

REQUEST FOR PROPOSALS

FEASIBILITY ANALYSIS

**PROVIDING MULTI-CITY FIRE SERVICES UNDER JOINT
POWERS AUTHORITY JURISDICTION**

Response Due Date

November 30, 2015

by 5:00 p.m.

To RFP Project Manager:

Mario E. Maldonado, Assistant to the City Manager

City of Brea

1 Civic Center Circle

Brea, CA 92821

Phone: (714) 990-7716

Email: mariom@cityofbrea.net

INTRODUCTION

The cities of Fullerton/Brea (hereinafter CITIES) are requesting proposals from qualified consultants to conduct a feasibility analysis and develop recommendations for the potential of providing Fire / EMS and Emergency Services (including ambulance transportation) for multiple cities under the jurisdiction of a Joint Powers Authority (JPA). The study and report should address the elements identified in the Scope of Work section herein. Interested parties are invited to submit proposals for completing the desired work.

BACKGROUND

The Cities of Brea and Fullerton entered into a cooperative agreement to share fire command services in May of 2011. The program was implemented with an initial three year pilot program designed to test feasibility and resolve operational concerns. In July 2014, the CITIES approved a five year agreement expanding the scope of shared services and agreeing to further study the possibility of providing the full scope of Fire / EMS and Emergency Services through a JPA.

Currently the CITIES are operating a joint command staff comprised of the Fire Chief, Two Deputy Fire Chiefs (Operations and Administration/Fire Marshal), two Fire Division Chiefs (Training and Support Services), three shift Fire Battalion Chiefs, and an EMS Manager. The command staff oversees ten stations (six in Fullerton, four in Brea).

Through the analysis process leading to the shared fire command agreement, the cities realized that passage of the Public Employee Pension Reform Act of 2013 (PEPRA) had created a challenge to formation of the JPA intended to eventually become employer to Fire services employees of the member cities. As implemented, PEPRA limited pension benefit formulas available to a new governmental agency only to those formulas created under the PEPRA legislation. While Brea and Fullerton staff worked with CalPERS to determine how PEPRA implementation would impact their decisions concerning a new JPA seeking membership in CalPERS, simultaneously, California State Senator Bob Huff introduced SB 1251 to seeking to clarify terms under which a JPA formed for the purpose of creating efficiencies of government could be brought into CalPERS membership. Through the legislative process, the bill was narrowed in focus to apply specifically to the Brea/Fullerton planned JPA and was approved and signed into law in 2014. In the 2015 session, SB 354 further clarified the terms applying to the CITIES planned JPA.

City of Fullerton Current Operations

Jurisdiction – Fullerton has a permanent population of 138,000 (2014) within 22.36 square miles. Fullerton is located in northern Orange County. Fullerton is known as the “education community” and Cal State Fullerton lies within the city, which increases the population by about 36,000 when school is in session.

Fullerton is a general law city, deriving its power from acts of the State Legislature. The City is governed by a nonpartisan, five-member City Council elected to serve staggered four-year terms. The City Council is responsible, in addition to many other duties, for passing ordinances and resolutions, adopting the budget, appointing committees, and hiring the City Manager, City Attorney, City Treasurer, and City Clerk.

The City of Fullerton provides the full range of municipal services contemplated by statute. This includes public safety (police and fire), highways and streets, airport, sanitation, water utility culture and recreation, public improvements, planning, and general administrative and support services.

Overview of Organization - The department is comprised of three divisions: Administration, Operations, and Prevention, with an operating budget of \$17,343,250 or 13.38% of the City budget, \$232,133,360. The Department responds to fires, medical aids, hazardous conditions, and public assistance requests, such as aid to the elderly or physically challenged, vehicle lockouts, water damage, flooding, and sewer breaks. Fire Department employees conduct inspections and respond to complaints by enforcing laws and regulations designed to protect lives and property. Public education in the areas of fire safety, first aid, and disaster preparedness is provided upon request. The department responds to approximately 13,000 calls per year.

The Fullerton Fire Department (FFD) is a career fire department comprised of 75 sworn personnel assigned to six fire stations. Three stations are staffed by 4-person paramedic engines, two stations are staffed by 3-person PAU engines, and one station is staffed by a 3-person BLS engine. One of the stations staffed by a paramedic engine is also staffed by a 4-person BLS truck. The department maintains a daily staff of 25 firefighters, not including command staff.

Ambulance transportation is provided by agreement with Care Ambulance and the city retains its 201 rights. Care has three EMT ambulances assigned Fire Stations 1, 3, and 6) to the city to assist fire department with 911 transportation.

The FFD has a Fire Prevention staff comprised of five non-sworn inspectors, not including the Fire Marshal and FFD clerical staff is comprised of four clerical personnel. HazMat inspections are conducted by the FFD inspectors.

Administration provides overall leadership, coordination, and direction for the Fire Department. The program is responsible for the budget, analyzing programs, developing

administrative procedures, recommending changes to increase productivity, and researching and preparing grant-funding proposals. Its daily operation forms a link between the community and other city departments, as well as the County of Orange, the state, and the federal government.

Operations are composed of three programs: Fire Suppression – provides continuous fire control and suppression, rescue, medical aid, hazardous materials control, and related emergency services. Emergency Medical Services – provides the delivery of basic and advanced life support services. Fire Training – schedules, tracks and ensures compliance with county, station and federally mandated and non-mandated training requirements. Fire training is also responsible for citywide disaster preparedness, maintaining the EOC in a ready, state, and training City employees to ensure mandates.

Fire Prevention is responsible for promoting public awareness of fire and life safety and enforcing the California Fire Code (based on the International Fire Code), the California Code of Regulations, and the California Health and Safety Code. The program oversees all fire inspections conducted annually by both fire inspector and suppression staff. Upon request, inspectors and specialist participate in community, school, civic, and private industry education and outreach programs.

Fire Prevention is composed of four programs: Environmental Protections, National Pollutant Discharge Systems (NPDES), Code Enforcement, and Fire Investigation. Environmental Prevention oversees state- mandated hazardous materials disclosure and underground storage tank laws and regulations. These programs are in place to protect the environment and ground water from the threat of harmful contamination. National Pollutant Discharge Elimination System (NPDES) regulates commercial and industrial occupancies for storm runoff. Code Enforcement provides guidance to the public on fire-safe practices through education and enforcement. Fire cause investigations are also processed through this subprogram.

City of Brea Current Operations

Jurisdiction – Brea has a permanent population of 42,000 (2014) within 12.1 square miles. Brea is located in northern Orange County and Brea Mall lies within the city limits providing an additional population during business hours.

Brea is a general law city, deriving its power from acts of the State Legislature. The City is governed by a nonpartisan, five-member City Council elected to serve staggered four-year terms. The City Council is responsible, in addition to many other duties, for passing ordinances and resolutions, adopting the budget, appointing committees, and hiring the City Manager and City Attorney.

The City of Brea provides the full range of municipal services contemplated by statute. This includes public safety (police and fire), highways and streets, sanitation, water utility culture and recreation, public improvements, planning, and general administrative and

support services.

Overview of Organization – The department is comprised of three divisions: Administration, Operations and Paramedic Services, and Prevention, with an operating budget of \$11,726,476 or 13.28% of the City budget, \$101,837,552. The Department responds to fires, medical aids, hazardous conditions, and public assistance requests, such as aid to the elderly or physically challenged, vehicle lockouts, water damage, flooding, and sewer breaks. Fire Department employees conduct inspections and respond to complaints by enforcing laws and regulations designed to protect lives and property. Public education in the areas of fire safety, first aid, and disaster preparedness is provided upon request. The department responds to approximately 4500 calls per year.

The Brea Fire Department (BFD) is a career fire department comprised of 39 sworn personnel assigned to four stations. Two stations are staffed by 3-person paramedic engines, one station is staffed by a 4-person paramedic truck, and one station is staffed by a 3-person BLS engine.

Ambulance transportation is provided by agreement with Emergency Ambulance and the city retains its 201 rights, although Emergency Ambulance believes they retain their 224 rights. Emergency Ambulance assigns one EMT ambulance to the city to assist fire department with 911 transportation. This ambulance does not respond out of our fire stations.

The BFD has a Fire Prevention staff of three non-sworn inspectors, not including the Fire Marshal and the BFD clerical staff is comprised of three clerical personnel. HazMat inspections are done by the county.

Administration provides overall leadership, coordination, and direction for the Fire Department. The program is responsible for the budget, analyzing programs, developing administrative procedures, recommending changes to increase productivity, and researching and preparing grant-funding proposals. Its daily operation forms a link between the community and other city departments, as well as the County of Orange, the state, and the federal government.

Operations are composed of three programs: Fire Suppression – provides continuous fire control and suppression, rescue, medical aid, hazardous materials control, and related emergency services. Emergency Medical Services – provides the delivery of basic and advanced life support services. Fire Training – schedules, tracks and ensures compliance with county, station and federally mandated and non-mandated training requirements. Fire training is also responsible for citywide disaster preparedness, maintaining the EOC in a ready, state, and training City employees to ensure mandates.

Fire Prevention is responsible for promoting public awareness of fire and life safety and enforcing the California Fire Code (based on the International Fire Code), the California Code of Regulations, and the California Health and Safety Code. The program oversees

all fire inspections conducted annually by both fire inspector and suppression staff. Upon request, inspectors and specialist participate in community, school, civic, and private industry education and outreach programs.

PURPOSE OF THE FEASIBILITY STUDY

By way of this RFP, the CITIES seek proposals from qualified firms or individuals to perform the work in one or more of the identified elements in the Scope of Work. The CITIES desire to contract with a single firm but will consider working with multiple firms or individuals to complete this work. Proposals should fully address the scope of work, and include a description of all deliverables and activities. Proposals will be evaluated by a team of representatives from the CITIES, who will recommend award of a contract or contracts. The CITIES expect the Scope of Work to be completed within four months of the award date (anticipated award date is late December 2015).

The purpose of the analysis is to determine if the full merger of the fire departments is feasible. The analysis would identify if the current deployment model is appropriate as far as call load, response time, effective firefighting force, effective EMS force, and manpower utilization hours. In addition, are there opportunities to strengthen the delivery of Fire, EMS, and other emergency services of CITIES, including providing ambulance transportation services, and other non-emergency functions among the agencies. The following interests have been expressed by the stakeholders in the development of this RFP:

- To provide a level of service equal or greater than is currently provided
- Identify deployment strategies to improve service or facilitate economic efficiencies
- Identify potential ambulance revenue options
- Identify legal requirements and strategies to ensure compliance
- Identify challenges, opportunities, weaknesses, and threats to the merging of services
- Identify efficiencies to be gained by the merging of services
- Identify a staffing model for a Dept. under governance of a JPA, including all necessary administration and support functions as well as field operations
- Identify a strategy and cost projection to address salary, benefit, and other compensation or working condition differences between the CITIES for as related to those employees who will potentially be transferred into the JPA. Include recommendations for addressing differences in compensation, benefits, and other components of existing memoranda of understanding the CITIES currently have with bargaining units representing impacted employees.
- Identify CalPERS requirements and contract implications arising from governance under a JPA, and project long term costs or savings
- Identify initial funding strategies and short and long term funding needs

- Identify facility, apparatus, and equipment maintenance requirements for a fire service governed by a JPA and strategies for addressing these requirements

SCOPE OF WORK

Project tasks shall include, but are not necessarily limited to, the following. If the Proposer feels that additional tasks are warranted, they must be clearly identified in the proposal.

The following tasks and deliverables must be addressed in all proposals submitted in response to this RFP.

1. Meet with CITIES designated stakeholders at three points in the project: (1) to review and finalize work plan upon award of the contract, (2) mid-project to update on progress and confirm work plan, and (3) to review draft recommendations at conclusion of project prior to delivery of final recommendations to City Councils for the CITIES. Designated stakeholders include the JPA working committee formed by the CITIES (comprised of two elected City Council members from each City, the two City Managers, the Fire Chief of the Joint Command Staff, and Fire bargaining unit representatives), potentially impacted bargaining unit leadership, Joint Fire Command Staff, representatives from the Administrative Services, Clerk Services, Facility Services, Fleet Services, Human Resources and IT departments or divisions and current ambulance service providers for the CITIES. Proposals should include format for these meetings as well as recommendations for any other stakeholders recommended to be included in the analysis process.
2. Develop staffing vs. contracting recommendation for the JPA including the following. Address how staffing needs may change in the future. Include identification of challenges, opportunities, strengths and weaknesses, advantages and disadvantages of each recommendation:
 - a. Administration
 - i. General management
 - ii. Clerk services
 - iii. Office support staff
 - b. Internal service operations
 - i. Finance/Purchasing
 - ii. Payroll
 - iii. Human Resources
 - iv. Information Technology

- v. Facilities Maintenance
 - vi. Fleet Maintenance
 - c. Field Operations
 - i. Fire Suppression
 - 1. Include deployment model recommendations
 - ii. Fire Prevention
 - iii. Ambulance Services
3. Develop a transition plan to include the following. Include identification of challenges, opportunities, strengths and weaknesses, advantages and disadvantages of each recommendation:
- a. For employees to be transferred from one of the CITIES to the JPA:
 - i. Analysis of current compensation packages and strategies to address differences in compensation, benefits, and other components of existing memoranda of understanding.
 - ii. Identify CalPERS requirements and contract implications related to transferring employees to the JPA.
 - b. Identify legal requirements for JPA formation and strategy for ensuring compliance.
 - i. Obligations and rights under 1797.201
 - ii. Risk to impact mitigation agreements, grants, or other revenues that any of the CITIES currently have based upon potential options, including CUPA, HazMat, etc
 - c. Determine facility, mobile apparatus and other equipment needs for the JPA and develop a strategy to address needs.
 - d. Develop timelines for completion of transition plan.
4. Develop a financial analysis, projections and recommendations including the following. Include identification of challenges, opportunities, strengths and weaknesses, advantages and disadvantages of each recommendation:
- a. Current annual fully burdened cost of Fire operations in Fullerton and Brea.

- b. Projected costs for consolidated Fire/Emergency Services and Ambulance services
 - i. Identify projected transition costs, including: apparatus and equipment, computer hardware and software, system compatibility, record management system, facility size, physical upgrades and other identified costs.
 - ii. Identify projected annual operational costs detailing the following:
 - 1. Personnel
 - 2. Contract
 - 3. Field Operations
 - 4. Other
 - iii. Identify projected long term liabilities including:
 - 1. CalPERS retirement
 - 2. Other Post Retirement Benefits
 - 3. Facility or Equipment leases
 - 4. Other
 - c. Determine cost allocation and apportionment recommendations for short term and long term costs and liabilities.
- 5. Deliver final report and recommendations as required in the Scope of Work to the City Councils of CITIES.

SUBMITTAL INSTRUCTIONS

All questions, proposals, offers and counter offers must be submitted, in writing by way of fax or email, only to:

RFP Project Manager:

Mario E. Maldonado, Assistant to the City Manager

City of Brea

1 Civic Center Circle

Brea, CA 92821

Phone (714) 990-7716

Fax (714) 990-2258

Email: mariom@cityofbrea.net

Interested parties shall not directly contact any Fire Department or staff member of the CITIES. All questions directed in writing to the RFP Project Manager at least seven (7) calendar days before the submission due date will be answered in an addendum, with the supplemental information resulting from such questions provided to all known potential responders.

Proposals must include:

1. A statement of the firm's general qualifications and experience performing similar analysis and recommendations.
2. A list of the proposed staff members who will perform the services and description of their individual qualifications and experience.
3. A list of references from at least three governmental agencies (preferably within California for whom the firm has provided similar services within the past 5 years. Include name of client organization, date of service and the contact name, phone number and email address for the client's project manager.
4. A project plan, charting the tasks and timeline for delivering the requested, proposed scope of work.

5. A cost sheet showing any and all charges for performing the services, including hourly billing rates, any other costs, and the total hours and total cost estimated to complete the work up to the point of developing an implementation plan. Indicate separately, the cost of preparing an implementation plan for the recommended action(s).
6. Proposal's shall be signed and dated by an authorized officer of the firm with a guarantee that the proposal will be valid for a minimum of 120 days.

Note: The CITIES expect the successful firm to contract the services on a fixed, not-to-exceed price basis, and will make monthly progress payments in the amount of 90% of the work completed each month, with 10% withholding for final project completion.

Proposals shall be submitted as one original and ten paper copies, and one PDF file, containing all text, graphics and attachments.

CITIES OF FULLERTON/BREA

GENERAL TERMS & CONDITIONS

REQUESTS FOR PROPOSALS

1. Submission

Each Proposer must submit its Proposal in strict accordance with all requirements of this RFP and compliance must be stated in the Proposal. Deviations, clarifications, and/or exceptions must be clearly identified and listed separately as alternative items for the City's consideration.

2. Insurance

Each Proposer shall demonstrate the willingness and ability to provide the required insurance coverage as set forth by CITIES requirements within ten calendar days of notification of selection for award of this Agreement.

3. Confidentiality

Proposals must not be marked as confidential or proprietary. The CITIES may refuse to consider a Proposal so marked. Information in proposals shall become property of the CITIES and subject to disclosure laws. The CITIES reserve the right to make use of any information or ideas in the proposals.

4. Expenses

The CITIES shall not, in any event, be liable for any pre-contractual expenses incurred by Proposers in the preparation of their proposal.

5. Changes to RFP

In the event the CITIES deem it necessary to clarify or make any changes to this RFP, these changes shall be made in the form of a written addendum authorized and issued only by the RFP Project Manager.

6. Execution of Agreement

The Successful Proposer(s) will be required to execute an agreement in the form attached hereto as Exhibit A of this RFP and comply with all requirements of said Agreement. In case of failure of successful Proposer to execute and return the contract and all required documents within the time allowed, the CITIES may, at their option, consider the Proposer having abandoned the proposal. Accepted proposals shall become a part of any resultant agreement for services.

7. Rights of CITIES

The CITIES reserve the right to:

- a. Waive any defect, irregularity or informality in the proposal or proposal procedures;

- b. Reject any and all proposals, or portions thereof;
- c. Request additional information for clarification;
- d. Cancel, revise and/or reissue this Request for Proposal or any portions thereof;
- e. Negotiate any conditions with Successful Proposer.
- f. Modify deadlines;
- g. Select any proposal or combination of proposals deemed to be in the best interest as determined by the CITIES.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITIES OF BREA AND FULLERTON
__(CONSULTANT)_____**

This Agreement is made and entered into this ___ day of _____, 2015, by and between the Cities of Brea and Fullerton, municipal corporations (hereinafter referred to as "CITIES") and _____ (hereinafter referred to as "CONSULTANT").

I. Recitals

A. CITIES desires to retain CONSULTANT to perform the scope of work described in the CITIES Request for Proposals (RFP) for A Feasibility Analysis for Providing Multi-City Fire Services Under Joint Powers Authority Jurisdiction (Attached hereto and incorporated herein) as well as the following expanded services as detailed below:

B. CONSULTANT represents that CONSULTANT is qualified to perform such services and is willing to perform such professional services within the agreed time period.

II. Agreement

NOW, THEREFORE, it is agreed by and among CITIES and CONSULTANT as follows:

A. Scope of Work: CONSULTANT shall perform those services described in Recital I.A., above, ("the Services").

B. CONSULTANT agrees as follows:

1. Upon receiving specific instructions from the CITIES RFP Project Manager to proceed, CONSULTANT shall forthwith commence performance hereunder in accordance with the Scope of Work, and with all Federal, State, and CITIES statutes, regulations,

ordinances, and guidelines, all to the reasonable satisfaction of CITIES.

2. CONSULTANT shall supply copies of all required reports, writings, photographs and/or documents (hereinafter collectively referred to as "documents") including any supplemental documents to CITIES, necessary for CONSULTANT to perform the Services, or as otherwise specifically required hereunder. Copies of the documents shall be in such numbers as are required by CITIES. CITIES may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITIES shall receive revised documents in such form and in the quantities determined necessary by CITIES.
3. CONSULTANT shall, at CONSULTANT'S sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONSULTANT, CONSULTANT hereby warrants that such persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no SUBCONSULTANT shall be retained by CONSULTANT except upon the prior written approval of CITIES.
4. CONSULTANT, while fulfilling the terms of this Agreement, is performing as a representative of CITIES and shall provide exceptional Customer Care. Any negative contact with staff, residents/citizens, businesses, visitors or other CONSULTANTs shall be reported by CONSULTANT immediately to CITIES RFP Project Manager. CONSULTANT's management and supervisory personnel shall intercede to resolve or mitigate the negative contact in conjunction with CITIES staff. CITIES and CONSULTANT may agree in advance to a single person contact, a representative of

either the CITIES or CONSULTANT, for the investigation and response to complaints.

C. CITIES agrees as follows:

1. City of Fullerton shall be lead agency during the term of the agreement until conclusion of the CONSULTANT's work. CONSULTANT questions arising during the course of the project shall be directed to the City Manager, City of Fullerton, or his designee.
2. To pay CONSULTANT a maximum sum of \$_____ for the performance of the services required hereunder. This sum shall cover the cost of all staff time and all other direct and indirect costs and fees, including the work of employees, CONSULTANT and SUBCONSULTANTS to CONSULTANT. Payment to CONSULTANT, by CITIES, shall be made in accordance with the schedule set forth below. Payments due shall be invoiced 50% to City of Brea and 50% to City of Fullerton.
3. Unless otherwise agreed upon, payments to CONSULTANT shall be made by CITIES in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITIES. All charges shall be in accordance with CONSULTANT's proposal either with respect to hourly rates or lump sum amounts for individual tasks.
4. Additional services: Payments for additional services requested, in writing, by CITIES shall be paid on a reimbursement basis in accordance with any agreed upon fee schedule established for CONSULTANT's services. Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITIES within a reasonable time after said invoices are received by CITIES.

- D. CITIES agrees to provide to CONSULTANT:
1. Information and assistance as needed to enable CONSULTANT to perform the Scope of Work. However, any and all information and data provided to CONSULTANT pursuant to this Agreement shall be forever maintained as confidential by CONSULTANT, to the maximum extent permitted by law.
 2. Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONSULTANT's responsibility to make all initial contact with respect to the gathering of such information.
- E. Ownership of Documents: All documents prepared by CONSULTANT pursuant to this Agreement shall be considered works made for hire and, together with all intellectual property rights arising therefrom, shall be deemed to be the property of CITIES. CONSULTANT hereby assigns to CITIES any and all intellectual property rights to such documents not otherwise conveyed by this subsection E. CONSULTANT shall not make and retain for its own use, copies of any documents prepared pursuant to this Agreement, without CITIES 'prior written consent.
- F. Termination: This Agreement may be terminated by CITIES upon the giving of a written "Notice of Termination" to CONSULTANT at least ten (10) days prior to the date of termination specified in said notice. In the event this Agreement is so terminated, CONSULTANT shall be compensated at CONSULTANT's applicable hourly rates on a pro-rata basis with respect to the percentage of the Services completed as of the date of termination. CONSULTANT shall provide to CITIES any and all documents and reports, whether in draft or final form, prepared by CONSULTANT as of the date of termination. CONSULTANT may not terminate this Agreement except for cause. Termination or expiration of this Agreement does not release

damage, claim, lawsuit, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct in performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the CITIES.

2. To the fullest extent permitted by law, CONSULTANT shall defend, indemnify and hold CITIES, their elected officials, officers employees, agents and volunteers free and harmless from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged, or threatened, actual attorneys fees and experts costs incurred by CITIES, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in, arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct in CONSULTANT's performance of this Agreement. All obligations under this provision are to be paid by CONSULTANT as they are incurred by the CITIES.
3. Any tort claims filed against the CITIES related to CONSULTANT's performance of this Agreement and subsequently tendered to CONSULTANT shall be promptly investigated, and the resolution of such claims shall be promptly reported to the CITIES.
4. CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those as set forth here in this section from each and every SUBCONSULTANT, sub-tier CONSULTANT or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance or subject matter of this Agreement. Notwithstanding the foregoing, CONSULTANT agrees

to be fully and primarily responsible for all claims and liabilities arising out of the acts or omissions of any of its CONSULTANTS and sub-tier CONSULTANTS in the performance of this Agreement.

7. Failure of CITIES to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITIES as set forth herein is binding on the successors, assigns or heirs of CONSULTANT and shall survive the termination of this Agreement or this section.
- I. Insurance: Throughout the term of this Agreement, CONSULTANT agrees to provide and maintain insurance as set forth herein.
 1. If CONSULTANT uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, CONSULTANT agrees to amend, supplement or endorse the existing coverage to do so. The following coverages will be provided by CONSULTANT and maintained on behalf of CITIES and in accordance with the requirements set forth herein:
 - A. Commercial General Liability/Umbrella Insurance. Primary insurance shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88. Total limits shall be not less than two million dollars (\$2,000,000) per occurrence for all coverage and two million dollars (\$2,000,000) general aggregate.
 - B. CITIES and their officers, agents and employees shall be named as additional insureds using ISO additional insured endorsement form CG 20 10 11 85 (in no event will CITY accept an endorsement form with an edition date later than 1990).

C. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to CITIES or any employee or agent of CITIES. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a “drop down” provision providing primary coverage above a maximum of \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy.

D. Coverage shall be in the following form as to any underlying coverage. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion. Policies shall have concurrent starting and ending dates.

E. Business Auto/Umbrella Liability Insurance. Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than one million dollars (\$1,000,000) per accident. Starting and ending dates shall be concurrent. If CONSULTANT owns no autos, a non-owned auto endorsement to the General Liability policy drafted above is acceptable.

F. Workers' Compensation/Employers' Liability shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this

policy shall be endorsed to waive any right of subrogation as respects the CITIES, their officers, agents or employees.

2. Additional insurance requirements:

A. This Section supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

B. Nothing contained in this Section is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Section are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.

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

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

E. For purposes of insurance coverage only, this Agreement shall be deemed to have been executed immediately upon any

party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

F. All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit CONSULTANT, and CONSULTANT's agents, officers or employees from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITIES.

G. Unless otherwise approved by CITIES, CONSULTANT's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A-:VII."

H. In the event any policy of insurance required by this Agreement does not comply with these requirements or is canceled and not replaced, CITIES have the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITIES will be promptly reimbursed by CONSULTANT. Upon CONSULTANT's failure to make such reimbursement within 30 days of written demand, CITIES may deduct that sum from any monies due CONSULTANT hereunder or otherwise.

I. CONSULTANT agrees to provide evidence of the insurance required herein, satisfactory to CITIES, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to CONSULTANT's general liability and umbrella liability policy (if any) using ISO form CG 20 10 11 85. Certificate(s) are to reflect that the insurer will provide

30 days' notice of any cancellation of coverage. CONSULTANT agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regarding to any notice provisions. CONSULTANT agrees to provide complete copies of policies to CITIES upon request.

J. CONSULTANT shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof shall be furnished within 72 hours of the expiration of the coverage.

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

L. CONSULTANT agrees to require all subCONSULTANTS or other parties hired for this project to provide general liability insurance naming as additional insureds all parties to this Agreement. CONSULTANT agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. CONSULTANT agrees to require that no contract used by any subCONSULTANT, or contracts CONSULTANT enters into on behalf of CITY, will reserve the right to charge back to CITIES the cost of insurance required by this Agreement. CONSULTANT agrees that upon request, all agreements with

subCONSULTANTs or others with whom CONSULTANT contracts on behalf of CITIES will be submitted to CITIES for review. Failure of CITIES to request copies of such agreement will not impose any liability on CITIES, its officers, agents, or employees.

M. If CONSULTANT is a Limited Liability Company (LLC), general liability coverage must be amended so that the LLC and its managers, affiliates, employees, agents and other persons necessary or incidental to its operations are insureds.

N. CONSULTANT agrees to provide immediate notice to CITIES of any claim or loss against CONSULTANT that includes CITIES as a defendant. CITIES assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims.

- J. Assignment: No assignment of all or any part of this Agreement, and no subcontract to perform any obligation hereunder, shall be made, either in whole or in part, by CONSULTANT without the prior written consent of CITIES.
- K. Independent CONSULTANT: The parties hereto agree that CONSULTANT and its employees, officers and agents are independent CONSULTANTs under this Agreement and shall not be construed for any purpose to be employees of CITIES.
- L. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any litigation arising out of this Agreement shall be the Superior Court of the County of Orange.
- M. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal

proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

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

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

CONSULTANT:

Type Name:

Title:

Address:

CITY OF BREA:

William Gallardo, City Manager
1 Civic Center Circle
Brea, CA 92821

CITY OF FULLERTON:

Joseph Felz, City Manager
303 W. Commonwealth Ave.
Fullerton, CA 92832