Charging Stations, and any other equipment installed by it, that is located in the Licensed Space. All other real or personal property taxes related to the Licensed Space, including any increase in real estate taxes on the real property on which the Licensed Space is located which arise from CSG's improvements and/or CSG's use of the Licensed Space, are the sole obligation of Host. Each party is responsible for its own income, franchise and similar taxes.

#### **4. INTELLECTUAL PROPERTY; PUBLICITY**

- 4.1. Intellectual Property. As used in this Agreement, "Intellectual Property" means all copyrights, patents, trademarks and service marks, names, logos, designs, domain names, generic Top-Level Domain names, all registrations for copyrights, patents, trademarks and service marks/names, domain names, generic Top-Level Domain names, trade secrets, know-how, and all unique concepts, information, data and knowledge that is eligible for legal protection under applicable laws as intellectual property, whether protected through confidentiality, registration or pending registration, regardless of form, whether disclosed in writing, electronically, orally or through visual means, whether learned or obtained orally, through observation, through the discharge of responsibilities under this Agreement, or through analysis of that information, data or knowledge.
  - 4.1.1. *Host Intellectual Property*. The parties agree that, as between them, Host has and retains ownership of all of Host's Intellectual Property, and CSG has no right, and shall not obtain any right, in any Host Intellectual Property.
  - 4.1.2. *CSG Intellectual Property*. The parties agree that, as between them, CSG has and retains ownership of all of CSG's Intellectual Property, and Host has no right, and shall not obtain any right, in any CSG Intellectual Property.
- 4.2. Ownership of Drawings and Other Documents. All documents prepared by or under the direction of CSG pursuant to this Agreement, including, without limitation, drawings, surveys, technical drawings, specifications, and other documents, including those in electronic format, are solely and exclusively CSG Intellectual Property, and CSG retains all common law, statutory and other reserved rights, including the copyright.
- 4.3. Publicity.
  - 4.3.1. CSG and Host may make general press releases and statements, hold press conferences, both through traditional and electronic media, including websites created by CSG or other third parties, regarding the execution of this Agreement and the status of the activities contemplated herein, *provided* each has the ability to review and approve in advance any use of its Intellectual Property by the other party in connection therewith.
  - 4.3.2. Notwithstanding anything to the contrary within this Agreement, CSG may advise mapping services, the manufacturers of vehicle navigation systems, map data providers, and other third-parties of the existence, location, and other details of the Electric Vehicle Charging Stations at the Licensed Space so that such services and manufacturers may include such information in connection with their mapping and listing services and navigation systems; and CSG may disclose to the public information about the location of the Electric Vehicle Charging Stations and the progress of their construction as required by governmental authorities. In addition, the parties may provide copies of this Agreement or portions hereof to utility providers, governmental authorities, and/or third parties as reasonably necessary or desirable to facilitate or effectuate the intents and purposes of this Agreement.

#### **5. REPRESENTATIONS AND WARRANTIES; COVENANTS**

- 5.1. Representations and Warranties. Each of Host and CSG hereby represents and warrants to the other as of the Effective Date that: (a) it has all necessary power and authority to execute, deliver, and perform its obligations hereunder; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents, any contract to which it is a party, or any law, rule, regulation, order, judgment, or other legal or regulatory determination applicable to it; (c) there is no pending or, to its knowledge, threatened litigation or administrative proceeding that may materially adversely affect its ability to perform this Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; (e) this Agreement constitutes a legal, valid and binding obligation of such party, except as the enforceability of this Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and (f) at all times during the License Term, it will comply with all federal, state, and local laws, rules, regulations (including, without limitation, all zoning ordinances and building codes) in performing its obligations under this Agreement.
- 5.2. Rights to Host Property. Permitted Uses on Host Property.
- 5.2.1. Host further represents, warrants and covenants that it has obtained or it shall obtain any and all consents, permits or approvals required in order for Host to grant the License and other rights and perform its obligations under this Agreement, and for CSG to take the actions with respect to the Licensed Space contemplated in this Agreement, from any third parties: (i) with an interest in the Host Property (including, without limitation, any owner, lender, lessee, ground lessor, or any party to any reciprocal easement agreement); (ii) whose consent is otherwise required under conditions, covenants and restrictions documents, declarations or similar agreements affecting the Host Property: or who exercise governmental or regulatory jurisdiction over the Host Property, including local and state governments. When obtaining consent, permit or permissions is required, Host and CSG shall use cooperative commercially reasonable efforts to contact and educate the applicable third parties of the terms, conditions, and benefits of the activities proposed to be taken pursuant to this Agreement. As part of that effort, the parties will, on request, include applicable necessary third parties as additional named insureds on the insurance policies required by ARTICLE 6, offer appropriate indemnities on terms similar to those stated in ARTICLE 7, satisfy reasonable third party requests and concerns regarding the Electric Vehicle Charging Stations and related items, and take other commercially reasonable steps required to obtain any required consent, permits or permissions of those third parties that is consistent with this Agreement.
- 5.2.2. Host further represents and warrants that there are no liens, judgments, encumbrances or other impediments of title on the Host Property that would adversely affect the use or occupancy of the Licensed Space by CSG pursuant to this Agreement, and during the License Term covenants to maintain the Host Property free of any such liens, judgments, encumbrances or other impediments.

## **6. INSURANCE; CASUALTY AND CONDEMNATION**

- 6.1. CSG Insurance.
- 6.1.1. During the License Term, CSG shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance:
- 6.1.1.1. Full replacement cost Property Insurance (written on a "special perils" basis) for the Electric Vehicle Charging Stations and all other personal property, machinery, equipment and trade fixtures owned by CSG;
- 6.1.1.2. Statutory Worker's Compensation Insurance, and Employer's Liability limits of \$1,000,000.00 per accident/per employee;
- 6.1.1.3. Commercial General Liability Insurance, written on an occurrence basis, covering bodily injury (including death), personal injury, and property damage, with limits of not less than \$1,000,000.00 per occurrence, that includes coverage for contractual liability, independent contractors, premises/operations, products/completed operations, and cross liabilities/separation of insureds; CSG shall consider its own insurance primary, and shall not seek contribution from similar insurance being maintained by Host, but only as to the negligent acts or omissions of CSG or the CSG Parties.
- 6.1.1.4. Automobile Liability with a combined single limit of \$1,000,000.00 that includes coverage for owned, non-owned and hired vehicles; and

- 6.1.1.5. \$5,000,000.00 in excess liability coverage per occurrence, for injuries, losses, claims for damages to persons or property occurring on the Licensed Space, and resulting from the use of the Electric Vehicle Charging Stations, the occupancy of the Licensed Space and/or the negligence of CSG and its agents, contractors, employees or invitees, which coverage shall sit excess of the scheduled underlying General Liability, and Automobile Liability and Employer's Liability Insurance policies with exclusions that are no more broad than those contained in the underlying policies.
      - 6.1.2. With respect to CSG's Commercial General Liability Insurance, Automobile Liability Insurance and Excess Liability Insurance, include Host as an additional insured with respect to liability arising out of the ownership, maintenance or use of the Electric Vehicle Charging Station or the Licensed Space.
      - 6.1.3. Annually, CSG shall provide Host with a certificate of insurance and endorsement, evidencing the required coverages.
    - 6.2. Host Insurance
      - 6.2.1. During the License Term, Host shall maintain insurance in the following amounts:
        - 6.2.1.1. Full replacement cost Property Insurance (written on an "special perils" basis) for (1) the Host Property and all improvements thereon (including without limitation the Licensed Space and all electrical infrastructure for the Electric Vehicle Charging Station); and (2) all personal property, machinery, equipment and trade fixtures located at the Host Property or owned by Host; and
        - 6.2.1.2. Commercial General Liability insurance with a minimum combined single limit of liability of at least \$2,000,000 for personal injuries or deaths of persons occurring in or about the Licensed Space and Host Property.
      - 6.2.2. Annually, Host shall provide CSG with a certificate of insurance and endorsement, evidencing the required coverages, stating that the insurance is primary with regard to Host and naming CSG as an additional insured.
    - 6.3. Policy Requirements. The insurance policies required under Sections 6.1 and 6.2 shall:
      - 6.3.1. be issued by insurance companies licensed to do business in the state in which the Host Property is located, with a general policyholder's ratings of at least "A-" and a financial rating of at least "Class VIII," in the most current Best's Insurance Reports available on the Commencement Date; if the Best's ratings are changed or discontinued, the parties shall agree to a comparable method of rating insurance companies;
      - 6.3.2. contain provisions whereby each party's insurers waive all rights of subrogation against the other party on each of the coverages required herein.
    - 6.4. Waiver. Anything in this Agreement to the contrary notwithstanding, to the extent covered by any property insurance maintained (or required to be maintained) hereunder, each party hereby waives every right or cause of action for any and all loss of, or damage to (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible) the Host Property, the Licensed Space, the Electric Vehicle Charging Stations, or any improvements on any of the foregoing, or to the personal property of either party, or their respective affiliates, representatives, agents, officers, directors, managers, members, shareholders, partners, contractors, or employees, regardless of cause or origin. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation.
    - 6.5. Casualty and Condemnation.
      - 6.5.1. Damage. If any portion of the Licensed Space is damaged by fire or other casualty; or any portion of the Host Property is damaged by fire or other casualty caused by the negligent act or omission of CSG, CSG will have thirty (30) days from date of such fire or casualty to elect to repair the property with notice of such intent delivered in writing to Host. If no written notice is received by Host within that thirty-day period, then either party may, within forty-five (45) days of the date of such fire or other casualty elect to terminate the License on written notice to the other party. If CSG elects to repair such property, it shall restore, rebuild, or replace those portions of the Electric Vehicle Charging Station in the Licensed Space and any other property damaged as a result of such fire or other casualty to its prior or better condition as necessary, and all property insurance proceeds of Host applicable to the Licensed Space shall be made available to CSG in connection with such repair and restoration. If CSG elects to terminate the License, it shall remove all of CSG's property from the Licensed Space in accordance with Section 2.2.2 of this Agreement. Any repair and restoration required by CSG under this Section 6.5.1 shall commence within sixty (60) days of the date CSG

elects to repair and restore the Licensed Space and shall be completed no later than 180 days thereafter.

- 6.5.2. Condemnation/Taking. If any portion of the Licensed Space or Host Property is condemned or taken in any manner for a public or quasipublic use that could adversely affect the use of the Electric Vehicle Charging Stations, then CSG may elect to terminate this Agreement effective as of the date title to the condemned portion of the Host Property is transferred to the condemning authority. If CSG does not elect to terminate, the parties will use commercially reasonable efforts to find an alternate location for the Electric Vehicle Charging Stations elsewhere on Host Property. The costs of the relocation of the Electric Vehicle Charging Stations shall be shared by CSG and Host. CSG may file a separate claim to the condemning authority for any relocation award made as a result of such condemnation. All relocation awards made as a result of such condemnation shall be paid to CSG to the extent that the Necessary Space is affected.

## 7. INDEMNITY; LIMITATION OF LIABILITY

- 7.1. CSG. Subject to Sections 6.4, and 7.3, CSG shall indemnify and hold harmless Host, its elected and appointed officials, employees, and agents (individually, “Host Party” and, collectively, the “Host Parties”) from and against all claims, demands, causes of action, liabilities, costs, damages, losses, penalties, fines, judgments or expenses, including reasonable attorneys’ fees and costs of collection (collectively, “Losses”) that arise out of or result from (i) any breach by CSG of its obligations, representations or warranties under this Agreement, or (ii) the willful misconduct or negligence of CSG, except to the extent arising out of or resulting from any willful misconduct or negligence of any Host Party or any installation or other activities conducted by a contractor, or other service provider designated by Host or by CSG per the express instructions of Host; and excepting any claims arising out of Host’s active negligence or willful misconduct. The obligations of CSG under this Section shall survive the expiration, cancellation, or termination of this Agreement and the License Term.
- 7.2. Host. Subject to Sections 6.4 and 7.3 hereof, Host shall indemnify and hold harmless CSG, its affiliates, and their respective representatives, agents, officers, directors, shareholders, partners and employees (individually, “CSG Party” and collectively, the “CSG Parties”) from and against all Losses that arise out of or result from (i) any willful misconduct or negligence of any Host Party in connection with this Agreement or (ii) any breach by Host of its obligations, representations or warranties under this Agreement; and excepting any claims arising out of CSG’s active negligence or willful misconduct. The obligations of Host under this Section shall survive the expiration, cancellation, or termination of this Agreement and the Term.
- 7.3. Limitation of Liability. In no event shall either party be liable (in contract or in tort, including negligence and strict liability) to such other party or its related parties for any special, indirect or consequential damages relating to the Agreement. The entire liability of each party for any and all claims of any kind arising from or relating to the Agreement will be subject in all cases to an affirmative obligation on the part of the other party to mitigate its damages. Each party’s total liability for any and all liability to the other party and to such other party’s affiliates or their respective representatives, agents, officers, directors, shareholders, partners or employees (on an aggregate basis) arising out of or in connection this Agreement whether in contract or in tort (including negligence and strict liability) shall not exceed the greater of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) or, if insurance coverage is applicable, the insurance coverage limits required under this Agreement. The provisions of this Section 7.3 shall apply to the full extent permitted by law and shall survive expiration or termination of this Agreement. The limits of this Section 7.3 shall not apply to a party’s obligations pursuant to Section 7.2, to the Liquidated Damages calculation in Section 5.2.

## 8. MISCELLANEOUS

- 8.1. Brokers. CSG hereby represents to Host that CSG has dealt with no broker in connection with this Agreement. Host hereby represents to CSG that Host has dealt with no broker in connection with this Agreement. Each party agrees to indemnify and hold the other party, its members, principals, beneficiaries, partners, officers, directors, employees, and agents, and the respective principals and members of any such agents harmless from all claims of any brokers claiming to have represented such party in connection with this Agreement.

- 8.2. Independent Agreements. The parties acknowledge and agree that the rights and obligations under the Agreement are separate and independent from, and shall not be conditioned on or affected by the performance or non-performance of the terms of, any other agreement between CSG and Host.
- 8.3. Survival of Covenants. The covenants, representations and agreements of Sections 2.2.3, 2.2.4, 3.5, 3.6, 4.1, 4.2, 4.3.2, 5.1, and 6.4, ARTICLE 7, and ARTICLE 8 shall survive the expiration, termination or cancellation of this Agreement, regardless of reason.
- 8.4. Ancillary Services. CSG shall hold all right and title to any ancillary services related to the production or consumption of electricity connected to the operation of the charging stations.
- 8.5. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and be served either by (i) deposit in the mail, addressed to the party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or (ii) deposit with an internationally-recognized overnight delivery carrier, with notice of delivery to the recipient party. Notice given by registered or certified mail or overnight carrier shall be deemed delivered and effective on the date of delivery shown on the return receipt or proof of receipt. For purposes of notice the addresses of the parties shall be as follows:

If to CSG:

CSG EV LLC  
600 B Street Suite 300  
San Diego, CA 92101  
Attn: Kory Trapp, V.P. Project Development

If to Host:

City of Brea  
1 Civic Center Circle  
Brea, CA 92821-5732  
Attn: \_\_\_\_\_

Each party may change its address for notice by giving notice thereof to the other party.

- 8.6. Assignment. This Agreement is binding on and inures to the benefit of the parties and their respective heirs, successors, assigns, and personal representatives. Neither party may assign its rights and obligations in and under this Agreement without first obtaining prior written consent of the other party, which shall not be unreasonably withheld.
- 8.7. Independent Entities. The parties shall act as and remain independent entities in the performance of this Agreement. Nothing in the Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose, and the employees of one party shall not be deemed to be the employees of the other party. Except as otherwise stated in this Agreement, neither party has any right to act on behalf of the other, nor represent that it has such right or authority.
- 8.8. Host Consents. Host's City Manager is authorized to grant or deny consents required of Host under this Agreement.
- 8.9. Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of California without giving effect to conflict of law rules. The parties further agree that all actions brought under this Agreement shall be brought in the courts located in Orange County, California.
- 8.10. Further Assurances. Each party agrees to execute (and acknowledge, if requested) and deliver additional documents and instruments and to perform additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions and conditions of this Agreement.
- 8.11. Force Majeure. Change in Law. Neither party is responsible for any delay or failure in performance of any part of the Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act, or omission of carriers, suppliers or other similar causes including delays or cancellations by vendors of technology, materials or components related to the project beyond the party's control. If any rule, directive, order, decision or law adversely impacts the ability for CSG to perform its obligations under the Agreement without becoming licensed or otherwise regulated by a public utility commission or analogous agency in the relevant jurisdiction, CSG may, at its option, immediately suspend performance under the Agreement and/or terminate the Agreement upon notice to Host and without penalty.

- 8.12. Attorneys' Fees; Waiver of Jury Trial. If either party institutes a suit against the other for violation of or to enforce any covenant, term or condition of this Agreement, the prevailing party shall be entitled to reimbursement of all of its costs and expenses, including, without limitation, reasonable attorneys' fees. The parties hereby waive any and all rights which either party may have to request or require that a jury determine any fact, matter, controversy, dispute or litigation between them, or render any judgment or decision, in any way concerning this Agreement, and agree that any and all litigation between them arising from or in connection with this Agreement shall be determined by a judge sitting without a jury.
- 8.13. No Waiver. The failure of a party to insist on strict performance of any provision of the Agreement does not constitute a waiver of, or estoppel against asserting, the right to require performance in the future. A waiver or estoppel given in any one instance does not constitute a waiver or estoppel with respect to a later obligation or breach.
- 8.14. No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person other than the parties and their respective successors and permitted assigns.
- 8.15. Remedies. The rights and remedies provided by this Agreement are cumulative, and the use of any right or remedy by any party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a party may have under applicable law, in equity or otherwise.
- 8.16. Integration; Amendments. It is agreed and understood that this Agreement contains all agreements, promises and understandings between the parties, and that there are no verbal or oral agreements, promises or understandings between the parties. Any amendment, modification or other change to this Agreement shall be ineffective unless made in a writing signed by the parties hereto.
- 8.17. Severability. If any term of this Agreement is held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over this subject matter, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as reformed to the extent necessary to render valid the particular provision or provisions held to be invalid, consistent with the original intent of that provision and the rights and obligations of the parties shall be construed and enforced accordingly, and this Agreement shall remain in full force and effect as reformed.
- 8.18. Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all the parties had signed the same document; all counterparts shall be construed together and shall constitute one and the same instrument. The delivery of an executed counterpart to this Agreement by electronic means (including via email) shall be as effective as the delivery of a manually executed counterpart.
- 8.19. Construction. The headings in this Agreement are inserted for convenience and identification only. When the context requires, the number of all words shall include the singular and the plural. In this Agreement, words importing any gender include the other genders and the words including, includes and include shall be deemed to be followed by the words without limitation. All documents or items attached to, or referred to in, this Agreement are incorporated into this Agreement as fully as if stated within the body of this Agreement.
- 8.20. Agreement. The Agreement expresses the mutual intent of the parties to this Agreement and the rule of construction against the drafting party has no application to this Agreement.

Effective as of the date first set forth above.

HOST:

City of Brea,  
a California municipal corporation

By: \_\_\_\_\_  
Cecilia Hupp, Mayor

CSG:

CARBON SOLUTIONS GROUP LLC,  
a Delaware limited liability company

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

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

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

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

Title: Manager

Title: 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.]

**EXHIBIT A**

**DESCRIPTION OF HOST PROPERTY**

Description of Host Property: See table below

Count	Location
1	City of Brea City Hall

Number and Type of Electric Vehicle Charging Stations to be located on Licensed Space:

Charger Type	Charger Capacity	Quantity
Level 2 ChargePoint CT4000	7.2 kW or similar	03

Electricity Cost Reimbursement table:

Unit	Unit cost
kWh	CSG will reimburse Host for electricity consumed on a quarterly basis at a rate equivalent to the City's commodity cost of electricity.

**Schedule I**

**IDENTIFICATION OF LOCATION OF LICENSED SPACE AND ELECTRIC VEHICLE  
CHARGING STATIONS**

Charger stations will be installed in place of existing stations at City Hall.

**City of Brea**

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**FINANCE COMMITTEE COMMUNICATION**

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**TO:** Finance Committee Members

**FROM:** Bill Gallardo

**DATE:** 07/12/2022

**SUBJECT:** Annual Vehicles and Equipment Purchase Plan for Fiscal Year 2022-23

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**RECOMMENDATION**

Authorize the Purchasing Agent to issue purchase orders in an amount not-to-exceed \$1,532,000 for various City vehicles and equipment described in the Annual Vehicles Replacement Plan for Fiscal Year (FY) 2022-23.

**BACKGROUND/DISCUSSION**

Each fiscal year, the vehicles used by various City departments are assessed to determine whether it is best to continue maintenance, retire, replace, or add new units. The determining factors include excessive mileage, unit hours, service life expectancy, maintenance cost history, safety and environmental impacts. The attached equipment list indicates the replacements or additions that were approved by the City Council as part of the FY 2022-23 Operating Budget. This list provides the equipment descriptions, quantities, estimated costs and departments where they will be assigned. The Purchasing Division will solicit bids for the listed equipment per the formal bidding requirements of the Brea Municipal Code, utilize competitively bid national cooperative agreements, or piggyback contracts to obtain the best available pricing.

Staff requests that City Council authorize the Purchasing Agent to issue purchase orders immediately after completing the best available pricing analysis without the need to return to City Council for approval of the individual awards for the following main reasons:

- Ensure the needed equipment is replaced in a timely fashion and without interruption in service
- Meet manufacturer production cutoff dates
- Take advantage of incentives and discounts
- Expedite the purchase of these items

Should any of the listed equipment be limited to a single source, the Purchasing Agent will verify and document the reasons for the sole source procurement prior to award.

To help facilitate operational and budgetary requirements, staff requests that City Council authorize the Fleet Supervisor and Purchasing Agent to make changes in the type and quantity of the listed equipment, subject to budget appropriations and the not-to-exceed amount requested.

**SUMMARY/FISCAL IMPACT**

The City Council adopted Fiscal Year 2022-23 Budget has sufficient funding available for the requested not-to exceed amount for these purchases in the Public Works Department, Equipment Maintenance Division, expenditure account in Mobile Equipment (480-51-5161-4641), Field and Shop Equipment (480-51-5161-4621), Community Benefit & Economic Development Fund (140-21-2131-4641) and General Fund (110-22-2211-4641 and 110-22-2231-4641) .

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Rudy Correa, Superintendent – Fleet/Water/Equipment

Concurrence: Michael Ho, P.E., Public Works Director/Acting City Engineer

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**Attachments**

Purchase Plan

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## VEHICLE and EQUIPMENT PURCHASE PLAN

Fiscal Year 2022-23

DEPARTMENT	UNIT #	Add/Replace	BUDGETED	ACCESSORIES
<b>POLICE</b>				
Administration: SUV/Sedan	1523	Replace	\$41,000	\$4,000
Parking Control: 1/2 -Ton Pick up	29034	Replace	\$32,000	\$5,000
Commercial Enforcement: ¾-ton Truck	1301	Replace	\$41,000	\$22,500
Detective: SUV/Sedan	1703	Replace	\$34,000	\$4,000
Detective: SUV/Sedan	1618	Replace	\$34,000	\$4,000
Detective: SUV/Sedan	1702	Replace	\$34,000	\$4,000
Command-Patrol: SUV	1629	Replace	\$49,000	\$16,500
UV Interceptor -Patrol: SUV	1708	Replace	\$49,000	\$16,500
UV Interceptor -Patrol: SUV	1711	Replace	\$49,000	\$16,500
UV Interceptor -Patrol: SUV	1802	Replace	\$49,000	\$16,500
4-Door Truck	New	Add	\$50,000	\$17,500
<b>FIRE</b>				
Fire Marshall: SUV/Sedan	New	Add	\$42,000	
Fire Chief: SUV/Sedan	New	Add	\$49,000	
<b>PUBLIC WORKS</b>				
1/2 Ton Pickup- B	1204	Replace	\$33,000	\$1,000
1/2 Ton Pickup-SP	28029	Replace	\$33,000	\$1,000
3/4 Ton Pickup Liftgate-S	1203	Replace	\$35,000	\$5,000
3/4 Ton Pickup-W	1207	Replace	\$35,000	\$13,000
Sewer Truck	22001	Replace	\$525,000	\$1,000
<b>MANAGEMENT SERVICES</b>				
City Manager SUV	1820	Replace	\$75,000	
<b>ADMINISTRATIVE SERVICES</b>				
IT SUV	1020	Replace	\$35,000	
<b>COMMUNITY SERVICES</b>				
Passenger Van	26030	Replace	\$45,000	
Utility Gator	29001	Replace	\$15,000	
		<b>Total</b>	<b>\$1,384,000</b>	<b>\$148,000</b>
		<b>Grand Total</b>	<b>\$1,532,000</b>	

**City of Brea****FINANCE COMMITTEE COMMUNICATION****TO:** Finance Committee Members**FROM:** David Dickinson**DATE:** 07/12/2022**SUBJECT:** Accept a \$133,244.52 California Highway Patrol Cannabis Tax Fund Grant Program Award for DUI Enforcement Training**RECOMMENDATION**

Adopt a resolution accepting a State of California Cannabis Tax Fund Grant Program (CTFGP) Award for training in the areas of education, prevention, and enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis, in the amount of \$133,244.52, for the one-year grant program which began July 1, 2022 and ends June 30, 2023.

**BACKGROUND/DISCUSSION**

The Police Department recently secured a State Cannabis Tax Fund Grant that funds various DUI enforcement-related training opportunities including Impaired Driving and Traffic Safety, Standardized Field Sobriety Test (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), Drug Recognition Expert (DRE), and the National Highway Traffic Safety Administration (NHTSA) Lifesavers Conference. In addition, a small portion of this grant funds the Management Analyst's time spent managing the grant.

<b>Fiscal Year</b>	<b>Personnel Costs</b>	<b>Travel Costs</b>	<b>Other Direct Costs</b>	<b>Total</b>
2022-23	\$112,697.42	\$14,797.10	\$5,750.00	\$133,244.52

The grant funds the above for Fiscal Year 2022-23. Under the terms of the grant, the Brea Police Department will improve the Department's effectiveness by training police personnel in the area of drug and alcohol detection in order to more effectively identify and convict DUI drivers, as well as training Traffic personnel on best practices of traffic collision investigation.

**SUMMARY/FISCAL IMPACT**

Adoption of the attached resolution will result in a reimbursement of \$133,244.52 by the State and will offset the General Fund costs.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager  
Prepared by: Jamie McDonald, Management Analyst  
Ryan Klug, Traffic Officer  
Concurrence: Dave Dickinson, Police Captain  
Adam Hawley, Police Chief

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**Attachments**

Resolution

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## RESOLUTION NO.

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BREA TO ACCEPT GRANT FUNDS IN THE AMOUNT OF \$133,244.52 FROM THE STATE OF CALIFORNIA, DEPARTMENT OF HIGHWAY PATROL, CANNABIS TAX FUND GRANT PROGRAM, AND AMENDING THE FISCAL YEAR 2022-23 ANNUAL BUDGET

#### A. RECITALS:

(i) The Brea Police Department, on behalf of the City of Brea, is interested in participating in the Cannabis Tax Fund Grant Program, which is made available through the California State Controller's Office and administered by the California Department of Highway Patrol (CHP) to support project categories in accordance with California Code of Regulations (CCR) Sections 1890.05 through 1890.07; and

(ii) Following the City's submittal of a proposal for the Program, the State of California CHP offered to award \$133,244.52 for the one-year grant program beginning July 1, 2022 and ending June 30, 2023; and

(iii) Grant funds will be used to fund training in the areas of education, prevention, and enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis, as well as best practices of traffic collision investigation, and staff time; and

(iv) In order to be considered eligible to receive grant funding, the City must submit a completed Grant Agreement and a governing body Resolution providing approval to receive funding.

**B. RESOLUTION:**

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

(i) Authorize the City Manager or a designated representative to, on behalf of the City, accept grant funding in the amount of \$133,244.52 from the State of California CHP.

(ii) Authorize and direct the City Manager or a designated representative to execute the grant documents and to submit all documents, including, without limitation, contracts, amendments, extensions, and payment requests as appropriate to accept the funds under and comply with the conditions of the grant.

(iii) Authorize and direct the City Manager or a designated representative to establish all required accounts and make any and all expenditures, appropriations, transfers, and/or distributions of funds on behalf of the City as are necessary and appropriate to carry out the purpose and intent of this resolution.

(iv) Certify that grant funds received hereunder shall not be used to supplant ongoing law enforcement expenditures.

**APPROVED AND ADOPTED** this 19th day of July 2022.

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Council of the City of Brea, held on the 19th day of July 2022 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lillian Harris-Neal, City Clerk

**City of Brea**

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**FINANCE COMMITTEE COMMUNICATION**

**TO:** Finance Committee Members

**FROM:** Bill Gallardo

**DATE:** 07/12/2022

**SUBJECT:** Authorization to Execute Contractual Services Agreement Between City of Brea and NEOGOV for Recruitment and Onboarding Software Services

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**RECOMMENDATION**

Approve recommendation that the City Council execute contractual services agreement between the City of Brea and GovernmentJobs.com, Inc. ("NEOGOV") and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360). This new Human Resources Information Management software agreement would significantly improve the City's recruitment and hiring process and allow for further efficiencies by creating an electronic onboarding process.

**BACKGROUND/DISCUSSION**

Currently, the City uses two internally developed Human Resources Management software application systems. The Personnel Applicant Tracking System (PATS) is currently used to facilitate online applications. This program is also used to track applicants throughout the hiring process and host all online job descriptions and salaries. There is a separate program known as InfoPath that is used to electronically capture notes during oral panel interviews, to display applicants' job applications and to tabulate applicant ratings. These internal software programs were developed over fifteen (15) years ago. Although the systems have served the organization well, their limitation has become increasingly apparent as older technology has resulted in a number of issues with compatibility, operational efficiency, and integration with newer versions of other City programs and software systems.

NEOGOV is a comprehensive HRIS (Human Resources Information System) applicant tracking software, which will allow the Human Resources division to improve the recruitment and hiring process and facilitate efficiencies in the onboarding program. NEOGOV is a system which has been geared towards public and higher education sectors for hiring and onboarding. They are the market and technology leader in on-demand human resources software, which offers a more developed product than the current internally developed software application used for applicant tracking.

NEOGOV's Human Resources software automates the entire hiring, onboarding, training and performance evaluation process. The NEOGOV suite supports organizations through the entire employee lifecycle. Human Resources is looking to use this software to automate the entire employee tracking and onboarding process. This software is the gold standard for all municipal Human Resources management software needs.

The Insight module is NEOGOV's applicant tracking system which automates the hiring process. It has easy-to-use job application templates and an applicant self-service portal. With the integration on NEOGOV's online job board, Governmentjobs.com, Insight will allow the City to broaden its reach by advertising to job seekers nationwide.

The onboarding module will allow the City to process hiring documents online for newly hired employees. This will enable new hires to become more productive from their first day on the job by streamlining new hire paperwork, processes and training. This will provide time savings by allowing the applicant to complete new-hire paperwork prior to starting work, and allow City staff to electronically process new-hire information.

NEOGOVS currently has several additional modules, which would allow the City of Brea a future expansion to include the Perform module, which will track employee performance and automates annual and probationary evaluations. The City Council previously approved a decision package authorizing the City to purchase this software and appropriated funds in Fiscal Year 2021-22.

### **SUMMARY/FISCAL IMPACT**

The cost of this software over a three-year contract averages \$22,469 per year for a total cost of \$67,407. The cost of the annual licensing fee for this software is \$20,904 in the first year, \$20,724 in year two and \$25,780 in year three of the contract. Funding will be charged fifty (50) percent to the General Fund (110) and fifty (50) percent to the Risk Management Fund (470).

This agreement was approved by City Council during Fiscal Year 2021-22. This cost can be absorbed in the Human Resources Division General Fund (110) budget for FY 2022-23. No additional budget appropriation is needed at this time.

### **RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Maio E. Maldonado, Human Resources Manager

Concurrence: Kristin Griffith, Administrative Services Director

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### **Attachments**

Agreement - NEOGOV

Contract Order Form

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## NEOGOV SERVICES AGREEMENT [7-6-22] BREA

V020121

You agree that by placing an order through a NEOGOV standard ordering document (the "Order Form" or "Ordering Document") you agree to follow and be bound by the terms and conditions set forth herein. "[Governmentjobs.com](https://www.governmentjobs.com)", "NEOGOV", "we", and "our" means [Governmentjobs.com](https://www.governmentjobs.com), Inc, for and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) and, where applicable, its affiliates; "Customer", "you", "your" means the [Governmentjobs.com](https://www.governmentjobs.com) client, customer, or subscriber identified in the Ordering Document.

If you are placing such an Order on behalf of a legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Ordering Document and these terms and, in such event, "you" and "your" as used in these agreement terms shall refer to such entity. "Agreement" shall be used to collectively refer to this NEOGOV Services Agreement (the "Services Agreement"), documents incorporated herein including the applicable Ordering Document and Schedule(s), and Special Conditions (if any). [The parties agree there are no "Special Conditions" applicable to this Agreement.]

1. **Provision of Services.** Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the applicable Ordering Document (collectively referred to as the "Services"). Customer hereby acknowledges and agrees that NEOGOV's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the date of your signature on an applicable Ordering Document or use of the Services commences (the "Effective Date"). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.
2. **SaaS Subscription.**
  - a) **Subscription Grant.** "SaaS Applications" means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order and subsequently made available by NEOGOV to Customer, and associated components as described in the Service Specifications made available to Customer by NEOGOV. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) access and use, and to permit Authorized Users to access and use, the SaaS Applications specified in the Order solely for Customer's internal, non-commercial purposes; (b) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription"). "Authorized Users" means (i) Customer employees, agents, contractors, consultants who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Services Agreement and (ii) for whom access to the Services has been purchased hereunder. You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.
  - b) **Delivery and Subscription Term.** NEOGOV delivers each SaaS Application by providing Customer with online access. When you access NEOGOV SaaS Applications, you are accepting it for use in accordance with this Agreement. Unless otherwise specified in an applicable Ordering Document, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, SaaS Subscriptions shall automatically renew for up to five (5), successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. NEOGOV shall provide Customer access to the SaaS Applications within a reasonable time, but no later than seven (7) business days following the Effective Date unless otherwise agreed.

- c) Content and Program Documentation. Should Customer purchase access to SaaS Applications containing audio-visual content ("Licensed Content"), NEOGOV grants to Customer a non-exclusive, non-transferable, and non-sublicensable license, during the applicable Term, for Authorized Users to access and view the Licensed Content within the SaaS Application. Customer shall not permit the Licensed Content to be, or appear to be, reproduced, performed, displayed, or distributed on, as part of or in connection with any website or other online area other than the SaaS Application. Customer shall not edit, alter, modify, combine with other content, or create any derivative works of the Licensed Content. "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
  - d) Service Levels. NEOGOV understands and agrees that Customer is a public entity and that the Services are paid for with public funds. Therefore, in order to ensure accountability to the public and that the public is receiving the level of performance of online services for which public funds are being paid, NEOGOV agrees that its subscription services shall maintain a level of "Uptime Availability" in accordance with the NEOGOV Service Level Warranties ("SLA") attached hereto as Exhibit A.
  - e) Customer shall have access to any and all Customer Data stored or maintained by NEOGOV on a "24/7/365" basis, except as detailed in the SLA, or any period of *force majeure*
3. Professional Services. "Professional Services" shall mean consulting, training services purchased by Customer in an applicable Ordering Document or NEOGOV Scope of Work (SOW) relating to assistance, training, deployment, usage, customizations, accessory data processing, and best practices of and concerning the SaaS Applications. NEOGOV shall provide the Professional Services purchased in the applicable Order Form or SOW, as the case may be. Professional Services may be ordered by Customer pursuant to a SOW and Service Specifications describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by both parties before NEOGOV shall commence work. If the parties do not execute a separate Statement of Work, the Services shall be provided as stated on the Order Form and this Agreement and documents incorporated herein shall control. [There are no professional services to be performed under Order Form Q- 04367.]
4. Payment Terms. Unless otherwise stated in an Ordering Document, Customer shall pay all Subscription fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees", collectively the "Fees") within thirty (30) days of Customer's receipt of NEOGOV's invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Invoices shall be delivered to the stated "Bill To" party on the Ordering Document. Unless explicitly provided otherwise herein, once placed the Ordering Document is non-cancellable and sums paid nonrefundable. Subscription Fees are based upon the Customer's employee count. Customer shall not exceed the employee amount its Subscription Fees are based off of unless applicable supplemental Subscription Fees are paid. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service. If Customer issues a purchase order, then it shall be for the full undisputed amount set forth in the applicable NEOGOV invoice or Ordering Document. Failure to provide NEOGOV with a corresponding purchase order shall not relieve Customer of its payment obligations. Except as otherwise specifically stated in the Ordering Document, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by giving Customer at least thirty (30) day notice prior to commencement of a Renewal Term. Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption with ten (10) days of NEOGOV's request therefor.
5. Term and Termination.
- a) Term. Unless otherwise specified in an applicable Ordering Document, this Agreement shall commence on the Effective Date. This Agreement shall remain in effect until all SaaS Subscriptions have expired and/or

both parties have achieved full performance of Professional Services or other services detailed in a SOW, unless it is terminated earlier in accordance with this Agreement.

- b) Termination for Cause; Effect of Termination. Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV intellectual property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. Unless otherwise specified, after expiration or termination of this Agreement NEOGOV may remove Customer Data from NEOGOV Services, following not less than thirty (30) days' prior, written notice to Customer that Customer Data, if any, is available for downloading at no additional cost. After such thirty (30) day period, or if directed by Customer, NEOGOV shall delete any remaining Customer Data using a method that complies with NIST SP800-88, or any successor standard thereto, or otherwise as agreed to by Customer.
  - c) Termination for Non-Appropriation. Notwithstanding any provision of this Agreement, NEOGOV understands and agrees that Customer is a California public entity and is subject to the California Constitutional Debt Limit restriction. During any fiscal year during the term hereof, should Customer's City Council fail to appropriate sufficient funding for this Agreement for the following fiscal year, then Customer may terminate this Agreement without penalty or payment acceleration of any kind by providing Company with not less than thirty (30) days' prior, written notice of termination. Upon termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV intellectual property.
6. Service Specifications. "Service Specifications" means Program Documentation, Service Schedules, Security Statements, and Service Level Warranties if applicable. The Service Specifications describe and govern the Services and are incorporated herein by reference. Online Service Specifications may be made available at <https://www.neogov.com/service-specifications> or provided upon Customer request. Excluding Service Schedules, NEOGOV may update the Service Specifications to reflect changes in, among other things, laws, regulations rules, technology, industry practices, patterns of system use, Updates and Upgrades, and availability of third-party services.
7. Maintenance; Modifications; Support Services.
- a) Maintenance, Updates, Upgrades. NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation and NEOGOV database security. NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.
  - b) Training Materials; Support. Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). During the Term of the Agreement, the Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.
  - c) Implementation. For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Ordering Document. NEOGOV personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and ensure Authorized User Admins grasp the system.

- d) Support. Phone support for the Services is available to Customer Monday through Friday, excluding NEOGOV holidays. Online support for the Services is available 24 hours a day, seven days a week. The length of time for a resolution of any problem is dependent on the type of case as described in the SLA.
  - e) Limitations. Unless otherwise specified in the Ordering Document, or herein, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.
8. NEOGOV Intellectual Property. NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the "NEOGOV Intellectual Property"). This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV Trademarks must be pre-approved by NEOGOV prior to use. "Trademarks" shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered. Nothing in this Agreement shall authorize NEOGOV to use any Customer Trademark for any purpose without Customer's prior, written consent.

## 9. Data Processing and Privacy.

- a) Customer & Platform Data. "Customer Data" shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV's provision of Services to Customer, including Personnel or Job Seeker Profile Data collected, loaded into, or located in Customer data files maintained by NEOGOV. Customer Data also includes all Customer data collected, used, processed, stored, or maintained by NEOGOV as the result of Customer's use of the Services. Except where subject to a third party's intellectual property rights, all Customer Data is and shall remain the sole and exclusive property of Customer and all right, title, and interest in the same belongs to Customer.

All Job Seekers' and other third parties' data made available to NEOGOV in connection with the Services (Third Party Data") is solely owned by such persons and may include, but is not limited to, personally identifiable information ("PII") collected, used, processed stored, or generated as the result of their use of the Services, and, without limitation, any information that identifies any such individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed herein. Notwithstanding NEOGOV's Privacy Policy, NEOGOV shall not sell, handle, store, transmit, or disseminate Customer Data except for the sole purpose of providing NEOGOV's services herein except as otherwise provided herein or consented to by such individuals. Subject to the foregoing, Customer grants NEOGOV a license solely to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. NEOGOV intellectual property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data". Customer exclusively owns all right, title, and interest in and to all Customer Data. Customer grants NEOGOV a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. "Platform Data" shall mean any data reflecting the access or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data. or other analysis, information, or data based on or derived from any of the foregoing, and that has been "anonymized." The Parties understand and agree that it is technologically difficult to render data truly "anonymous". Therefore, as used in this Section 9(a), the term "anonymized" means and refers to use of technology that irreversibly alters data in such a way that the data subject can no longer be identified directly or indirectly, either by the data controller alone or in collaboration with any other party, and is thereby rendered "anonymized data", as generally described in ISO 25237:2017, Sections 3.2 and 3.3. Use of "Platform Data" derived from Customer Data is only permitted provided all Customer Data to be used is rendered "anonymized data", as referenced above, whether or not Customer Data includes personally identifiable information.

NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. NEOGOV grants to

Customer a limited, non-perpetual, non-exclusive, non-transferable, and non-sublicensable license during the Term to use and access, and to permit Authorized Users to use and access, Platform Data of which NEOGOV makes available through the SaaS Applications solely for Customer's internal purposes. Customer acknowledges NEOGOV may compile Platform Data based on Customer Data input into the Services. Customer agrees that NEOGOV may (i) make Platform Data publicly available in compliance with applicable law, and (ii) use Platform Data to the extent and in the manner permitted under applicable law.

- b) Privacy Policy; Data Processing Agreement. NEOGOV shall process all data in accord with the NEOGOV Privacy Policy available at <https://www.neogov.com/privacy-policy>. The defined terms in the Privacy Policy shall have the same meaning in this Agreement unless otherwise specified herein. To the extent Customer uses the Services to target and collect personal information from users located in the European Union, European Economic Area, or Switzerland (the "EU"), or has Authorized Users accessing the Services from the EU, the NEOGOV Data Processing Addendum ("DPA") available at <https://www.neogov.com/service-specifications> is incorporated herein by reference.
- c) Data Responsibilities. Except as provided herein, Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless vital to provide the Services or otherwise agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.
- d) Breach Notice. In the event of a data or security breach, as defined by applicable law, by anyone other than your employee, contractor, or agent, upon discovery of such breach, NEOGOV will initiate remedial actions and notify Customer of the breach as required by and in compliance with applicable law. NEOGOV's notification of, or response to, a data breach under this Section will not be construed as an acknowledgement by NEOGOV of any fault or liability with respect to the breach. In the event of a security breach, as defined by applicable law, by your Personnel, Authorized, or unauthorized user, contractor or agent, you shall have sole responsibility for initiating remedial actions and you shall notify NEOGOV of the breach and steps you will take to remedy the breach as soon as possible. Customer is solely responsible for complying with data breach notification laws applicable to the Customer and fulfilling any third-party notification obligations related to any data breach(es).

Notwithstanding the foregoing, in the event of any act, error or omission, negligence, misconduct, or breach of NEOGOV's security obligations under this Section 9 that permits any unauthorized access to, or that compromises (i) the security, confidentiality, or integrity of Customer Data while under the control of, while being used by, or while being stored by a third party on behalf of NEOGOV; or (ii) the physical, technical, administrative, or organizational safeguards put in place by NEOGOV that relate to the protection of the security, confidentiality, or integrity of Customer Data, NEOGOV shall, as applicable: (a) notify Customer as soon as practicable but no later than seventy-two (72) hours of becoming aware of such occurrence; (b) cooperate with Customer in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials reasonably required for Customer to comply with applicable law or as otherwise reasonably required by Customer; (c) in the case of PII, and solely to the extent required by applicable law, (i) notify the affected individuals whose information comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82.; or, (ii) reimburse Customer for any reasonable costs in notifying the affected individuals; (d) in the case of PII, and solely to the extent required by applicable law, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law.; and (e) perform or take any other actions required to comply with applicable law as a result of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law.

- e) Cloud - Based Storage. Unless otherwise agreed to in writing by Customer. any and all cloud-based storage of Customer Data and Third Party Data shall be within the continental United States and shall be in compliance with ISO/IEC 27001 - 27002. Cloud-based storage of PII shall be in compliance with ISO/IEC 27017 - 27018.

- f) Subject to the provisions of Section 9(d), above, at all times herein, NEOGOV shall perform the Services in accordance with this Agreement, and otherwise in compliance with all applicable local, State, and federal laws, statutes, and regulations, and industry standards. At all times, NEOGOV shall comply with California Civil Code Section 1798.80, et seq., and the California Consumer Privacy Act of 2018, Civil Code Section 1798.100, et seq.
10. Subcontractors; Third Party Products. NEOGOV may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor"). "Third-Party Products" means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Services. The Services may permit access to Third-Party Products. For purposes of this Services Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products. NEOGOV cannot guarantee the continued availability of such Third-Party Products and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third-Party Product ceases to make the third-party application available for interoperation with the corresponding NEOGOV Service in a manner acceptable to NEOGOV.
11. Nondisclosure. Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data in written, oral, electronic, magnetic, photographic, and/or other forms, including, but not limited to (a) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified, (b) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret, (c) all Customer Data, and (d) trade secrets (collectively, "Confidential Information"). In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, (x) without the express prior written consent of the other party, (y) except as permitted or authorized herein or, (z) except as required by law including the Public Records Act of the Customer's State, or any subpoena or court order, redistribute, market, publish, disclose, or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the Term and for a period of three (3) years thereafter or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law. In association with NEOGOV's concern for the protection of trade secrets, Confidential Information, and fair market competition, Customer acknowledges all photos, "screen captures", videos, or related media of NEOGOV products, pages, and related documentation shall be approved by NEOGOV prior to any publicly accessible disclosure of such media.
12. Representations, Warranties, and Disclaimers.
- a) Service Performance Warranty. NEOGOV warrants that it provides the Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND NEOGOV STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.
- b) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.
- c) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR.

ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

- d) **Services Do Not Constitute Advice or Credit Reporting.** NEOGOV does not provide its customers with legal advice regarding compliance, data privacy, or other relevant applicable laws in the jurisdictions in which you use the Services. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY YOU AS EITHER LEGAL, FINANCIAL, INSURANCE, OR TAX ADVICE. TO THE EXTENT YOU REQUIRE ANY SUCH ADVICE, YOU REPRESENT THAT YOU WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR OTHER PROFESSIONALS. YOU SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE YOU OPERATE AND HAVE EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE. YOU ACKNOWLEDGE THAT NEOGOV REPRESENTS THAT IT IS NOT A "CONSUMER REPORTING AGENCY" AS THAT TERM IS DEFINED IN THE FAIR CREDIT REPORTING ACT AS AMENDED.
  - e) **Configurable Services.** The Services can be used in ways that do not comply with applicable laws and it is Customer's sole responsibility to monitor the use of the Services to ensure that such use complies with and is in accordance with applicable law. In no event shall NEOGOV be responsible or liable for Customer failure to comply with applicable law in connection with your use of the Services. NEOGOV is not responsible for any harm caused by users who were not authorized to have access to the Services but who were able to gain access because usernames, passwords, or accounts were not terminated on a timely basis by Customer. Customer acknowledges that NEOGOV exercises no control over specific human resource practices implemented using the Service or Customer's decisions as to employment, promotion, termination, or compensation of any personnel or Authorized User of the Services. Customer further agrees and acknowledges that NEOGOV does not have a direct relationship with Customer employees and that Customer is responsible for all contact, questions, Customer Data updates and collection, with Customer employees.
13. **Customer Compliance.** Customer shall be responsible for ensuring that Customer's use of the Services and the performance of Customer's other obligations hereunder comply with all applicable rules, regulations, laws, codes, and ordinances. Customer is responsible for Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services equipment and facilities required to access the Services. All users of the Services are obligated to abide by the Terms of Use available at <https://www.neogov.com/terms-of-use>. Customer shall be responsible for procuring all licenses of third-party software necessary for Customer's use of the Services. Customer is responsible and liable for all uses of the Services, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement, except Customer's use of the Services in compliance with this Agreement that is alleged by any third person to constitute infringement of any intellectual property right.
14. **Indemnification.**
- a) **Indemnity.** Subject to subsections (b) through (d) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will hold harmless defend the Customer, its elected officials, officers, employees, and agents ("Indemnitees") against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV (which shall not include entry of judgment against any Indemnitee without their consent), including payment of reasonable attorneys' fees and costs, if Customer does the following:
    - i) Notifies NEOGOV promptly in writing, not later than thirty (30) days after Customer receives notice of the claim (or sooner if required by applicable law);
    - ii) Gives NEOGOV sole control of the defense and any settlement negotiations; and
    - iii) Gives NEOGOV the information, authority, and assistance NEOGOV needs to defend against or settle the claim.
  - b) **Alternative Resolution.** If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.

- c) No Duty to Indemnify. NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.
- d) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.
- e) Cyber Insurance. Throughout the term of this Agreement, NEOGOV shall have and maintain cyber liability insurance, as follows: cyber liability (\$2,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of Customer Data; (ii) data breach including theft, destruction, and/or unauthorized use of Customer Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of Customer Data.

## 15. Limitations of Liability.

- a) EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) CAP ON MONETARY LIABILITY. WITHOUT LIMITATION OF THE PREVIOUS SECTION, EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITIES ARISING OUT OF EITHER PARTY'S EXPRESS INDEMNITY OBLIGATIONS, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF NEOGOV INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF ITS EXPRESS INDEMNITY OBLIGATIONS EXCEED TWO (2) TIMES THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

## 16. E-Signatures.

- a) E-Signature Provisioning & Consent. NEOGOV E-Forms and other electronically signed services (“E-Signatures”) are provided by NEOGOV for two counterparties (generally a government employer (the “sending party”) subscribing to NEOGOV Services and Personnel or Job Seekers) to electronically sign documents. If you use E-Signatures offered by NEOGOV, you agree to the statements set forth in this Section. Whenever you sign a document using E-Signatures you affirmatively consent to using electronic signatures via the E-Signatures and consent to conducting electronic business transactions. You also confirm that you are able to access the E-Signatures and the document you are signing electronically. When using E-Signatures for a document, your consent applies only to the matter(s) covered by that particular document.
  - b) Right to Opt-Out of E-Signatures. You are not required to use E-Signatures or accept electronic documents provided thereby. Personnel and Job Seekers can choose to not use E-Signatures and may sign the document manually instead by notifying the sending party they are choosing to do so and by obtaining a non-electronic copy of the document. NEOGOV assumes no responsibility for providing non-electronic documents. In the event a non-sending party elects to sign the document manually, do not use E-Signatures to sign the document.
  - c) Electronic Download. If you have signed a document electronically using E-Signatures and transmitted it back to the sending party, NEOGOV provides the opportunity to download and print a paper copy of the document at no charge. If you later withdrawn your consent to using E-Signatures, please notify the sending party and stop using E-Signatures. Note that the decision to stop using E-Signatures after you have already used it does not change the legality of the documents you have previously signed using an electronic signature.
  - d) E-Signature Validity. PLEASE NOTE THAT NEOGOV’S STATEMENTS CONTAINED HEREIN OR ELSEWHERE CONCERNING THE VALIDITY OF ELECTRONIC DOCUMENTS AND/OR THE SIGNATURE LINES OF DOCUMENTS THAT ARE ELECTRONICALLY SIGNED ARE FOR INFORMATIONAL PURPOSES ONLY; THEY SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. UNDER FEDERAL AND STATE LAWS GOVERNING ELECTRONIC SIGNATURES, ELECTRONIC SIGNATURES ON CERTAIN TYPES OF AGREEMENTS ARE NOT ENFORCEABLE. NEOGOV HEREBY DISCLAIMS ANY RESPONSIBILITY FOR ENSURING THAT DOCUMENTS ELECTRONICALLY SIGNED THROUGH E-SIGNATURE’S ARE VALID OR ENFORCEABLE UNDER THE LAWS OF THE UNITED STATES OF AMERICA, ANY PARTICULAR STATE, OR ANY OTHER LEGAL JURISDICTION. YOU SHOULD CONSULT WITH LEGAL COUNSEL CONCERNING THE VALIDITY OR ENFORCEABILITY OF ANY DOCUMENT YOU MAY SIGN ELECTRONICALLY USING NEOGOV’S E-SIGNATURES.
17. Text Message Communications. NEOGOV may offer Job Seekers and Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there maybe technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.
18. Cooperative Agreement. As permitted by law, it is understood and agreed by Customer and NEOGOV that any (i) federal, state, local, tribal, or other municipal government (including all administrative agencies, departments, and offices thereof); (ii) any business enterprise in which a federal, state, local, tribal or other municipal entity has a full, majority, or other controlling interest; and/or (iii) any public school (including without limitation K-12 schools, colleges, universities, and vocational schools) (collectively referred to as the “New Entity”) may purchase the Services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section,

Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity.

19. **Publicity.** Each party hereto may disclose its relationship with the other party under this Agreement provided, however, that any further use of Customer's name, and any use of any of Customer's marks, logos, or seal by NEOGOV shall require Customer's prior, written consent.
20. **Force Majeure.** Neither party shall be liable for any damages, costs, expenses or other consequences incurred by the other or by any other person or entity as a result of delay in or inability to deliver any required performance hereunder due to circumstances or events beyond either party's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, military action or usurped power; (h) actions or failures to act on the part of a governmental authority, excluding Customer; or (i) pandemic resulting in the issuance of any governmental health order such as "stay at home" orders or similar binding orders preventing a party's performance.
21. **Independent Contractor; Third Party Agreements.** The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Each party acknowledges that nothing in this Agreement gives either party the right to bind or commit the other party to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.
22. **Entire Agreement; Amendment.** This Services Agreement and documents incorporated herein, the applicable Ordering Document, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. "Special Conditions" means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Ordering Document. Any terms or conditions not expressly set forth herein or in the Ordering Document, shall not be binding or have any force or effect. It is expressly agreed that the terms of this Agreement and any NEOGOV Ordering Document shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOGOV Ordering Document, 3) the NEOGOV Services Agreement and incorporated documents, 4) Customer terms and conditions (if any). This Agreement supersedes the terms and conditions of any clickthrough agreement and/or any online terms and conditions associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the part(ies) to be bound.
23. **General.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of law rules. Venue for any legal action arising out of this Agreement shall be the Superior Court of the County of Orange, California. If any provision of this Agreement is held to be illegal or unenforceable, upon written agreement of the parties, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to limitation of liability, indemnification, payment, and others which by their nature are intended to survive. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Ordering Document and (ii) NEOGOV at 300 Continental Blvd., Suite 565, El Segundo, CA 90245. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature. Each party represents and warrants to the other party that(i) the person signing this Agreement has

full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it. Neither party may assign this Agreement, without the express written approval of the other and any attempt at assignment or subcontracting in violation of this Section shall be null and void; provided, however, that either party may assign this Agreement to its affiliates, subsidiaries and parent companies by notifying the other party in writing but without requiring the other party's consent. In the event that such assignment is made by a party to an affiliate, subsidiary, or parent company pursuant to the preceding sentence, the assigning party must provide the non-assigning party with written notice within thirty (30) days of such assignment, and the non-assigning party shall have thirty (30) days from its receipt of such notice to terminate this Agreement (without further liability or obligation solely on account of such termination) in the event the assignee is (i) debarred, suspended, excluded or disqualified from doing business with the non-assigning party or the United States Government; (ii) listed on the Excluded Parties List System maintained by the General Services Administration of the United States Government (found at [www.epls.gov](http://www.epls.gov)); or (iii) a person with which U.S. persons are prohibited from transacting business of the type contemplated by this Agreement or with which U.S. persons must limit their interactions to types approved by the US Department of Treasury, Office of Foreign Assets Control (OFAC), such as by U.S. law, executive order, trade embargo or restriction, economic sanction, or lists published by OFAC. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

## **EXHIBIT A** **NEOGOV Service Level Warranties**

1. Definitions. For purposes of this Contract, the following definitions shall apply:
  - a) “Non-excluded Downtime” means a period of downtime that is not Excluded Downtime.
  - b) “Excluded Downtime” means (i) Scheduled Downtime; (ii) any period of unavailability lasting less than 10 minutes, not to occur more than once per month; (iii) issues arising from components controlled by the Customer (or its vendors, contractors or service providers) and their performance or failure to perform which impair or disrupt Customer’s connections to the Internet and the transmission of data as reasonably determined by NEOGOV after an investigation into the issue; (iv) that resulted from any actions or inactions of Customer or any third parties; and (v) unavailability of features or functions which would be considered a Level 1 or Level 2 severity level under the table in Section 2 below.
  - c) “SaaS Application” means each proprietary NEOGOV web-based software-as-a-service application subscribed to by Customer.
  - d) “Scheduled Maintenance” shall mean a period of time where the System is unavailable to Customer, and/or any third party, in order for NEOGOV to perform maintenance of the System. System maintenance includes, but shall not be limited to (i) adding, modifying, or upgrading equipment software and/or System source code, and; (ii) adding, modifying, or upgrading equipment.
  - e) “Service Credit” shall mean a percentage of Service Fees to be credited to Customer if NEOGOV fails to meet a Service Level, as set forth in this SLA. Once Service Credit equals 1/365 of the total fees paid for the SaaS Application
  - f) "Service Level" means a performance standard NEOGOV is required to meet in providing the Services, as set forth in this SLA.
  - g) “Uptime” means the percentage of total time in a calendar month that the hosted environment is available. Uptime is calculated as the sum of available time minus Non-excluded Downtime minus Excluded Downtime divided by total time minus Excluded Downtime, expressed as a percentage.
2. Customer Obligations. The Customer’s responsibilities and obligations in support of this SLA include the following:
  - a) Providing information and authorizations as required by NEOGOV for performing the Services.
  - b) Adhering to policies and processes established by NEOGOV for reporting service failures and incidents and prioritizing service requests.
  - c) Paying fees and costs as required by any master agreement or scope of work.
  - d) In order to receive any of the Service Credits described herein, Customer must notify NEOGOV within thirty (30) days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.
3. NEOGOV Obligations; Service Levels; Service Credits.
  - a) Customer Service Response. NEOGOV will provide telephone customer support Monday through Friday excluding NEOGOV holidays. If the NEOGOV support desk is unable to resolve the issue within the time limits specified herein, the case shall be escalated to the appropriate teams.

Target Response and Resolution Times		
Severity	Issues/Factors Determining Severity	Initial Acknowledgment <sup>1</sup>
Level 1	<ul style="list-style-type: none"> <li>• Functionality, system use questions.</li> <li>• Enhancement requests</li> <li>• Data Privacy inquiry</li> </ul>	< 72 hours
Level 2	<ul style="list-style-type: none"> <li>• Problem does not impact or has low impact to customer operations.</li> <li>• Can conduct daily work.</li> <li>• No error messages.</li> <li>• There is a work around.</li> </ul>	< 24 hours
Level 3	<ul style="list-style-type: none"> <li>• No work around solution.</li> <li>• Moderate system impact.</li> <li>• Moderate data security, availability, or integrity impact.</li> <li>• Hot-fix required</li> </ul>	< 4 hours
Level 4	<ul style="list-style-type: none"> <li>• Critical error that leads to work stoppage or significant error in processing candidates</li> <li>• System outage due to NEOGOV software or hardware</li> <li>• Problem puts user or customer information at risk.</li> <li>• Multiple Customers reporting a safety issue.</li> <li>• Unauthorized access to customer or job seeker data.</li> </ul>	< 2 hour

- a) Standard Service Levels/Warranty. The SaaS Application, Resolution Times and Acknowledgment Times (the “Service Levels”) must meet the standards described in this section. If Service Levels degrade to a level of non-compliance during the periods specified, Customer may request a Service Credit and NEOGOV must take the necessary steps to bring the system back to the required level unless Customer determines that factors outside NEOGOV’s control are the cause. Only one Service Credit can be applied within a twenty-four (24) hour period. Any and all customer credits shall be attributed to the month period subsequent to the month in which the credit is requested by Customer. The aggregate maximum number of Service Credits to be issued by NEOGOV to Customer for any and all Downtime periods that occur in a single calendar month shall not exceed five (5) Service Credits. A Service Credit shall be issued in NEOGOV’s invoice in the year following the Downtime, unless the Service Credit is due in Customer’s final year of service. In such case, a refund for the dollar value of the Service Credit will be mailed to Customer. In no case will the Service Credits due to Customer for a month exceed the amounts paid by Customer to NEOGOV. In the event Customer terminates this contract with Service Credits still owed to Customer, NEOGOV shall compensate Customer for the monetary value of these Service Credits.

Examples: If Customer experiences one Downtime period, it shall be eligible to receive one Service Credit. If Customer experiences two Downtime periods, from multiple events at least twenty-four (24) hours apart, it shall be eligible to receive two Service Credits.

Service Level Warranties			
Service	Measurement	Service Level	Service Credit
SaaS Application	SaaS Application Uptime	99.8% in three (3) months during consecutive six (6) month period.	In addition to all other remedies available to Customer, Customer shall be entitled to terminate this Agreement for a material breach upon written notice to NEOGOV with no further liability, expense, or obligation to NEOGOV, provided that Customer notifies NEOGOV within thirty (30) days of the conclusion of the third (3rd) month in which the Services were not available 99.8% of the time). Customer is entitled to prorate refund from date of termination within 30 days of the termination date.
SaaS Application	SaaS Application Uptime	99.8%	10% of monthly SaaS Application Fees

<sup>1</sup> During standard business hours.

Target Resolution Level 4	Target Resolution Time	100%	8% of monthly SaaS Application Fees
Level 3 Severity Resolution	Target Resolution Time	100%	5% of monthly SaaS Application Fees
Customer Support	Initial Acknowledgment	95% in calendar month	.5% of monthly SaaS Application Fees



# NEOGOV

## HUMAN RESOURCES MANAGEMENT SUITE

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*for the public sector*

**Exhibit A**  
**Order Form**



NEOGOV

Customer:

Governmentjobs.com, Inc. (dba "NEOGOV")  
300 Continental Blvd, Suite 565  
El Segundo, CA 90245  
United States  
billing@neogov.com

Brea, City of (CA)  
1 Civic Center Cir  
Brea, CA 92821-5732  
USA

Quote Valid From: 2/10/2022  
Quote Valid To: 6/30/2022

Quote Number: Q-04367  
PaymentTerms: Annual,Net 30

Employee Count: 417  
Order Summary

Year 1

Service Description	Start Date	End Date	Term Price
Custom Bundle Includes Insight License, Onboard License, Candidate Text Messaging (CTM), Government Jobs,			\$14,404.00
<b>Year 1 TOTAL:</b>			\$14,404.00

Year 2

Service Description	Start Date	End Date	Term Price
Custom Bundle Includes Insight License, Onboard License, Candidate Text Messaging (CTM), Government Jobs,			\$20,724.00
<b>Year 2 TOTAL:</b>			\$20,724.00

Year 3

<b>Service Description</b>	<b>Start Date</b>	<b>End Date</b>	<b>Term Price</b>
Custom Bundle Includes Insight License, Onboard License, Candidate Text Messaging (CTM), Government Jobs,			\$25,780.00
<b>Year 3 TOTAL:</b>			\$25,780.00

Year 1

<b>Service Description</b>	<b>Start Date</b>	<b>End Date</b>	<b>Term Price</b>
Custom Bundle Setup and Training			\$6,500.00
<b>Year 1 TOTAL:</b>			\$6,500.00

**ORDER TOTAL:** **\$67,408.00**

**A. Terms and Conditions**

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement either affixed hereto or the version most recently published prior to execution of this Ordering Form available at <https://www.neogov.com/service-specifications>. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated in this Ordering Document, all SaaS Subscriptions shall commence on the Effective Date. This Ordering Document may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

**B. Special Conditions (if any).**

- Initial Term: 36 months

**"Brea, City of (CA)"**

**NEOGOVS**

Signature:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Date:

\_\_\_\_\_

Date:

\_\_\_\_\_

**City of Brea**

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**FINANCE COMMITTEE COMMUNICATION**

**TO:** Finance Committee Members

**FROM:** Bill Gallardo

**DATE:** 07/12/2022

**SUBJECT:** Approval of Fiscal Year 2022-23 Property Tax Rate to Fund the City's Paramedic Program

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**RECOMMENDATION**

Approve resolution.

**BACKGROUND/DISCUSSION**

At the March 7, 1978, general municipal election, the qualified electors of the City, by and through the City Council, approved the levy of an annual property tax rate to fund the City's Paramedic Program. This annual property tax was not to exceed \$0.20 per \$100 of Assessed Value (25% of market value) per year. Beginning in 1981, the County of Orange implemented a policy change concerning Assessed Value. The tax roll is now reported at "Full Taxable Value" rather than Assessed Value.

For Fiscal Year 1981-82, the property valuation was increased to Full Taxable Value for property tax purposes. Therefore, the tax rate needed to be decreased in order for the actual amount of taxes paid by the property owner to remain unchanged. According to Resolution 81-72, a tax rate of \$0.045 per \$100 of Full Taxable Value is equivalent to a tax rate of \$0.18 per \$100.00 of Assessed Value based on the previous method.

State law prohibits the City Council from increasing the paramedic levy above the voter-authorized level. The tax rate of \$0.045 per \$100 of Full Taxable Value is less than the voter-authorized maximum tax rate. Additionally, it is noted that the passage of Proposition 218 by the voters in November 1996 had no impact on the City's ability to levy the annual Paramedic Tax, as the tax was voter-approved in 1978.

Each fiscal year, the City Council adopts a resolution approving the rate of tax upon taxable property within the City of Brea. This tax rate is required to be approved by the City Council and submitted to the Orange County Auditor-Controller's Office no later than August 10, 2022 allowing the County to apply the rate of taxation to the City's property tax roll to maintain the Paramedic Program.

Since its inception in 1979, the Brea Fire Services Department Paramedic Program has grown considerably from the days when the paramedics responded to calls in an old red van. Currently, the paramedics utilize a modern paramedic engine company configuration. The original program that began in Fiscal Year 1978-79 had a budget of \$200,000 and was fully funded by revenues generated from the paramedic tax. While the actual tax rate has remained constant over the past 43 years, additional revenue has been generated from increases in the property values. Meanwhile, direct expenditures have increased as the program has been greatly enhanced, as outlined below, and as the City's population and service demands have increased.

**About the Paramedic Program**

A "Paramedic Engine Company" providing Emergency Medical Service (EMS) delivery is currently the most common staffing configuration in operation locally and regionally. This configuration provides for

Advanced Life Support capability within its firefighting and emergency response resources without compromising either service. The City's paramedic units, Brea Engine Company #1, Truck Company #2 and Engine Company #3, are complete units that respond to both fires and medical emergencies. In addition, resources necessary to provide functional support, such as extrication of patients and fire protection during traffic emergencies, are available at the scene with the paramedic unit.

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

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

### Paramedic Response History

Calendar Year	2017	2018	2019	2020	2021
Total Emergency Medical Calls(1)	4,265	3,948	3,832	3,660	4,079
Total Calls for Service from Fire Dept. (Including false alarm responses)(1)	5,373	4,917	4,893	4,823	5,145
Percent of Total	79.38%	80.29%	78.3%	75.9%	79.3%
(1) Data updated to include all call data reported from the Metro Cities Fire Authority Metro Net Communications Report					

### SUMMARY/FISCAL IMPACT

Paramedic tax revenue is accounted for in the Paramedic Services Fund (Fund 174) separate from the City's General Fund. This fund was established to account for revenues generated from the paramedic tax and other revenues, as well as costs associated with the Brea Paramedic Program. This includes personnel costs for 21 full-time paramedic positions, one EMS Manager position and related costs to operate the program.

The proposed paramedic tax rate is \$0.045 per \$100 of Full Taxable Valuation. Based on an estimated Full Taxable Valuation (secured and unsecured value) of \$12.473 billion, the estimated tax levy is \$5.612 million.

The former Brea Redevelopment Agency (RDA), which was established in 1971, impacts the flow of paramedic tax revenues to the City. Property owners within the RDA project area pay the same property rate as if they were outside the RDA project area (non-RDA area properties). Paramedic tax for properties outside the RDA project area are remitted to the County and flow directly back to the City. However, under state law, property tax revenue (including the Paramedic Tax) remitted by property owners within the Redevelopment Project Areas go to the County and are first allocated to the Redevelopment Agency.

In 2012, Redevelopment Agencies were dissolved and Successor Agencies were established to pay off the remaining obligations for the former redevelopment agencies. As in all California cities, Brea's property taxes (including Paramedic Tax) remitted from properties in the project areas, are now allocated to Redevelopment Property Tax Trust Fund (RPTTF) and the portion needed to pay off the obligations for that fiscal year is forwarded to the Successor Agency. The remaining portion of the Paramedic Tax revenues allocated to the RPTTF are passed back to the City.

As the Successor Agency pays down the obligations of the former Redevelopment Agency, the Paramedic Tax revenues that were previously directed to the RDA and now the Successor Agency are slowly, but surely, coming back to the City for paramedic service sooner than they otherwise would have been.

The estimated paramedic tax levy, net of the amount retained by the Successor Agency, is projected to generate \$5,539,213 to the City of Brea in Fiscal Year 2022-23. The revenue collected will cover approximately 85.0% of the \$6,514,204 of estimated program costs. The difference is to be funded from the City's General Fund in the amount of \$683,193 and other revenue sources in the amount of \$291,798. Another revenue source includes pass-thru revenue received for Advanced Life Support (ALS) ambulance transport services.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Anthony Godoy, Management Analyst II

Concurrence: Kristin Griffith, Administrative Services Director

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**Attachments**

Paramedic Tax Resolution

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## RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BREA  
FIXING THE RATE OF TAX UPON THE TAXABLE PROPERTY WITHIN  
THE CITY OF BREA FOR THE FISCAL YEAR 2022-23  
NECESSARY TO MAINTAIN A MOBILE INTENSIVE CARE PROGRAM  
KNOWN AS PARAMEDICS WITHIN THE AREA OF THE CITY OF BREA  
AND CERTIFYING SAID RATE OF TAXATION TO THE ORANGE  
COUNTY AUDITOR-CONTROLLER**

**A. RECITALS:**

(i) During the General Municipal Election held March 7, 1978, the qualified electors of the City of Brea authorized the City, by and through the Council, to levy a property tax rate not exceed \$0.20 per \$100 of Assessed Valuation in addition to its maximum property tax rate established pursuant to Division 1, Part 4, Chapter 2 of the California Revenue and Taxation Code for the specific purpose of establishing and maintaining a mobile intensive care program known as Paramedics within the area of the City of Brea (said "Paramedic Program" hereafter).

(ii) In Fiscal Year 1981-82, the County of Orange implemented a policy concerning Assessed Value. The tax roll is now reported at "Full Taxable Value" rather than Assessed Value. This change resulted in \$0.045 per \$100 Full Taxable Value as the tax levy for the Paramedic Program in years 1981-82 through 2021-22.

(iii) Information and evidence presented to this Council indicated that it would be necessary to expend a sum of approximately \$6,514,204 during the Fiscal Year 2022-23 in order to maintain the Paramedic Program within the area of the City of Brea.

(iv) The revenue to be generated for Fiscal Year 2022-23 based on the tax levy of \$0.045 per \$100 of Full Taxable Value of the property within the City of Brea, exclusive of the revenue generated from the valuation within the Brea Community Redevelopment Project areas and required to be allocated to the Successor Agency has been estimated to

be \$4,783,000.

(v) All legal prerequisites of the adoption of this resolution have occurred.

**B. RESOLUTION:**

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

1. In all respects as set forth in the Recitals, Part A of this Resolution.
2. There is hereby fixed and levied that the total rate of taxation of \$0.045 per \$100 of Full Taxable Value of all taxable property within the City of Brea, said taxation to be utilized to maintain a mobile intensive program known as the Paramedic Program within the area of Brea for the Fiscal Year 2022-23 and this Council hereby certifies said rate of taxation for that specified purpose to the Auditor-Controller of the County of Orange.
3. The City Clerk shall certify to the adoption of this Resolution and file with the Orange County Auditor-Controller, a certified copy hereof, on or before August 10, 2022.

**APPROVED AND ADOPTED** on this

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

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

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

DATED: \_\_\_\_\_

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