



## Finance Committee Agenda

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Tuesday, June 9, 2026, 8:30 AM  
EXECUTIVE CONFERENCE ROOM - 3RD FLOOR  
1 Civic Center Circle  
Brea, CA 92821

**MEMBERS:** Mayor Pro Tem Marty Simonoff, Chair and Council Member Steve Vargas

**ALTERNATES:** Mayor Cecilia Hupp and Council Member Christine Marick

This agenda contains a brief general description of each item the Committee will consider. The Administrative Services Department has on file copies of written documentation relating to each item of business on this Agenda available for public inspection. Contact the Administrative Services Department Office at (714) 990-7684 or view the Agenda and related materials on the City's website at <https://www.ci.brea.ca.us/509/Meeting-Agendas-Minutes>. Materials related to an item on this agenda submitted to the Committee after distribution of the agenda packet are available for public inspection in the Administrative Services Department's Office at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post document before the meeting.

### **Procedures for addressing the Committee**

Members of the public may offer comment by phone or email or may observe the meeting by attending in person. All requests to offer comment must be submitted via phone by calling (714) 990-7684 or by emailing [debbied@cityofbrea.gov](mailto:debbied@cityofbrea.gov) by 12:00 p.m. on the Monday prior to the meeting.

### **Special Accommodations**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Administrative Services Office at (714) 990-7684. 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)

***PLEASE SILENCE ALL PAGERS, CELL PHONES AND OTHER ELECTRONIC EQUIPMENT WHILE THE COMMITTEE IS IN SESSION.***

## **1. CALL TO ORDER/ROLL CALL**

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- 1.A. Attendees
- 1.B. Matters from the Audience

## **2. CONSENT**

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- 2.A. Approval of Minutes 05-26-2026

### **3. DISCUSSION**

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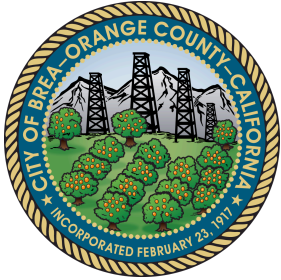
- 3.A. Office Lease between the City of Brea and the Brea Olinda Unified School District
- 1. Approve a one-year Office Lease with the Brea Olinda Unified School District, with an optional eleven-month extension term (Attachment A).
  - 2. Authorize the City Manager to approve non-substantive changes, as well as amend and extend the term of the Office Lease, for up to eleven months.
- 3.B. Parking Lot Use Agreement between the City of Brea and the Brea Olinda Unified School District for 220 South Orange Avenue
- 1. Approve a one-year Parking Lot Use Agreement with the Brea Olinda Unified School District for use of a parking lot located at 220 South Orange Avenue (Attachment A).
- 3.C. Citywide Janitorial Services
- 1. Award a contract to K Pro Stone Care for Citywide Janitorial Services, in the amount not to exceed \$395,868.00 per year, for a period of three (3) base years.
  - 2. Authorize the City Manager to approve up to four (4) additional one (1) year extensions.
- 3.D. Landscape Maintenance Services Agreement
- 1. Award a contract to Mariposa Landscapes, Inc., for Landscape Maintenance Services in the amount not to exceed \$510,323.50 per year, for a period of three (3) base years
  - 2. Authorize the City Manager to approve up to four (4) additional one (1) year extensions.
- 3.E. ActiveNet Software Agreement
- 1. Approve a three (3) year Agreement with Active Network, effective July 1, 2026, to provide ongoing software and support for the Community Services recreation program, ActiveNet; and
  - 2. Authorize the City Manager or designee to execute the Agreement

### **4. ADJOURNMENT**

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Next Scheduled Meeting: Tuesday, June 30, 2026 at 8:30 am.

*Date Posted: June 4, 2026*



# CITY *of* BREA

Finance Committee Communication

June 9, 2026

Item No. 2A.

Approval of Minutes 05-26-2026

TO	PREPARED BY
Finance Committee Members	Debbie Duff, Accounting Technician II
DEPARTMENT HEAD APPROVAL	CITY MANAGER APPROVAL
Monica Lo, Administrative Services Director	Kristin Griffith, City Manager

## **Attachments**

[Finance Committee-05-26-2026-minutesDraft.pdf](#)

**\*\* The following document is a draft of the minutes and the not the official approved minutes \*\***

## **Minutes for the Finance Committee**

1 Civic Center Circle, Brea, CA 92821

May 26, 2026, 8:30 AM - 8:34 AM

### **1. CALL TO ORDER/ROLL CALL**

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Mayor Pro Tem Marty Simonoff called the meeting to order at 8:30 am.

#### 1.A. Attendees

Mayor Pro Tem Marty Simonoff, Council Member Steve Vargas, Kristin Griffith, Jason Killebrew, Monica Lo, Michael Ho, Sean Matlock, Ryan Chapman, Wade Whitman, Matt Cuevas, Eric Aulls, Patty Jaminson, and Debbie Duff.

#### 1.B. Matters from the Audience

None.

### **2. CONSENT**

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#### 2.A. Approval of Minutes 05-12-2026

The minutes of the May 12, 2026 Finance Committee meeting were approved as written.

### **3. DISCUSSION**

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#### 3.A. Public Hearing to Consider Levying an Assessment for Landscape and Lighting Maintenance Districts Nos. 1, 2, 3, 4, 5, 6 and 7 for Fiscal Year 2026-2027

Council Member Steve Vargas asked whether the districts were required to complete the Prop 218 process and staff confirmed that they were.

The Finance Committee recommended this item for City Council action.

#### 3.B. Rejection of Bids for the Arovista Park Parking Lot Paving, CIP Project No. 7978

Council Member Steve Vargas asked whether rejecting the bids was standard procedure. Staff explained to the Finance Committee that, because the project will now receive grant funding, the customary process is to rejected all bids, return bid bonds to the bidders, revise the bid documents to incorporate grant funding requirements, and re-advertise the project at a later date.

The Finance Committee recommended this item for City Council action.

#### 3.C. Road Repair and Accountability Act - Local Streets and Roads Funding Program, Fiscal Year 2026-27 Proposed Project List

The Finance Committee reviewed and recommended this item for City Council action.

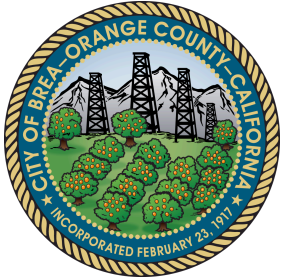
#### 3.D. Renewed Measure M (M2) Eligibility Submittal Package for Fiscal Year 2026-27

The Finance Committee reviewed and recommended this item for City Council action.

#### **4. ADJOURNMENT**

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Mayor Pro Tem Marty Simonoff adjourned the meeting at 8:34 am.



# CITY of BREA

Finance Committee Communication

June 9, 2026

Item No. 3A.

## Office Lease between the City of Brea and the Brea Olinda Unified School District

TO	PREPARED BY
Finance Committee Members	Marie Dao, Senior Management Analyst
DEPARTMENT HEAD APPROVAL	CITY MANAGER APPROVAL
Jason Killebrew, Assistant City Manager/Community Development Director	Kristin Griffith, City Manager

### RECOMMENDATION

Staff recommends that the Finance Committee recommend the City Council take the following actions:

1. Approve a one-year Office Lease with the Brea Olinda Unified School District, with an optional eleven-month extension term (Attachment A); and
2. Authorize the City Manager to approve non-substantive changes, as well as amend and extend the term of the Office Lease, for up to eleven months.

### BACKGROUND/DISCUSSION

On October 19, 2021, the Brea Olinda Unified School District ("School District") executed an Office Lease with the City of Brea to utilize 1,721 square feet of office space located on Level 2 of the Brea Civic and Cultural Center. This space was leased in addition to the larger 9,300 square-foot space that the School District has leased from the City since 1980 for their main offices. Since 2021, the School District has utilized the additional 1,721 square-foot space for general office use and remote learning operations due to the COVID-19 pandemic. The 2021 Office Lease allowed for three one-year extensions and is scheduled to expire on July 31, 2026.

The School District has found the additional office space to be beneficial for their continued remote learning operations and general office use and has requested to continue occupying the space. Based on the following proposed terms, staff recommends that the City and School District enter into a new Office Lease.

### **Proposed Terms**

1. The Office Lease shall become effective on August 1, 2026 for a one-year term ending on July 31, 2027.
2. The School District shall have the right to extend the term of the Office Lease for eleven months, expiring on June 30, 2028, which aligns with the expiration date of the 9,300 square foot main office sublease.
3. The School District shall pay \$3,801.67 per month in rent, which includes the base cost of all water, electricity, gas, and other utility services, but excludes telephone and janitorial service costs.
4. The City will pay for the maintenance and upkeep of the shared parking, restrooms, elevators, landscaping, and other common amenities, while the School District will pay for and maintain the upkeep of the interior of their leased space.
5. The monthly rent shall be increased effective August 1, 2027, by an amount equal to the annual percentage increase published as the Consumer Price Index, with a minimum increase of two percent and a maximum

increase of four percent.

6. The School District may use the office space between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday.

The Office Lease was approved by the School District at their April 23, 2026 board meeting.

City staff recommends that the Finance Committee approve the Office Lease and recommend it for City Council review and approval.

**FISCAL IMPACT/SUMMARY**

Revenue from the Office Lease with the School District has already been included in the City's General Fund (110) budget for Fiscal Year 2026-27.

**Attachments**

[Office Lease \(signed by BOUSD\).pdf](#)

## OFFICE LEASE

This OFFICE LEASE (“Lease”) is dated June 16, 2026 for reference purposes and is executed by the CITY OF BREa, a municipal corporation (“City”), and the BREa-OLINDA UNIFIED SCHOOL DISTRICT, a public school district (“Tenant”).

### 1. Premises

City leases to Tenant and Tenant leases from City that certain office space in the City of Brea, California, located on Level 2 of City’s Civic and Cultural Center located at 1 Civic Center Circle (the “Building”) more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (the “Premises”), subject to the terms, covenants and conditions hereinafter set forth.

### 2. Term

A. The Base Term of this Lease shall be for one (1) year. The commencement of the Base Term shall be on August 1, 2026 (“Commencement Date”), and shall end on July 31, 2027.

B. Tenant shall have the right to extend the term of this Lease for eleven (11) months (“Extension Term”) by giving written notice of the extension to City at least three (3) months prior to the expiration of the Base Term.

C. Tenant may terminate this Lease upon giving ninety (90) days prior written notice before the end of the Base Term or the Extension Term.

### 3. Rent

A. Commencing on August 1, 2026, Tenant shall pay to City as rent, without prior notice or demand by City, \$3,801.67 per month, on or before the first day of each calendar month during the Term of this Lease.

B. The monthly rent shall be increased effective on August 1, 2027, by an amount equal to the annual percentage increase published as the CPI (Consumer Price Index) for the U.S. Department of Labor, Bureau of Labor Statistics, for the Los Angeles-Long Beach-Anaheim area, determined by comparing the CPI for September 2026 to the CPI for September 2025, in order to calculate the annual increase, with a minimum increase of 2% and a maximum increase of 4%. If, for whatever reason, the CPI is not available for the month of September 2026, the parties may use a mutually agreeable calculation to determine the rate of increase.

C. Rent for any period during less than one month shall be a prorated portion of the monthly payment required herein, based upon a 30-day month. Rent shall be paid to City without prior demand and without deduction or offset, in lawful money of the United States of America, at 1 Civic Center Circle, Brea, California, 92821-5732, or at such other place as City may designate in writing.

### 4. Use

A. Tenant shall use the Premises for general office use and teaching conferences between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday, in connection with its operations and shall not use or permit the Premises to be used for any other purpose without the prior written consent of City, which may be granted or withheld at City's sole and absolute discretion. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein that will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents, or cause cancellation of any insurance policy covering the Premises or part thereof or portion of its contents. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or parties in the Building, or use or allow or permit the Premises to be used for any unlawful purpose. Nor shall Tenant cause, maintain or permit any nuisance in or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Tenant shall maintain the Premises so as to be free from risk hazards to the public health, safety, or welfare.

B. Tenant shall not be responsible for any currently existing Hazardous Materials on site or in the Premises, including asbestos or lead paint as of the Commencement Date. Tenant shall not cause or permit any Hazardous Materials, as defined below, to be brought upon, kept, used, discharged, deposited or leaked in or about the Premises or the Building by Tenant or any of Tenant's agents or by anyone in the Premises (other than City or its agents, employees or contractors), except to the extent such Hazardous Materials are cleaning or office supplies customarily kept or used by typical office tenants and are kept and used in accordance with all applicable laws. For purposes of this Lease, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal governmental authority or by common law decisions, including (i) all chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls.

## **5. Compliance with Law**

Tenant shall not use the Premises or permit anything to be done in or about the Premises that will in any way conflict with any applicable law. Tenant shall comply with applicable laws related to its occupancy of the Premises, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements and acts. The judgment of a court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether City is party thereto or not, that Tenant has violated any law shall be conclusive of that fact as between City and Tenant.

## **6. Alterations and Additions**

Tenant shall not make or suffer to be made any alterations, additions or improvements in or about the Premises or any part thereof without the written consent of City. Any alterations, additions or improvements in, to or about the Premises (including wall coverings, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures) shall on the expiration or sooner termination of this Lease become a part of the realty, shall belong to City, and shall be surrendered with the Premises. In the event City consents to the making of any alterations,

additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense.

**7. Physical Condition of Premises; Limited City Maintenance Responsibilities**

A. Tenant warrants and agrees that Tenant has inspected the Premises. By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises as-is and as being in good sanitary order, condition and repair. City shall have no responsibility for any repairs or improvements to the Premises, prior to, or as a condition of, Tenant's occupation of the Premises. Except as expressly set forth in this Lease, including Section 8 (Representations and Warranties of City), City makes no representations regarding the condition, status, compliance with laws or suitability for a particular purpose for Tenant's use.

B. The parties acknowledge that the Premises have not been inspected by a Certified Access Specialist ("CASp"). Tenant may, at its option, obtain a CASp inspection.

C. Notwithstanding the foregoing, City shall be responsible for compliance with applicable accessibility laws (including ADA and California accessibility standards) with respect to the base Building and common areas, including structural and path-of-travel elements. Tenant shall be responsible only for compliance related to Tenant-specific improvements or alterations, as identified within the Premises. Costs for any required accessibility upgrades not triggered by Tenant improvements shall be borne by City.

D. Tenant shall be responsible for routine, non-structural maintenance within the Premises, including interior cleanliness, minor repairs, and janitorial services. If Tenant fails to do so within thirty (30) business days after written demand by City, then City may do so and Tenant shall reimburse City for City's costs, as additional rent, within thirty (30) business days after written demand from City with evidence of such costs.

E. Tenant shall, upon the expiration or sooner termination of this Lease, surrender the Premises to City in good condition. City shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises, or any part thereof, and the parties affirm that City has made no representations to Tenant respecting the conditions of the Premises or the Building except as specifically set forth herein. Tenant shall submit to City, prior to applying for any permits to renovate, reconstruct, improve, alter or in any other way modify the Premises, plans and specifications for City's written approval.

F. City shall not be liable for any failure to make any repairs, or to perform any maintenance with respect to the Premises, except as specifically provided herein. Except as may otherwise expressly be provided herein, including the rent abatement provisions set forth above, there shall be no abatement of rent and no liability of City by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Premises or in or to any fixtures, appurtenances and equipment therein. Tenant specifically waives the right to make repairs at City's expense under any law now or hereafter in effect.

G. Notwithstanding any provision to the contrary, including any provision stating that rent shall not abate, City shall, at its sole cost and expense, maintain, repair, and replace the

Building Systems, including:

- Failure of Building Systems; such as HVAC, electrical, plumbing and life-safety systems;
- Damage or casualty;
- Required repairs not caused by Tenant;
- Governmental orders affecting occupancy;

H. In the event City fails to perform its obligations under this Section within a reasonable time after written notice, Tenant may, after an additional reasonable cure period, perform such work and offset the reasonable cost against rent.

I. If the Premises are rendered substantially unusable for more than thirty (30) consecutive days, Tenant shall have the right to terminate this Lease upon written notice.

## **8. Representations and Warranties of City**

A. City represents and warrants to Tenant that, as of the Commencement Date:

1) The Premises and Building comply, in all material respects, with applicable federal, state, and local laws, including building, fire, and life-safety codes.

2) To City's actual knowledge, there are no outstanding written notices of violation, orders to correct, or governmental actions affecting the Premises.

3) The Building systems, including HVAC, electrical, plumbing, and life-safety systems (collectively, "Building Systems"), are in good working order.

4) City has not received written notice of any hazardous conditions requiring remediation, except as disclosed in writing to Tenant.

5) City shall be responsible for compliance with applicable accessibility laws (including ADA and California accessibility standards) with respect to the base Building and common areas, including structural and path-of-travel elements. Tenant shall be responsible only for compliance related to Tenant-specific improvements or alterations.

B. Survival. The representations and warranties set forth in this Section shall survive the Commencement Date and Tenant's occupancy of the Premises.

## **9. Claims Against Premises**

Tenant shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's liens arising from, or any claim for any work of construction, repair, restoration, replacement or improvement of or to the Premises by Tenant, but Tenant shall pay or cause to be paid any and all such claims or demands before any action is brought to enforce the same against the Premises. Tenant shall indemnify, defend and hold City and the Premises free and harmless of all liability for any and all such claims and

demands, together with City's reasonable attorneys' fees and all costs and expenses in connection therewith.

**10. Utilities**

City and Tenant agree that the rent specified in Section 3 above includes the base cost of all water, electrical, gas and other utility services, but excludes telephone costs and the costs of janitorial services (which Tenant shall procure at its sole cost and expense). Tenant shall not run any new utility or communication service lines without City's prior written consent.

**11. Taxes**

Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable upon all of Tenant's possessory interest in and to the Premises, leasehold improvements, equipment, furniture, fixtures and personal property located in or about the Premises. Without prior demand or notice by City, Tenant shall, not less than fifteen (15) days prior to the date upon which any such possessory interest or other such tax is due, provide City with proof of payment of such tax.

**12. Rules and Regulations**

City reserves the right to make, and to amend from time to time, rules and regulations for the Premises. Tenant shall faithfully observe and comply with such rules and regulations, which shall be binding upon Tenant upon delivery of a copy thereof to Tenant.

**13. Holding Over**

If Tenant remains in possession of the Premises or any part thereof after the expiration of the term, with the express written consent of City, then such occupancy shall be a tenancy from month-to-month at a rent in the amount of 135% of the last monthly rent, plus all other charges payable hereunder, and upon all the terms and conditions hereof.

**14. Entry by City**

Tenant agrees that representatives of City, as designated by the City Manager, shall during normal business hours, have the right to enter the Premises and inspect the same to determine if the same complies with each and every term and condition of this Lease and with all applicable laws relating to building occupancy and the conduct of Tenant's business. Tenant waives any claim for damages related to the inspection, provided City makes a good faith effort not to interfere with the educational purposes related to Tenant's business within the Premises. City shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults, safes and files. City shall have the right to use any and all means which City may deem proper to open such doors in an emergency, in order to obtain entry to the Premises without liability to Tenant except for any failure to exercise due care for Tenant's property. Any entry to the Premises obtained by City by any of such reasons, or otherwise, shall not, under any circumstances, be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

**15. Default**

The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

A. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of thirty (30) days after written notice thereof by City to Tenant.

B. A failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by, Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof by City to Tenant; provided, however, that if the nature of the default involves such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

C. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located in or about the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

**16. Remedies for Default**

In the event of a default by Tenant, at any time thereafter and without notice or demand and without limiting the exercise of any other available right or remedy, City may:

A. Terminate Tenant's right to possession of the Premises by any lawful means in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Tenant all damages incurred by City by reason of Tenant's default including: the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises; reasonable attorneys' fees and costs; and the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such rent loss for the same period that Tenant proves could be reasonably avoided. Unpaid installments of rent or other sums shall bear interest from the due date thereof at the rate of 18% per annum or at the maximum legal rate then in effect in California, whichever is lower. In the event Tenant shall have abandoned the Premises, City shall have the option of (1) taking possession of the Premises and recovering from Tenant the amount specified in this paragraph, or (2) proceeding under the provisions of the following paragraphs.

B. Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover

rent as it becomes due hereunder.

C. Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California. Furthermore, Tenant agrees that no election by City as to any rights or remedies available hereunder or under or pursuant to any law or judicial decisions of the State of California shall be binding upon City until the time of trial of any such action or proceeding.

**17. Offset Statement**

Tenant shall at any time and from time to time, upon not less than ten (10) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing (a) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any incurred defaults on the part of City hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of which the Premises are a part.

**18. No Assignment and Subletting**

Tenant shall not assign or transfer this Lease or any right hereunder to any other party or parties nor shall Tenant sublet all or any portion of the Premises.

**19. Attorneys' Fees**

In the event that any action or proceeding is brought by either party to enforce any term or provision of this Lease, the prevailing party shall recover its reasonable attorneys' fees, experts' costs, and all other costs of suit.

**20. Fixtures**

All trade fixtures installed in or on the Premises by Tenant may be removed by Tenant at any time so long as the same may be removed without permanent damage to the Premises. Tenant shall repair all damage which may result therefrom to the reasonable satisfaction of City.

**21. Indemnification**

Tenant shall defend, indemnify and hold City and its elected officials, officers, agents and employees free and harmless from all liabilities, claims, losses, damages, costs and expenses incurred by City by reason of Tenant's breach of this Lease or Tenant's negligent acts or those of Tenant's employees, or agents in connection with Tenant's use and occupancy of the Premises and any common areas of the Building or other portions of the Building.

**22. Insurance**

A. Fire and Extended Coverage

1) Tenant's Duty to Keep Improvements Insured

At Tenant's sole cost and expense, Tenant shall keep or cause to be kept insured, for the mutual benefit of City and Tenant, all improvements located on or appurtenant to the Premises against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for such structures, including vandalism and malicious mischief. The amount of the insurance shall be the then replacement cost but without deduction for depreciation ("Full Insurable Value"). City shall not carry any insurance the effect of which would be to reduce the protection or payment to Tenant under any insurance that this Lease obligates Tenant to carry. If any dispute as to whether the amount of insurance complies with the above cannot be resolved by agreement, City may, not more than once every three months, request the carrier of the insurance then in force to determine the Full Insurable Value, and the resulting determination shall be conclusive between the parties for the purpose of this paragraph.

2) Proceeds of Fire and Extended Coverage Insurance

City shall, at Tenant's sole cost and expense, cooperate fully with Tenant to obtain the largest possible recovery, and all policies of fire and extended coverage insurance required above, shall provide that the proceeds shall be paid to Tenant as follows:

a) The proceeds shall be deemed to be held in trust by the Tenant to the uses and purposes prescribed by this Lease.

b) Disbursements of proceeds for repair, restoration, reconstruction of improvements shall be made monthly on architect's certificates until all the work is completed and accepted; provided, however, that such disbursements shall not exceed 90% of the work in place until completion, acceptance, expiration of time for lien claims, and elimination of all liens claimed.

c) Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair, and reconstruction of improvements shall be the sole property of Tenant.

B. Commercial General Liability Insurance

At Tenant's sole cost and expense, Tenant shall keep or cause to be kept in full force and effect, for the mutual benefit of City and Tenant, commercial general liability insurance against claims and liabilities for personal injury, death, and/or property damage arising from the use, occupancy or condition of the Premises, improvements, or adjoining areas or ways, providing protection of at least \$1,000,000 for bodily injury or death to any one person, at least \$1,000,000 for any one accident or occurrence, and at least \$500,000 for property damage.

C. Policy Form, Contents and Insurer

All insurance required by this Lease shall be carried only in responsible insurance companies licensed to do business in the State of California or a self-insurance program acceptable to City. All such policies shall contain language providing that (1) the insurer waives the right of subrogation against City and its employees, agents and representatives, (2) the policies

are primary and noncontributing with any insurance that may be carried by City, and (3) they cannot be canceled or materially altered except after thirty (30) days' written notice by the insurer to City. Tenant shall furnish City with copies of all such policies promptly upon receipt of them, or certificates evidencing the insurance. Prior to the commencement of this Lease, Tenant shall furnish City with certificates and endorsements representing all insurance required by this Lease. The required policy shall name City and its respective elected officials, officers, employees and agents as additional insureds. Tenant may affect for its own account any insurance not required under this Lease.

D. Failure to Maintain Insurance; Proof of Compliance

1) Tenant shall deliver to City, in the manner required for notices, copies of certificates and endorsements of all insurance policies required by this Lease, together with evidence satisfactory to City of having procured and currently maintaining all required policies, with the following time limits:

a) For insurance required at the commencement of this Lease, upon execution of this Lease.

b) For insurance becoming required at a later date, at least ten (10) days before that requirement takes effect, or as soon thereafter as the requirement, if new, takes effect.

c) For any renewal or replacement of a policy already in existence, at least twenty (20) days before expiration or other termination of the existing policy.

2) If Tenant fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish City with required proof that the insurance has been procured and is in full force and paid for, then City shall have the right, at City's election and on five (5) days' written notice, to procure and maintain such insurance. The premiums paid by City shall be treated as added rent due from Tenant with interest at the rate of 18% per year or the maximum allowable legal rate in effect in the State of California on the date when the premium is paid, whichever is higher, to be paid on the first day of the month following the date on which the premium was paid. City shall give prompt written notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the day of the notice.

**23. Destruction of Premises**

A. Destruction Due to Risk Covered by Insurance. If, during the term of this Lease, the Premises or the Building and other improvements in which the Premises are located are totally or partially destroyed from a risk covered by insurance carried by either Tenant or City, rendering the Premises totally or partially inaccessible or unusable, City shall not be responsible to restore the Premises. Such destruction shall not terminate the Lease unless the Premises are totally unusable by Tenant. Notwithstanding the foregoing, if the Premises are not restored to a condition reasonably suitable for Tenant's use within a reasonable time, Tenant may terminate this Lease upon written notice.

B. Destruction Due to Risk Not Covered by Insurance. If, during the term of this

Lease, the Building, the Premises, or other improvements in which the Premises are located are totally or partially destroyed by a risk not covered by the insurance, rendering the Premises totally or partially inaccessible or unusable, City shall not be responsible to restore the Premises and such damage shall not terminate the Lease. Notwithstanding the foregoing, if the Premises are not restored to a condition reasonably suitable for Tenant's use within a reasonable time, Tenant may terminate this Lease upon written notice.

**24. Authority**

The individual executing this Lease on behalf of Tenant represents and warrants that he or she is fully authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with terms. Tenant represents and warrants that Tenant received approval to enter into this Lease from Tenant's governing board, prior to execution of this Lease.

**25. Waiver**

No delay or omission in the exercise of any right or remedy of City on any default by Tenant shall impair such right or be construed as a waiver. The waiver by City of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of the acceptance of such rent.

**26. Time**

Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

**27. Inability to Perform**

This Lease and the obligations of Tenant hereunder shall not be affected or impaired because City is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, war, civil insurrection, acts of God, or any other cause beyond the reasonable control of City.

**28. Signs**

City shall provide white vinyl lettering signage similar to all other Civic and Cultural Center tenants. Tenant shall not place any sign upon the Premises without City's prior written consent.

**29. Performance Bond**

A. Prior to the commencement of any repair, alteration, addition, renovation or Improvement as may be required or permitted in the Premises, Tenant shall file with the City Clerk

a corporate surety bond satisfactory to the City Manager and conditioned that Tenant shall well and truly observe, fulfill and perform each and every repair, alteration, addition, renovation or improvement contemplated. The corporate surety bond shall be in the penal sum of 110% of the reasonable value of any such repair, alteration, addition, renovation or improvement as determined by the City's Public Works Director, whose decision shall be final. In the event of any breach of any condition of the aforesaid bond, the whole amount of the penal sum therein named shall be deemed to be liquidated damages, and the same shall be recoverable from the principal and sureties upon the bond. This corporate surety bond will be required for any repair, alteration, addition, renovation or improvement over \$10,000, as estimated by City.

B. Upon completion of the repairs, alterations, additions, renovations or improvements secured by such corporate surety bond, Tenant may apply to the Public Works Director for a reduction in the penal sum of such bond and the Public Works Director, upon satisfactory proof being presented shall reduce the penal sum thereof to an amount not exceeding 50% of the reasonable value of such repairs, alterations, additions, renovations or improvements.

**30. Brokers**

Tenant and City each represent and warrant to each other that no broker has represented either of them or is otherwise entitled to a commission or fee in connection with the transactions contemplated in this Lease.

**31. Notices**

Any notice required or permitted under the terms of this Lease shall be deemed served when personally served on Tenant or the City Clerk or when the same has been placed in the United States mail, postage prepaid and addressed as follows:

Tenant: Brea-Olinda Unified School District  
Attention: Assistant Superintendent, Business Services  
1 Civic Center Circle  
Brea, CA 92821

City: City of Brea  
Attention: City Manager  
Brea Civic & Cultural Center 1 Civic Center Circle  
Brea, CA 92821

**32. Execution by City Not a Waiver**

Tenant understands and agrees that City, by entering into and executing this Lease, shall not have waived any right, duty, privilege, obligation or authority vested in City to approve, disapprove or conditionally approve any application which Tenant may be required to make under any laws, rules, ordinances or regulations now or hereafter in effect which City may be empowered to apply, including any use permit or approval whether similar in nature or not.

**33. Entire Agreement**

The attached exhibits are incorporated into this Lease by reference. This Lease (including the attached exhibits) contains the entire agreement between the parties with respect to the subject matter herein. No promise, representation, warranty, or covenant not included in this Lease has been or is relied on by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the Premises, to read the Lease or other documents or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

**34. Amendment**

This Lease may not be modified or amended except by written instrument duly executed by the parties.

**35. Memorandum of Lease**

Concurrently with its execution and delivery of this Lease, Tenant shall execute and acknowledge a short form Memorandum of Lease for recording purposes in the form attached hereto as Exhibit "B" and shall deliver it to the City for execution and recording. Upon the expiration or earlier termination of this Lease for any reason, Tenant shall within five business days following written request by City, deliver to City an executed, acknowledged and recordable quitclaim deed conveying to City any and all interest Tenant may have under this Lease.

**TO EXECUTE THIS LEASE**, the parties have caused their authorized representatives to sign below.

**TENANT:**

BREA-OLINDA UNIFIED SCHOOL  
DISTRICT,  
a public school district

By:  \_\_\_\_\_ Print  
Name: Richard Chapman  
Assistant Superintendent, Business  
Services

**CITY:**

CITY OF BREA

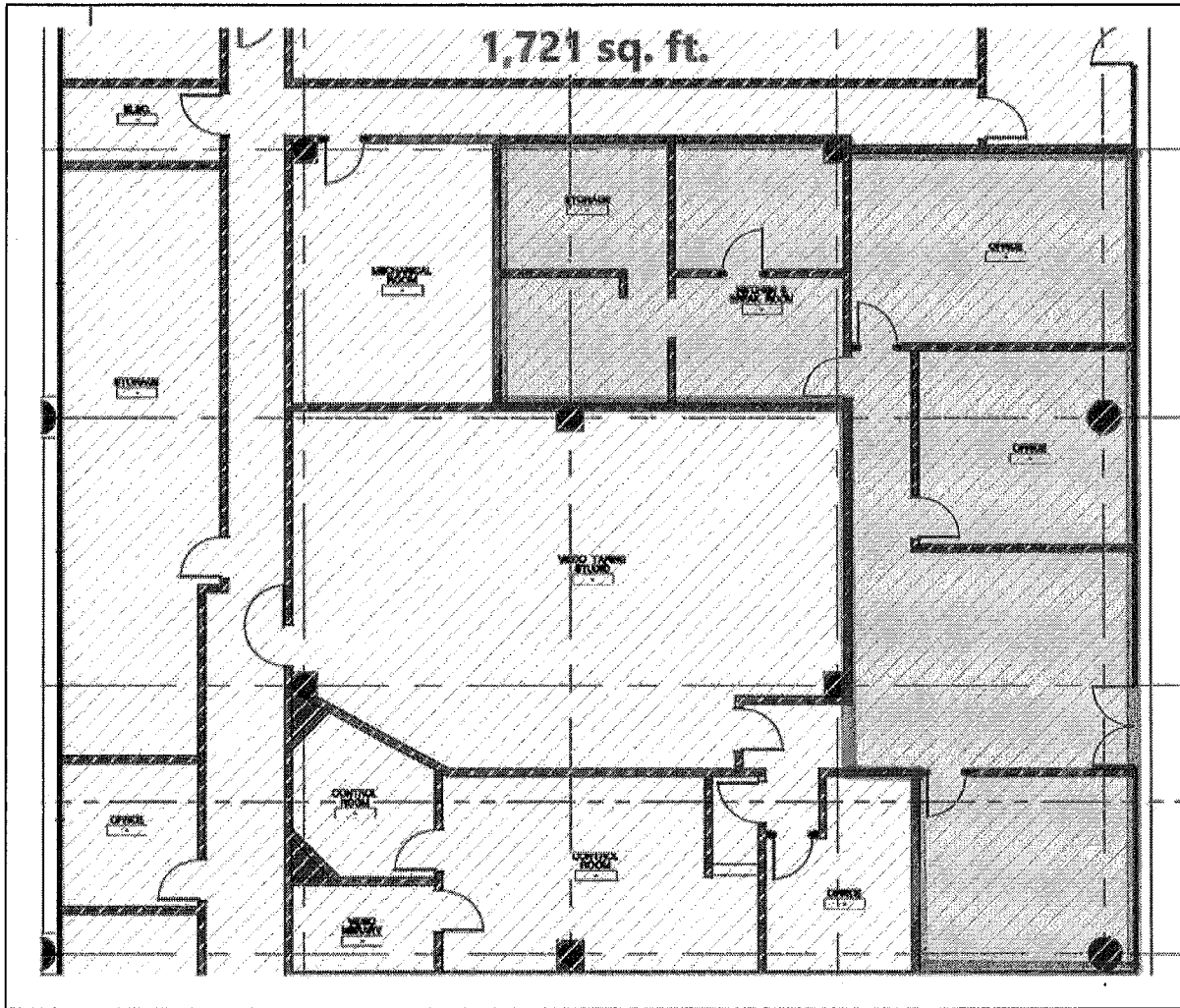
By: \_\_\_\_\_  
Cecilia Hupp, Mayor

ATTEST: \_\_\_\_\_  
Victoria Popescu, City Clerk

EXHIBIT "A"

DIAGRAM OF PREMISES

1,721 square feet



**EXHIBIT "B"**

**FORM OF MEMORANDUM OF LEASE**

(Attached)

RECORDING REQUESTED BY,  
WHEN RECORDED RETURN TO:

City of Brea  
1 Civic Center Circle  
Brea, California 92821  
Attention: City Clerk

---

[Space Above For Recorder's Use Only]

The undersigned declare that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is dated as of June 16, 2026 and is executed by the CITY OF BREA ("Landlord"), and the BREA-OLINDA UNIFIED SCHOOL DISTRICT, a unified school district ("Tenant").

### RECITALS

A. Tenant and Landlord have entered into that certain Lease dated June 16, 2026 (the "Lease"), pursuant to which Landlord has agreed to lease and demise to Tenant, and Tenant has agreed to lease and accept from Landlord, a portion (the "Premises") of that certain building located in the City of Brea, County of Orange, State of California, commonly known as 1 Civic Center Circle (the "Property"). The Premises are more particularly described in the Lease.

B. Tenant and Landlord now desire to enter into this Memorandum to provide record notice of the Lease and comply with California law requiring that municipal leases be recorded.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Landlord agree as follows:

1. Lease. Landlord hereby leases and demises to Tenant, and Tenant hereby leases and accepts from Landlord, the portion of the Property defined as the "Premises" in the Lease for a term of 23 months at the rental rate and upon the other terms and conditions set forth in the Lease, which are incorporated herein by this reference.
2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Lease. In the event any provision of this Memorandum is inconsistent with any term or condition of the Lease, the term or condition of

the Lease shall prevail.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first written above.

**LANDLORD:**

CITY OF BREA

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

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

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

**TENANT:**

BREA-OLINDA UNIFIED SCHOOL  
DISTRICT

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

Print Name: Ricardo Cisneros

Assistant Superintendent,  
Business Services

ATTEST:

\_\_\_\_\_ (SEAL)

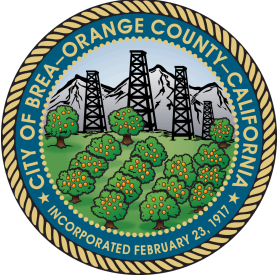
By: \_\_\_\_\_

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

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

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

City Clerk



# CITY *of* BREA

Finance Committee Communication

June 9, 2026

Item No. 3B.

## Parking Lot Use Agreement between the City of Brea and the Brea Olinda Unified School District for 220 South Orange Avenue

TO	PREPARED BY
Finance Committee Members	Marie Dao, Senior Management Analyst
DEPARTMENT HEAD APPROVAL	CITY MANAGER APPROVAL
Jason Killebrew, Assistant City Manager/Community Development Director	Kristin Griffith, City Manager

### **RECOMMENDATION**

Staff recommends that the Finance Committee recommend the City Council take the following action:

1. Approve a one-year Parking Lot Use Agreement with the Brea Olinda Unified School District for use of a parking lot located at 220 South Orange Avenue (Attachment A).

### **BACKGROUND/DISCUSSION**

On December 19, 2022, the Brea Olinda Unified School District (“School District”) executed an Agreement for Use of Parking Lot with the City of Brea to provide additional parking spaces for Laurel Elementary Magnet School (“Laurel”) employees. The City owns the property which contains approximately twenty marked parking spaces located at 220 South Orange Avenue (“parking lot”). The current agreement allowed for three one-year extensions and is scheduled to expire on June 30, 2026.

The School District has expressed their desire to continue utilizing the parking lot for Laurel’s employees. Based on the following proposed terms and conditions, staff recommends that the City and School District enter into a new Parking Lot Use Agreement (“Agreement”) for the School District’s use of 220 South Orange Avenue.

### **Proposed Terms**

- The Agreement shall become effective on July 1, 2026 for a one-year term during the school year, ending on June 30, 2027.
- The School District shall have an exclusive right to use all twenty parking spaces in the parking lot between the hours of 6:30 a.m. and 5:00 p.m. only on weekdays that Laurel is in session (school days).
- The School District shall pay the City \$2,000.00 for their use of the parking lot.
- Should the City terminate the Agreement due to no fault of the School District, the School District shall receive a pro rata refund of the \$2,000.00 fee.

### **Proposed Conditions**

- The School District shall share the parking spaces in the parking lot with members of the public.

- The School District shall be responsible for keeping the parking lot clear of litter and debris.
- The School District shall be responsible for the cost of any improvements necessary for its use of the parking lot, which, at minimum, shall include City-approved signage, striping, etc. to the satisfaction of the City Engineer.
- The City may also enter into other agreements permitting the use of the parking lot.

City staff recommends that the Finance Committee approve the Parking Lot Use Agreement and recommend it for City Council review and approval.

**FISCAL IMPACT/SUMMARY**

Revenue from the Parking Lot Use Agreement with the School District has already been included in the City's General Fund (110) budget for Fiscal Year 2026-27.

**Attachments**

[City of Brea Parking Lot Agreement 26-27 SY.pdf](#)

## PARKING LOT USE AGREEMENT

THIS PARKING LOT USE AGREEMENT (“**Agreement**”) is dated June 16, 2026 for reference purposes and is executed by the CITY OF BREA, a California municipal corporation (“**City**”), and the BREA OLINDA UNIFIED SCHOOL DISTRICT, (“**BOUSD**”).

### RECITALS

A. City owns property located at 220 South Orange Avenue, which is currently improved with 20 marked parking spaces and more particularly described in the attached Exhibit A (“**Parking Lot**”).

B. BOUSD seeks to use the Parking Lot to provide additional parking spaces for Laurel Elementary Magnet School (“**Laurel**”) employees (“**Employees**”). Laurel is located at 200 South Flower Avenue.

C. City has determined that it is in the public interest to permit the use of the Parking Lot by the Employees on the terms and conditions set forth herein.

**NOW, THEREFORE**, the parties agree as follows:

1. Effect and Operation. This Agreement shall become effective on July 1, 2026, (“**Effective Date**”).

2. Parking Lot Use. BOUSD shall have an exclusive right to use all 20 parking spaces in the Parking Lot between the hours of 6:30 a.m. and 5:00 p.m. (not overnight) on weekdays (Monday through Friday, but not Saturdays or Sundays) that Laurel is in session (“**School Days**”). BOUSD’s exclusive right applies only to such time period on School Days.

3. Term. This Agreement shall be effective for a term of one school year commencing on the Effective Date and ending on June 30, 2027; provided, however, that this Agreement may also be terminated in accordance with the provisions of Sections 8, 10, and 16 below.

4. Use Fee. Concurrently with execution of this Agreement, BOUSD shall pay City \$2,000.00 (“**Use Fee**”) for BOUSD’s non-exclusive right to use the Parking Lot pursuant to this Agreement.

5. Conditions on Use. BOUSD’s use of the Parking Lot shall be subject to the following:

5.1 Shared Use. BOUSD shall share the parking spaces in the Parking Lot with members of the public.

5.2 Rules. BOUSD shall comply, and shall use diligent efforts to cause Employees to comply, with generally applicable rules adopted by City with respect to the

Parking Lot, including the operation of vehicles in a safe manner and keeping the Parking Lot clear of litter and debris.

5.3 Improvements. BOUSD shall be responsible for the cost of any improvements necessary for its use of the Parking Lot. Improvements, at minimum, shall include City-approved signage, striping, etc. to the satisfaction of the City Engineer. BOUSD shall not make any alterations or improvements to the Parking Lot without City's written consent.

5.4 Lien Free. BOUSD shall keep the Parking Lot free from all liens, taxes, and assessments resulting from, or caused by, its use of the Parking Lot.

6. Acceptance of Parking Lot; Indemnification. City is not aware of any condition of the Parking Lot that would make it unsafe for BOUSD to use as a parking area for Employees. BOUSD acknowledges that its use of the Parking Lot shall constitute its acceptance of the Parking Lot's condition and its belief that the same is safe for its use as a parking area for Employees. BOUSD shall indemnify, defend, and hold harmless City and City's officials, officers, attorneys, employees, consultants, agents, and representatives (collectively, "**City Parties**"), from any claims, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and expenses and court costs) (collectively, "**Claims**"), suffered, incurred or sustained by City Parties as a result of, or in connection with, any act or omission of BOUSD or an Employee in the performance of this Agreement (including the use of the Parking Lot) except to the extent that such Claims are caused by the gross negligence or willful misconduct or omission of City Parties. BOUSD's obligation to indemnify, defend, and hold harmless shall survive until the expiration of all applicable statutes of limitation for such Claims.

7. Damage or Loss. BOUSD assumes all risk of damage to property or injury to persons in or upon the Parking Lot, from any cause other than the negligence or willful misconduct or omission of City Parties. BOUSD releases City Parties, and waives its entire right of recovery against City Parties, for loss or damage arising out of, or incident to, the Parking Lot, other than those caused by the negligence or willful misconduct of City Parties.

8. Insurance. BOUSD shall obtain, maintain, and keep in full force and effect, at its sole cost and expense and with reputable and financially responsible insurance companies reasonably acceptable to City, a policy or policies of Commercial General Liability Insurance, including garage keepers legal liability coverage, with a minimum limit of One Million Dollars (\$1,000,000), combined single limit coverage against any injury, death, loss or property damage. BOUSD shall maintain on file with the City Clerk certificates from the insurance carriers issuing the foregoing policies showing that the foregoing policies are in effect. BOUSD shall not have the right to use the Parking Lot until such certificates are filed with the City Clerk. If at any time BOUSD fails to obtain, maintain, or otherwise keep the foregoing policies in full force and effect, then City may immediately terminate this Agreement. BOUSD agrees that (i) it shall not cancel or reduce the coverage provided by the foregoing policies; (ii) the coverages provided by the foregoing policies shall be primary to any coverages available to City; and (iii) the foregoing policies shall include provisions for waiver of subrogation. In addition, BOUSD shall obtain an endorsement to the foregoing policies in substantially the form set forth below:

ENDORSEMENT

The City of Brea and its officials, officers, attorneys, employees, consultants, agents and representatives shall be additional insureds with respect to claims arising under this policy.

The company waives any right of contribution with insurance that may be available to the City of Brea.

In the event of cancellation or material change in the coverage of this policy, the company shall give thirty (30) days prior written notice to the City of Brea.

9. Other Agreements. City may also enter into other agreements permitting the use of the Parking Lot.

10. Termination for Convenience. Either party may terminate this Agreement for convenience upon thirty (30) days notice to the other. In the event of a termination for convenience by City, BOUSD shall receive a pro rata refund of the Use Fee.

11. Notice. Any notices related to this Agreement shall be deemed received on: (a) the day of delivery, if delivered by hand during regular business hours or by e-mail before or during regular business hours; (b) the business day after delivery, if delivered by e-mail after regular business hours; or (c) on the second business day following deposit in the United States mail, postage prepaid, to the addresses listed below, or to such other addresses as the parties may, from time to time, designate in writing. Any notice delivered by e-mail that concerns breach or termination of this Agreement shall concurrently be sent by deposit in the United States mail, postage prepaid but such notice shall be deemed received on the day of e-mail delivery.

If to City:

City of Brea  
1 Civic Center Circle  
Brea, California 92821  
Attention: Assistant City Manager / Community  
Development Director  
E-mail: jasonk@ci.brea.ca.us

If to BOUSD:

Brea Olinda Unified School District  
1 Civic Center Circle  
Brea, California 92821  
Attention: Assistant Superintendent  
E-Mail: Rchampion@bousd.us

12. Arbitration. Any controversy between the parties arising out of this Agreement shall be submitted to JAMS/Endispute for binding arbitration in Orange County, California. In the event the parties are unable to agree upon an arbitrator, JAMS/Endispute shall select the

arbitrator pursuant to experience criteria reasonably established by the parties. Prior to the commencement of any such arbitration, not less than one-half day of mediation will first be utilized in an attempt to settle any such controversy. The costs of the mediation and/or arbitration, including any JAMS/Endispute administration fee, the arbitrator's fee, and costs for the use of facilities during the hearings, shall be borne equally by the parties; provided, however, that attorneys' fees may be awarded to the prevailing, or most prevailing, party at the discretion of the mediator/arbitrator. The provisions of Code of Civil Procedure Sections 1282.6, 1283 and 1283.05 shall apply to the arbitration. The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement, nor to grant any remedy that is either prohibited by the terms of this Agreement or not available in a court of law.

13. Applicable Law and Attorneys' Fees. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Should legal action (including arbitration) be brought by either party for breach of this Agreement to enforce any provision, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs, and other litigation/arbitration expenses including expenses incurred for preparation and discovery. The entitlement to recover such fees, costs and expenses shall accrue upon the commencement of the action regardless of whether the action is prosecuted to final judgement.

14. Waiver. The waiver of any provision of this Agreement must be in writing and signed by the party providing such waiver. The waiver of a breach of any provision of this Agreement shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision of this Agreement. Acceptance of performance after the due date of such performance shall not be deemed to be a waiver any preceding breach of any provision of this Agreement, regardless of the accepting party's knowledge of such preceding breach at the time of acceptance of such performance.

15. No Personal Liability. City Parties, except City, shall not be personally liable to BOUSD in the event of any breach or default by City.

16. Successors and Assigns. BOUSD shall not assign any of its rights or obligations under this Agreement without City's prior consent, which consent may be withheld in City's sole and absolute discretion. A transfer of City's ownership interest in the Parking Lot shall relieve City from liability hereunder; provided, however, that this Agreement shall be binding upon the transferee and provided further, however, that an assignment of all or a portion of City's rights and obligations under this Agreement to a third-party operator shall not relieve City from liability hereunder. Any assignment or transfer of the rights and obligations under this Agreement that is not specifically permitted shall be void and a basis for immediate termination of this Agreement.

17. Relationship of the Parties. This Agreement shall not cause the parties to be construed as partners, joint venturers or agents of each other or subject either party to any obligations, loss, charge or expense of the other party.

18. Rules of Construction. Unless otherwise indicated or apparent from the context, the following rules of construction shall apply. The singular includes the plural and vice versa;

the term “shall” is mandatory and the term “may” is permissive; the term “business day” means a non-holiday weekday; the term “regular business hours” means the period from 8:00 a.m. PST to 5:00 p.m. PST on a business day; and the terms “include,” “includes,” and “including” are illustrative and nonexhaustive.

19. Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any provision of this Agreement, or the application thereof, shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

20. Time. Time is of the essence of this Agreement.

21. Further Assurances. The parties shall execute and deliver any and all additional documents and other assurances, and shall do any and all other acts and things, reasonably necessary to carry out the purposes of, and the intent of the parties under, this Agreement.

22. Entire Agreement; Modification. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties respecting such matters. This Agreement may not be modified except by a written agreement signed by the parties.

23. No Recording. Neither this Agreement, nor a memorandum hereof, shall be recorded in the Official Records of Orange County, California.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

[This Space Intentionally Left Blank; Signatures Begin On The Next Page]

IN WITNESS WHEREOF, the parties have entered into this Agreement for Use of Parking Lot as of the Effective Date.

CITY: CITY OF BREA, a California municipal corporation

By: \_\_\_\_\_  
Name: Cecilia Hupp  
Its: Mayor

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

ATTEST:

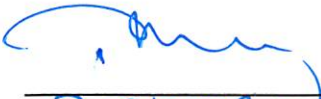
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

Richards, Watson & Gershon

\_\_\_\_\_  
Terence Boga, City Attorney

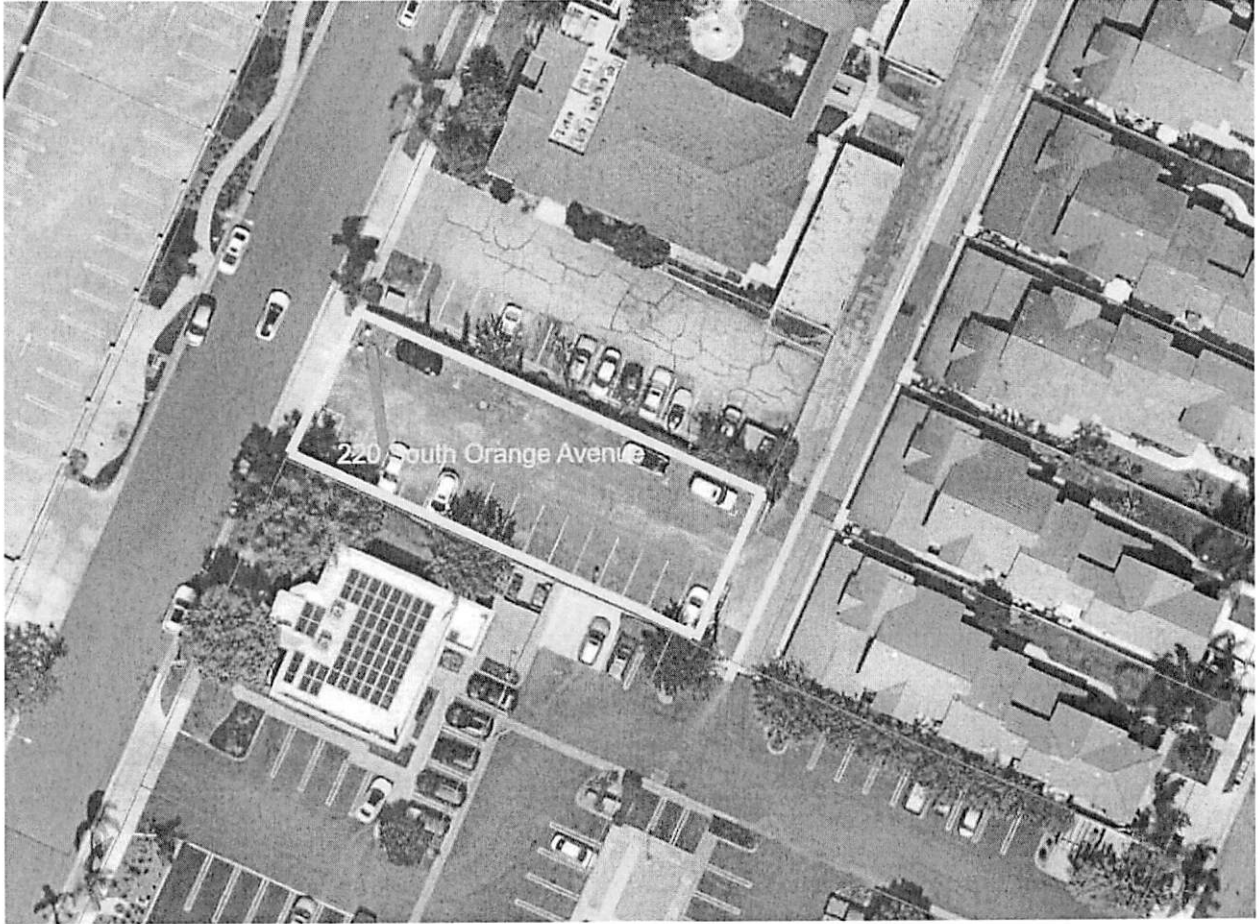
BOUSD: BREA OLINDA UNIFIED SCHOOL DISTRICT, a California corporation

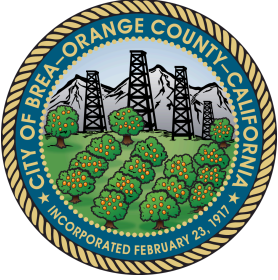
By:   
Name: R. Champion  
Its: ASST. Supt. BUSINESS

Date: 6/1/26

EXHIBIT A

220 South Orange Avenue Parking Lot





# CITY of BREA

Finance Committee Communication

June 9, 2026

Item No. 3C.

## Citywide Janitorial Services

TO	PREPARED BY
Finance Committee Members	Eric Aulls, Public Works Manager
DEPARTMENT HEAD APPROVAL	CITY MANAGER APPROVAL
Michael Ho, Public Works Director	Kristin Griffith, City Manager

### RECOMMENDATION

Staff recommends that the Finance Committee recommend the City Council to take the following action:

1. Award a contract to K Pro Stone Care for Citywide Janitorial Services, in the amount not to exceed \$395,868.00 per year, for a period of three (3) base years; and
2. Authorize the City Manager to approve up to four (4) additional one (1) year extensions.

### BACKGROUND/DISCUSSION

The City utilizes janitorial services to provide cleaning for the Brea Community Center, Brea Civic Center, Senior Center, Pioneer Hall, Plunge, and Downtown Day Porter. These services include a schedule of cleaning to be completed daily, weekly, monthly, and quarterly during specific hours and days of the week to provide a clean environment for City employees and the public visiting our facilities. The City's current janitorial services contract will expire on June 30, 2026.

In April 2026, the Public Works Department prepared a Request for Proposal (RFP) for Citywide Janitorial Services and posted it on the City website and the Public Purchase platform. Eleven (11) contractors responded on May 18, 2026. The proposed bid amount results are as follows:

BIDDER'S NAME	ANNUAL PROPOSED COST
K Pro Stone Care	\$395,868.00
Merchants Building Maintenance	\$425,693.08
Apex Team Solutions, dba Jonco Enterprises, Inc.	\$462,000.00
CCS Facility Services	\$479,808.00
Guaranteed Janitorial Services, Inc.	\$479,866.92
UBM Enterprise, Inc.	\$499,430.16 *Disqualified

Omni Enterprise, Inc.	\$569,636.88
US Metro Group, Inc.	\$637,683.63
Premier Property Preservation	\$765,663.60
Ecobrite Services	\$772,492.55 *Disqualified
Ultimate Maintenance Services, Inc.	\$856,200.00

Staff reviewed the proposals to assess their ability to complete the services, competitive pricing, and the level of detail. Two contractors submitted incomplete bids and were subsequently disqualified. After reviewing the proposals, staff ranked the bidders as follows:

<b>BIDDER'S NAME</b>	<b>EVALUATION SCORE</b>
K Pro Stone Care	96/100
Merchants Building Maintenance	89.5/100
Guaranteed Janitorial Services, Inc.	84/100
CCS Facility services	83.5/100
Apex Team Solutions, dba Jonco Enterprises, Inc.	82/100
US Metro Group, Inc.	77.5/100
Premier Property Preservation	76.5/100
Omni Enterprise, Inc.	75.5/100
Ultimate Maintenance Services, Inc.	74.5/100
UBM Enterprise, Inc.	*DISQUALIFIED - INCOMPLETE SUBMISSION
EcoBrite Services	*DISQUALIFIED - INCOMPLETE SUBMISSION

The review process shows that K Pro Stone Care scored higher in all categories, including pricing, than the other ten (10) contractors. Staff identified K Pro Stone Care as the lowest and most responsible bidder to provide citywide janitorial services. K Pro Stone Care demonstrated the ability to perform janitorial services at a competitive price and meet the City of Brea's requirements for high-quality work. K Pro Stone Care is a Sole-Proprietor entity and will provide the City with direct on-site communication with the owner, supervisor, and staff. K Pro Stone Care has worked with the City of Brea since 2008, including a 2022 contract for janitorial services at City park restrooms, and has demonstrated high-quality work, availability, and communication with City staff.

For these reasons, staff recommends awarding the contract to K Pro Stone Care for a three-year base term, with the option of four (4) one-year period extensions, in the amount not to exceed \$395,868.00, with a Consumer Price Index (CPI) adjustment effective year two (2), July 1, 2027, upon request by K Pro Stone, and capped at 5% annually each year thereafter based upon the Consumer Price Index of Los Angeles - Long Beach - Anaheim area.

**FISCAL IMPACT/SUMMARY**

Public Works has identified sufficient funds in the FY 2026-27 operating budget, and no additional appropriation is requested. A Consumer Price Index (CPI) adjustment will be effective in year two (2), July 1, 2027, and K Pro Stone Care may request a CPI adjustment, capped at 5%, based on the CPI for the Los Angeles-Long Beach-Anaheim area, each year thereafter, which will be incorporated in future budgets for consideration.

**Attachments**

[KPro Stone Janitorial Agreement.pdf](#)

**CITY OF BREA  
MAINTENANCE SERVICES AGREEMENT**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_ by and between the City of Brea, a municipal corporation (“City”) and K Pro Stone Care, an Individual/Sole Proprietor (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**RECITALS**

- A. The City heretofore sought proposals for performance of the following maintenance services: To provide janitorial services at: Brea Community Center, Brea Civic Center, Senior Center, Pioneer Hall, Plunge, and Downtown Day Porter. The required maintenance services are more fully described herein.
- B. Contractor timely submitted a responsive proposal to the City to provide the maintenance services, referenced in Recital “A”, above.
- C. After reviewing all proposals, including qualifications, experience, proposed staffing, working plans, response time, and the proposed cost, Staff recommended and the City Council approved Contractor to be awarded a contract to provide the required maintenance services.
- D. The City enters this Agreement with Contractor in reliance on Contractor’s represented experience and qualifications to perform the required services, and in order to set forth terms and conditions for Contractor’s performance of such services.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, the Parties agree as follows:

**1. SCOPE OF SERVICES AND TERM.**

1.1 Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the maintenance services described in the Scope and Schedule of Services, Exhibit “A” hereto, and the City’s solicitation document, if issued (collectively, “Services”). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, statutes, orders, rules and regulations.

1.2 Term. The term of this Agreement shall be from July 1, 2026 to June 30, 2029, unless earlier terminated, or extended, as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by written agreement, extend the term of this Agreement if necessary to complete or provide additional Services.

## **2. RESPONSIBILITIES OF CONTRACTOR.**

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

The Parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Contractor agrees that, in providing its employees and any other personnel to City to perform any work or other Services under this Agreement, Contractor shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code § 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Contractor shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations

2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Scope and Schedule of Services set forth in Exhibit "A" hereto. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

2.4 City's Representative. The City hereby designates Public Works Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

2.5 Contractor's Representative. Contractor hereby designates Mike Khpsrowabadi, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences and

procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.6 Standard of Care; Performance of Employees; Warranty. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor warrants that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or any subcontractor who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from performing the Services by the Contractor and shall not be re-employed to perform any of the Services. All parts and components furnished hereunder, if any, shall be warranted in accordance with the applicable manufacturer's express warranty for such goods. Contractor's performance of the Services are warranted to be free from defects and in compliance with all requirements of this Agreement, for a period of one (1) year. The warranties shall not limit the City's rights under Section 13.2.

2.8 Period of Performance. Contractor shall perform all Services in strict accordance with the Scope and Schedule of Services in Exhibit "B" hereto. If the Services are not completed in accordance with the Schedule of Services, it is understood, acknowledged and agreed that the City will suffer damage.

### **3. DISPUTES.**

Should any dispute arise respecting the true value, quality, or sufficiency of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Services pending resolution of the dispute by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

### **4. LAWS AND REGULATIONS; EMPLOYEE/LABOR CERTIFICATIONS.**

Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising

therefrom. City is a public entity of the State of California subject to State law including certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and compliance therewith by Contractor is required.

4.1 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

4.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

4.3 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine.

4.4 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §13000, et seq.); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Contractor's failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall indemnify the City as to any fines or penalties, as required herein.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they

may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

## **5. INSURANCE.**

Before commencing the Services, Contractor shall procure and throughout the term hereof maintain, insurance in such form and with such limits as set forth in Exhibit "C hereto.

## **6. SAFETY.**

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

## **7. PAYMENT BOND.**

7.1 Payment Bond. If required by law or by City, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in such form as approved by the City Attorney, in the amount of the total, not-to-exceed compensation indicated in this Agreement. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

7.2 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post an acceptable replacement bond at least ten (10) days prior to expiration of the original bond. No further payments shall be deemed due or will be made under this Agreement until any replacement bond required by this Section is accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bond shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

7.3 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

## **8. ACCOUNTING RECORDS.**

Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

## **9. FEES AND PAYMENTS.**

9.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in the Payment Schedule, Exhibit "B" hereto. The total compensation shall not exceed Three Hundred Ninety-Five Thousand, Eight Hundred Sixty-Eight dollars (\$395,868.00) without written approval of City's City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

9.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the Services provided since the commencement of Services, or since the start of the subsequent billing periods, as applicable, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

9.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

9.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be outside of the Scope of Services. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

9.5 Price Adjustment. During the second twelve (12) month period of the Agreement, the Base Sum per month is subject to a cost-of-living adjustment (Stepped Up Base). The cost-of-living adjustment shall be set at the beginning of the second period adjustment date) in the following manner: The Consumer Price Index for all Urban Consumers (base year 1982-84 = 100) for the Los Angeles-Long Beach-Anaheim area published by the United States Department of Labor, Bureau of Statistics (Index) which is published for the month immediately preceding the adjustment date (Adjustment Index) shall be compared to the Index which was

published for the date immediately preceding the beginning of the first twelve (12) month period (Beginning Index). The CPI adjustment will be capped at no more than 5% annually.

If the Adjustment Index has increased over the Beginning Index, the monthly payment shall be increased by the amount obtained by multiplying the base sum by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

## **10. CALIFORNIA LABOR CODE REQUIREMENTS.**

10.1 Contractor is aware of the requirements of California Labor Code Sections 1720 through 1861 which require the payment of prevailing wage rates and compliance with other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). The Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws. Pursuant to Labor Code Section 1771, Contractor agrees to fully comply with such Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all applicable California Labor Code requirements, which include, but are not limited to, payment of prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), maintenance and submission of certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

10.2 Pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Agreement and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

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

## **11 TERMINATION OF AGREEMENT.**

11.1 Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time with or without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination and provided Contractor is not

then in breach, Contractor shall be compensated for those services which have been adequately rendered to City up to the effective date of termination. Contractor may not terminate this Agreement except for City's failure to cure a material default following Contractor's service of a thirty (30) day notice to cure.

11.2 Effect of Termination. Upon termination for other than City's default, City may require Contractor to provide all finished or unfinished Work Product and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall provide all Work Product within fifteen (15) days of the request.

## **12. OWNERSHIP OF WORK PRODUCT**

12.1 Except as otherwise provided in Section 11.2, above, and unless otherwise agreed upon in writing, all draft and final reports, documents, and other written material, and any and all images, ideas, concepts, designs including website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Contractor in the performance of this Agreement (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of City. All Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City upon final payment being made provided that any such use shall be at City's sole risk. Contractor shall not obtain or attempt to obtain copyright protection as to any of the Work Product. Work Product does not include intellectual property owned by or licensed to Contractor as of the effective date of this Agreement.

12.2 Contractor hereby assigns to City all rights of ownership to the Work Product, including any and all related intellectual property and proprietary rights, that are not otherwise vested in the City pursuant to subsection 12.1, above.

## **13. GENERAL PROVISIONS.**

13.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Contractor:**  
Mohammad Mike Khosrowabadi  
K Pro Stone Care  
1207 W Chateau Ave.  
Anaheim, CA 92802

**City:**  
City of Brea  
1 Civic Center Cl.  
Brea, CA 92821

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 13.2 Indemnification.

(A) Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents ("Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, stop notices, liens, expenses, liability, loss, damage, penalties, fines, and/or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incidental to any breach of this Agreement, any violation of law, and/or any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. The provisions of this subsection (A) shall not apply to claims and liabilities arising out of the sole negligence, violation of law, or willful misconduct of any of the Indemnitees.

(B) Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 13.2(A) that may be brought or instituted against City or any other Indemnitees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or any of the Indemnitees as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or any of the Indemnitees as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City or any of the Indemnitees.

13.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California without regard for conflicts of laws principles. Venue for any legal action arising out of this Agreement shall be in Orange County, California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900, et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

13.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

13.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with the Services required herein.

13.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

13.7 Assignment or Transfer; Subcontracting. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly authorized herein, without prior written approval of City. Contractor shall be responsible for all acts, omissions, and performance of any and all subcontractors, engaged in connection with this Agreement.

13.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. As the context permits, all references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. As the context permits, all references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

13.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

13.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

13.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

13.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

13.13 Prohibited Interests. Contractor warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees, if requested, to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For the term of this Agreement, no official, officer or employee of City, during the

term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

13.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

13.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

13.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

13.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

13.18 Entire Agreement. This Agreement, together with all Exhibits and City's RFP (if issued), each of which are incorporated by reference herein, contains the entire agreement of the parties with respect to the subject matter herein, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties. The provisions of this document shall govern in the event of any conflict with any Exhibit or document incorporated herein. The provisions of this document shall govern over any conflicting provisions in any exhibit hereto and/or Contractor's proposal.

**[SIGNATURES ON NEXT PAGE]**



**EXHIBIT A**  
**SCOPE AND SCHEDULE OF SERVICES**

1. Contractor shall furnish all labor, materials and equipment necessary to provide the Services located at the Brea Community Center, Brea Civic Center, Senior Center, Pioneer Hall, Plunge, and Downtown Day Porter.
2. Extra Work/Project Cleaning
  - A. Work not considered to be routine, not done on a regular schedule, or not considered under this specification/contract shall be considered extra work. This type of work may only be done at the request of the City representative. Extra work shall be performed at the rates indicated in the Price Sheet or as agreed-upon by the parties. City and Contractor will determine the number of hours and the schedule required to accomplish the requested task(s).
  - B. The following are examples of the type of work which may be considered extra:
    - i. Cleaning areas not defined within this contract
    - ii. Increasing frequency of cleaning
    - iii. Special projects

**General Building and Office Areas Cleaning Schedule**

3. Daily Services – General Building and Office Areas
  - A. Sweep all vinyl and composition tile floors
  - B. Sweep all outside entrances for trash
  - C. Dust and remove cobwebs and dirt in all areas of the building
  - D. Dust accessible desktops, chairs, tables, telephones, filing cabinets and other office furniture, bookshelves, minor signage
  - E. Remove debris from ceilings, walls, floors, windowsills, ledges, chair rails, partition trim and low moldings
  - F. Clean luncheon tables and clean and position chairs
  - G. Empty all wastebaskets and other waste containers. Carry trash to designated areas, replace liners with new liners
  - H. Clean and services smoking stands where applicable
  - I. Clean and polish drinking fountain
  - J. Clean all glass entry doors thoroughly
  - K. Clean all stairwells and landings twice weekly, vacuum if carpeted
  - L. Spot clean partitions, doors, grab bars, panica hardware, doorknobs, handles, door frames, wall switches, office partitions glass, interior lower level glass, carpet for spillage and stains
  - M. Spot mop resilient floors for spillage, dirt, etc.
  - N. Damp mop all wood floors with treated terrycloth towels
  - O. Damp mop all concrete, rubber, tile, and vinyl flooring
  - P. Vacuum or sweep elevator cabs where applicable
  - Q. Wipe clean all elevator doors and control panel to remove finger marks

- R. Spray buff all main aisles and corridors as needed to ensure a slip resistant high gloss finish
  - S. Report broken or missing items to City of Brea representative
  - T. Establish a lost and found box at each building location
  - U. Maintain Janitor's Closet in clean and orderly manner
4. Weekly Services – General Building and Office Areas
- A. Sweep inside and outside stairways (twice a week)
  - B. Dust banisters, handrails, pictures, clocks, major signage, ledges, partition tops, moldings, chairs, rugs, and office furniture
  - C. Spot clean woodwork for finger marks and stains
  - D. Damp mop with treated terrycloth towels all wood floors
  - E. Damp mop and buff all tile floors to ensure a slip resistant high gloss finish
5. Monthly Services – General Building and Office Areas
- NOTE: BCC LOCKER ROOM AND RESTROOM FLOORS WILL NOT BE WAXED, MACHINE SCRUB ONLY**
- A. High dust moldings, doors, and window casings
  - B. Brush down wall and ceiling vents
  - C. Clean and wipe down baseboards
  - D. Vacuum draperies or blinds and upholstered furniture
  - E. Wash and disinfect handrails, wastebaskets on a rotation basis
  - F. Detail carpet edges under and around furniture and behind doors
  - G. Machine scrub and extract all rubberized flooring
  - H. Clean wax and machine polish all tile and vinyl floors to ensure a slip resistant high shine surface.
6. Quarterly Services – General Building and Office Areas
- A. Clean all refrigerators
  - B. Deep clean all lockers at the Brea Community Center

### **Restroom Clean Schedule**

7. Daily Services – Restrooms
- A. Pickup/Clean restroom entrance area for trash and debris
  - B. Empty and disinfect all waste paper containers and replace with new liners
  - C. Refill soap, towel, tissue, seat cover dispensers, and sanitary product dispensers
  - D. Remove debris and cobwebs from ceilings, walls, and floors
  - E. Clean splash marks and polish mirrors, walls, and sinks
  - F. Clean and disinfect all toilet tissue, seats, urinals, and sinks (inside and outside)
  - G. Remove scale and all other organic materials
  - H. Disinfect handles, knobs, and other touched areas. Counter tops shower facilities (as required - site specific)
  - I. Clean and polish drinking fountains, chrome, under sinks, toilets and urinals to keep scale free and partitions for smudges and remove graffiti

- J. Clean the waterless urinals per the manufacturer requirement.
- K. Wipe down with disinfectant ceramic tile walls, toilet compartments partitions, and tops of partitions
- L. Pour one gallon of water into floor traps to prevent odors
- M. Thoroughly mop floors with disinfectant solution
- N. Repair any damage due to improper cleaning techniques
- O. Change the urinal replacement cartridges in the waterless urinals per the manufacturer requirements

8. Daily Services – Brea Police Jail

**NOTE: STAFF TO CHECKIN WITH WATCH COMMANDER OR DUTY POLICE STAFF**

- A. Empty and disinfect all waste paper containers, replace with new liners
  - B. Clean and disinfect metal mirrors, all toilet tissue, towel, trash and sanitary containers, toilets, urinals and sinks (inside & outside) removing scale and other organic matter, both sides of toilet seats, handles, knobs, and other touched areas
  - C. Wipe down with disinfectant walls, compartments and tops of partitions
  - D. Clean light fixtures and air vents as needed.
  - E. Clean, disinfect and wipe dry all counter tops, bench & sitting area with disinfectant
  - F. Spot clean partitions for smudges and remove graffiti and walls for splashes around sinks and urinals
  - G. Thoroughly mop floors with disinfectant solution.
  - H. Remove debris from ceilings, walls, and floors
  - I. Pour one gallon of water into floor traps to prevent odors.
  - J. Refill soap, towel, tissue and seat cover dispensers
  - K. Report any facility issues (repairs needed) to the City of Brea Building Maintenance Division (714)990-7691.
9. Daily Services – Police Department Bulletproof Glass (Lamination Polycarbonate)
- A. Dust polycarbonate with a soft cloth or chamois only, wiping gently (No paper towels).
  - B. Wash polycarbonate with mild soap or detergent and lukewarm water solution. Use a clean soft cloth or natural sponge and as much solution as possible. Rinse well. Dry by blotting with a damp cloth or chamois. Grease and oil are best removed with hexanes, kerosene or aliphatic naphtha.
  - C. Do not use any aromatic compounds.
  - D. Do not use any window cleaning fluids, scouring compounds, gritty cloth, leaded or ethyl gasolines or strong solvents such as alcohol, acetone, carbon tetrachloride, lacquer thinners, Windex and etc.
  - E. Do not use any paper towels

**NOTE:** The Contractor is required to adhere to the provisions of the Federal Clean Water Act as regulated by the U.S. Environmental Protection Agency in Code 40, Code of Federal Regulations

(CFR) Parts 122, 123, 124, the Porter-Cologne Act (California Water Code), the Waste Discharge Requirements for Municipal Storm Water Discharges within the County of Orange and the National Pollution Discharge Elimination System (NPDES). Copies of the suitable Best Management Practices (BMPs) from the California Storm water Quality Association (CASQA), Storm water Best Management Practice Handbook for Construction Activities are available for review at the offices of the AGENCY's City Engineer or can be found at [www.cabmphandbooks.com](http://www.cabmphandbooks.com).

#### 10. Facilities

- A. The facilities, addresses, square footage, the particular cleaning schedules, days and hours of service are listed in the Line Details of the eProcurement.

#### 11. Optional Services

- A. Carpet: Contractors employees to follow manufactures recommended carpet cleaning procedures or equivalent (to be approved by City of Brea authorized representative in advance).
- B. Window Washing/Cleaning: Windows to be cleaned and streak free including all window hardware.
- C. Proposal: A provision is listed as "Optional Bid Items"
- D. Carpet and Window Cleaning Schedule: Specific dates to be advised upon execution of contract for "Optional Bid Items".

#### 12. Sales and Equipment

- A. The Contractor shall provide all supplies to carry out the cleaning and disinfecting operations within this contract, and shall meet the standards of the Federal Occupational Safety and Health Act and Cal OSHA. The Contractor shall submit a written list of all supplies (i.e. cleaners, disinfectants, floor cleaners, and wax) with attached Material Safety Data Sheets (MSDS) intended for use in the buildings for approval by the City of Brea. In addition to cleaning supplies the contractor shall also supply all glass cleaner, floor stripper, furniture polish, stainless steel cleaner, etc. Any supplies not on the approved list shall be removed from the premises. Adequate quantities for properly labeled supplies (minimum of two weeks inventory) must be on-hand to perform cleaning at all times. Contractors to provide an estimated monthly usage along with an estimated monthly cost of supplies.
- B. The Contractor shall provide all equipment to carry out cleaning operations. The use of HEPA filter vacuums is a requirement throughout the building to be cleaned. The contractor shall submit a written list of all equipment, by quantity, name brand and model. Example:
  - i. Two (2) Carpet Cleaning Machines
  - ii. 12 Advance 16" Carpet twin HEPA filter Vacuums
  - iii. Two (2) Rotary Buffing Machines 18"
  - iv. Two (2) Carpet Extractors w/power-head

All equipment shall be listed in contractor's proposal to be used for daily cleaning requirements. In case of equipment breakdown, forty-eight (48) hours repair or replacement time shall be allowed.

**NOTE:** all equipment to be new at commencement of contract.

### 13. Day Porters

A. Brea Police Department is to approve the day porter in advance due to security concerns. It is also highly important that livescan background checks be completed on all of the contractor employees due to sensitive materials and equipment that is in the areas that will be serviced. This includes the Brea PD, the Brea Fire Department, the Civic Center Building as well as other areas.

B. Duties may include:

- i. Open the Staff access doors as needed, turn off alarms and turn on lights (Civic Center).
- ii. Check, clean-sweep breezeway, parking lots and adjacent sidewalks for trash. On rainy days place safety warning signs in areas where a slip hazard exists.
- iii. Check the meeting schedule for any meetings that might require setup. Set up as needed to ensure proper facilities and administration supplies are ready before the start of the meeting. The meeting schedule is provided every Friday.
- iv. Check all Restrooms for supplies and inspect to see that they were properly cleaned and disinfected. Correct any problems with supplies as well as cleaning and disinfecting. Inform City staff of discrepancies.
- v. Operate City Auto Scrubber equipment at the Civic and Community Centers.
- vi. During the day, the porter will have to help (respond) to the City of Brea staff needs. Responding to phone calls and verbal notification for assistance (i.e., - spills, hazardous issues relating to custodial, pest control and setup for meetings)
- vii. Check in with the City of Brea custodial representative daily to give updates and check to see if any custodial services have been requested.
- viii. plugs; lights out) needed to the City of Brea Building Maintenance Division.
- ix. Restrooms and restock supplies.
- x. Spot clean carpet
- xi. Report any maintenance repairs (i.e. leaking faucets; clogged drains; broken electrical to City staff.

### 14. Minimum Quality Standards

The following Quality Standards (cleaning standards) shall be used on a daily basis, and during the Performance Inspection process to assess the quality of the cleaning per the nine (9) areas identified below:

A. Office – Minimum Cleaning Standards

- i. Furniture and Equipment: Shall be free of dust, cobwebs, dried-soil and soil without causing damage. They shall appear visibly and uniformly clean. This shall include the elimination of cleaner residue, streaks and film.
- ii. Telephones: Shall be free of dust and soil. They shall appear visibly and uniformly clean and polished-dry.
- iii. Lamps: Shall be free of dust, dried-soil and soil without causing damage. Lamp shall appear visibly and uniformly clean. This shall include the elimination of streaks, cleaner residue and film.
- iv. Walls and Doors: Shall be free of dust, cobwebs, dried-soil and soil without causing damage. These surfaces shall appear visibly and uniformly clean. This shall include the elimination of film, streaks, hand prints and cleaner residue.
- v. Waste Containers: Contents shall be removed from waste containers and can liners have replaced, as required. Inside and outside of the container shall be cleaned and disinfected. Containers shall appear visibly and uniformly clean. This shall include the elimination of streaks, food-stuff and the presence of an offensive odor emitting from the container.
- vi. Partitions: Shall be free of dust, cobwebs, soil and graffiti without causing damage. Partitions shall appear visibly and uniformly clean. This shall include the elimination of streaks, film and cleaner residue.
- vii. Floors, Carpet, and Baseboards: Shall be free of dust, cobwebs, dried-soil, soil, gum, spots, stains and debris. Hard/resilient floors shall have multiple coats of a slip-resistant seal and finish applied that result in a consistent high-shine. Floors, carpet and cove-bases shall appear visibly and uniformly smooth and clean. This shall include the elimination of dust streaks, lint, standing water, cleaner residue, embedded soil and foreign objects.

B. Restrooms – Minimum Cleaning Standards

- i. Special Note: Maintaining a sanitary restroom environment that minimizes the possibility of cross-infection is considered of the highest priority by the City of Brea. An inspection team shall closely monitor sanitation levels.
- ii. Dispensers: Shall be free of dust, dried soil, bacteria and soil without causing damage. These surfaces shall appear visibly and uniformly clean and disinfected. This shall include the elimination of film, streaks, and cleaner residue. Dispensers shall be refilled when required with the proper expendable supply item.
- iii. Sanitary Napkin Dispensers / Disposal Canisters: Shall be free of dust, dried soil, bacteria and soil without causing damage. These surfaces shall appear visibly and uniformly clean and be disinfected inside and out. This shall include the elimination of film, streaks, and cleaner residue. Disposal bags are to be replaced with new daily.
- iv. Hardware: Shall be free of dust, soil, bacteria and scale without causing damage. Brightwork shall appear visibly and uniformly clean, disinfected

and polished to a streak-free shine. This shall include the elimination of polish residue.

- v. Sinks: Shall be free of dust, bacteria, soil, cleaner residue and soap film without causing damage. They shall appear visibly and uniformly clean, and polished-dry. This shall include the elimination of polish residue.
- vi. Mirrors: Shall be free of dust and soil. Mirrors and surrounding metal framework shall appear streak-free, film-free and uniformly clean.
- vii. Toilets and Urinals: Toilets, toilet seats and urinals shall be free of dust, bacteria, soil, organic matter, cleaner residue and scale without causing damage. These fixtures shall appear visibly and uniformly clean, disinfected and polished-dry. This shall include the elimination of streaks, film and water spots. Under rim areas are to be and will be inspected for cleanliness.
- viii. Partitions: Shall be free of dust, cobwebs, soil and graffiti without causing damage. Partitions shall appear visibly and uniformly clean, disinfected and polished-dry. This shall include the elimination of streaks and film.
- ix. Waste Containers: Contents shall be removed from waste containers and can liners have replaced with new. Inside and outside of the container shall be cleaned and disinfected. Containers shall appear visibly and uniformly clean. This shall include the elimination of streaks, food-stuff and the presence of an offensive odor emitting from the container.
- x. Walls and Doors: Shall be free of dust, cobwebs, soil, spots and stains without causing damage. These surfaces shall appear visibly and uniformly clean/disinfected. This shall include the elimination of film, streaks and cleaner residue. Ceramic walls and wainscots; and metal kick plates, handles and push plates on doors shall also be polished-dry.
- xi. Floors and Baseboards: Shall be free of dust, cobwebs, soil, gum, stains and debris. Floors shall have multiple coats of a slip-resistant seal/finish applied that results in a consistent shine. Floors and cove-bases shall appear visibly and uniformly clean and disinfected. This shall include the elimination of dust streaks, lint, standing water, cleaner residue and film.
- xii. Air Vents: Shall be free of dust and soil. This also pertains to air distribution units and exhaust vents. They shall appear visibly and uniformly clean.
- xiii. Light Fixtures: Shall be free of dust and soil without causing damage. Diffusers shall remain in proper position, and appear streak-free and uniformly clean.

#### C. Entrances and Patios – Minimum Cleaning Standards

- i. Tracks: Shall be free of dirt and debris. Tracks shall appear visibly clean. This shall include the elimination of standing water from wet cleaning procedures.
- ii. Lights: Shall be free of dust, cobwebs, soil, spots, and stains without causing damage. They shall appear streak-free, film-free and uniformly clean. Bright metal surfaces shall be polished to a high-shine. Bright metal

surfaces shall be polished to a high shine. This shall include the elimination of polish residue and/or film.

- iii. Floors, Carpet and Cove-bases: Shall be free of dust, cobwebs, dried soil, soil, gum, spots, stains, and other debris. Hard/resilient floors shall have multiple coats of a slip resistant seal and finish applied that results in a consistent high-shine. Floors, carpet and Cove-bases shall appear visibly and uniformly smooth and clean. This shall include the elimination of dust streaks, lint, standing water, cleaner residue, embedded soil and foreign objects.

#### D. Corridor – Minimum Cleaning Standards

- i. Floors and Cove-bases: Shall be free of dust, cobwebs, dried-soil, gum, spots, stains, and debris. Hard/resilient floors shall have multiple coats of a slip-resistant seal and finish applied that results in a consistent high-shine. Floors shall appear visibly and uniformly smooth and clean. This shall include the elimination of dust streaks, lint, standing water, cleaner residue and film.
- ii. Walls and Fixtures: Shall be free of dust, cobwebs, dried-soil and soil without causing damage. These surfaces shall appear visibly and uniformly clean. This shall include the elimination of film, streaks, and cleaner residue.
- iii. Water Fountains: Shall be free of dust, soil, scale and water spots without causing damage. Brightwork shall be disinfected and polished to a streak-free shine. Water fountains shall appear visibly and uniformly clean. This shall include the elimination of film and cleaner residue.

#### E. Stairwells – Minimum Cleaning Standards

- i. Rails and Walls: Shall be free of dust, cobwebs, dried-soil and soil without causing damage. These surfaces shall appear visibly and uniformly clean. This shall include the elimination of film, streaks, lint, standing water, cleaner residue or film.
- ii. Steps and Landings: Shall be free of dust, cobwebs, dried soil, gum, stains, and debris. This shall include risers and cove-bases. These surfaces shall appear uniformly smooth and clean without leaving dust streaks, lint, standing water, cleaner residue or film.
- iii. Windows and Blinds: The contractor is responsible for cleaning the interior and exterior of the building windows per the specification. Blinds shall be cleaned by dusting and/or wiping with damp cloth. Windows to be dirt and streak free.

#### F. Miscellaneous – Minimum Cleaning Standards

- i. Air Vents: Shall be free of dust and soil. This also applies to air distribution units and exhaust vents. They shall appear visibly and uniformly clean.

- ii. Light Fixtures: Shall be free of dust and soil without causing damage. Diffusers shall remain in proper position, and appear streak-free and uniformly clean.

#### G. Janitor Closets and Storerooms

- i. Shelves: Shall be free of dust, cobwebs, dried-soil and soil. They shall appear visibly and uniformly clean. Supplies and equipment shall be stocked, organized, neatly on shelves.
- ii. Janitor Carts: Shall be free of dust, dried-soil and soil. They shall appear visibly and uniformly clean, Supplies and equipment stored on Janitor carts shall also be free of dust and soil. and organized, neatly.
- iii. Equipment: Shall appear visibly clean and organized. All mops will be wrung out and the mop buckets are to be empty and clean when not in use.
- iv. Walls: Shall be free of dust, cobwebs, dried-soil and soil. They shall appear visibly and uniformly clean. This shall include the elimination of film, streaks, and cleaner residue.
- v. Utility Sinks: Shall be free of dust, soil, cleaner residue and soap film. Utility sinks shall appear visibly and uniformly clean. This shall include the elimination of streaks, embedded soil, film and water spots. Brightwork shall be cleaned, de-scaled and polished.
- vi. Floors: Shall be free of dust, cobwebs, dried-soil, gum, spots, stains and debris. Hard/resilient floors shall have multiple coats of a slip-resistant seal and finish applied that result in a consistent high-shine. Floors shall appear visibly and uniformly smooth and clean. This shall include the elimination of dust streaks, lint, standing water, cleaner residue, and film.

#### H. Gym and Locker Room – Minimum Cleaning Standards

- i. Equipment: All glassware, mirrors, lockers and equipment to be cleaned. They shall appear visibly and uniformly clean. Equipment shall be clean, including seats, benches grab bars are to clean and disinfected. The gym equipment is to be organized and placed in its proper locations.
- ii. Shelves: Shall be free of dust, cobwebs, dried-soil and soil. They shall appear visibly and uniformly clean. Supplies and equipment shall be stocked, organized, neatly on shelves.
- iii. Walls: Shall be free of dust, cobwebs, dried-soil and soil. They shall appear visibly and uniformly clean. This shall include the elimination of film, streaks, and cleaner residue.
- iv. Floors: Shall be free of dust, cobwebs, dried-soil, gum, spots, stains and debris. Hard/resilient floors shall have multiple coats of a slip-resistant seal and finish applied that result in a consistent high-shine. Floors shall appear visibly and uniformly smooth and clean. This shall include the elimination of dust streaks, lint, standing water, cleaner residue, and film.

- v. Catering Kitchens: Shall be cleaned and maintained in accordance with Orange County health and safety standard.

#### 15. Performance Inspections

- i. The purpose of the Performance Inspections is to ensure a high level of workmanship as well as to ensure the Quality, Health and Cleaning Standards throughout this Scope/Specification are consistently achieved. Attached is a Performance Inspection Sheet that will be used by both the contractor and the City of Brea to monitor performance.
- ii. The following intervals will be used for these inspections:
  - 1. Contractor – Weekly
  - 2. Contractor – Monthly
  - 3. City of Brea – Random
- iii. The Contractor shall perform weekly quality inspections of all sites and submit a written inspection report to the City of Brea. The contents and format of the inspection report shall be determined by the contractor and the City of Brea at the award of the contract. A Performance Inspection Form will be provided by the City of Brea.
- iv. The Contractor shall perform monthly quality inspections with the City of Brea designated representative. This inspection shall be of all sites covered by this contract with a written inspection report summary submitted by the contractor to the City of Brea.
- v. All noted deficiencies shall be corrected within 48 hours of inspection. Repeated deficiencies of the same nature and site could result in contract termination.
- vi. Post Custodial Performance Inspection Sheet and Schedules I, II, III daily at each facility for contract employees to use as a reference and City staff to monitor.

**Custodial Performance Inspection Sheet**  
**Building:** \_\_\_\_\_

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

<b>PERFORMANCE INSPECTION FORM</b>				
<b>Dept:</b>	<b>ABOVE STAND ARD</b>	<b>STAND ARD</b>	<b>BELOW STAND ARD</b>	<b>INSPECTOR:</b>
<b>AREAS INSPECTED</b>				<b>COMMENTS</b>
<b>1. Entrances &amp; Lobbies</b>				
<b>a. Mats, Carpets</b>				
<b>b. Glass, Metal Surfaces</b>				
<b>c. Corners, Thresholds</b>				
<b>d. Dusting</b>				
<b>e. Floor Appearance</b>				
<b>f. Sweeping, Vacuuming</b>				
<b>g. Walls</b>				
<b>h. Fixtures</b>				
<b>I. Walkways / Breezeways</b>				
<b>2. Elevators</b>				
<b>a. Tracks</b>				
<b>b. Lights</b>				
<b>c. Walls, Doors</b>				
<b>d. Floors, Carpets</b>				
<b>3. Corridors/Circulation Areas</b>				
<b>a. Sweeping, Vacuuming</b>				
<b>b. Floor Appearance</b>				
<b>c. Baseboards</b>				
<b>d. Walls</b>				
<b>e. Water Fountains</b>				
<b>f. Fixtures</b>				
<b>4. Stairwells</b>				
<b>a. Rails, Walls</b>				
<b>b. Steps, Landings</b>				
<b>5. Restrooms</b>				
<b>a. Dispensers, Hardware</b>				
<b>b. Sinks</b>				
<b>c. Mirrors</b>				
<b>d. Toilets, Urinals</b>				
<b>e. Partitions/Walls</b>				

<b>f. Floors, Baseboards</b>				
<b>g. Waste Containers</b>				
<b>6. Offices/Conference Rooms/Library</b>				
<b>a. Furniture</b>				
<b>b. Telephones</b>				
<b>c. Walls, Doors, Spot Cleaning</b>				
<b>d. Waste Containers/Recycling</b>				
<b>e. Partitions</b>				
<b>f. High/Low Dusting</b>				
<b>g. Floor Appearance</b>				
<b>h. Sweeping, Vacuuming</b>				
<b>i. Baseboards</b>				
<b>j. Edge vacuuming</b>				
<b>7 Windows</b>				
<b>a. Glass</b>				
<b>b. Sills, Frames</b>				
<b>c. Blinds</b>				
<b>8 Miscellaneous</b>				
<b>a. Air Vents</b>				
<b>b. Light Fixtures</b>				
<b>c. Carpet Spotting</b>				
<b>d. Vending areas</b>				
<b>e. Floor waxing, Spray buffing</b>				
<b>9. Janitor Closets</b>				
<b>a. Cleanliness</b>				
<b>b. Organization</b>				
<b>c. Supplies/Equipment</b>				
<b>10. Recycling</b>				
<b>a. Paper Recycling Bins</b>				
<b>b. Beverage Container Bins</b>				
<b>11. Kitchen</b>				
<b>a. Kitchen</b>				
<b>b. Kitchen Sinks</b>				
<b>c. Kitchen Counters</b>				

<b>d. Kitchen Table &amp; Chairs</b>				
<b>e. Kitchen Floors</b>				
<b>f. Kitchen Appliances</b>				

**Notes:**

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**Corrective Actions:**

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**Completed By:** \_\_\_\_\_

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

16. Specific Terms and Conditions

A. Background/Security

- i. All personnel engaged in performance of this work shall be employees of the Contractor and as such shall be warranted to possess sufficient experience and security records to perform this work.
- ii. Livescan background checks must be completed on all of the contractor employees due to sensitive materials and equipment that is in the areas that will be serviced.

B. Health

- i. All personnel shall be in good health and free of contagious diseases. Contractor shall not allow any person(s) under the influence of alcohol or drugs on the premises or in the buildings.
- ii. Contractor shall not allow the use or presence of alcohol or drugs on the premises or in the building.

C. Conduct

- i. No person(s) shall be employed for this work who is found to be incompetent, disorderly, troublesome, under the influence of alcohol or drugs. who fails or otherwise refuses to perform the work properly, or is otherwise objectionable.

- ii. Contractor shall not allow the use or presence of alcohol or drugs on the premises or in the building

D. Supervision of Staff

- i. Contractor shall provide one supervisor or foreman who shall be present at all times during night operations, and who shall be responsible for both conduct and workmanship.
- ii. The supervisor/foreman shall oversee all services at the Brea facilities. The supervisor or foreman shall be able to communicate effectively in both written and oral English language.

E. Day Porters

- i. All Day Porters shall be fully trained for the type of duties that they will perform and shall be able to communicate effectively in both written and oral English language.

F. Training

- i. Contractor shall have an ongoing training program for all its staff in areas of Safety and Job Duties. Contractor shall provide only personnel that have been fully trained for performance of this work. Supervisors shall have been trained in supervision as well as technical training.

G. Uniforms and Photo IDs

- i. All contractor's employees shall wear uniforms at all times while on duty. Uniforms must have the Contractor's company name.
- ii. A picture ID is to be worn at all times similar to the current City of Brea name /picture ID cards.

H. Adequate Safety

- i. Warning devices shall be used by the contractor when there is a safety hazard (i.e. rain-slip), waxing or wet mopping floors or as needed to ensure the safety of our employees and residents.
- ii. The contractor shall be responsible for instructing its employees in all safety measures.
- iii. All equipment used by the contractor shall be maintained in safe operating condition at all times and be free from defects which would constitute a hazard to any persons.
- iv. All employees must wear proper personal protective equipment while working on City of Brea premises.

I. Non-Smoking Facilities

- i. All City of Brea buildings are designated as non-smoking facilities.
- ii. No custodian shall smoke while within twenty (20) feet of said buildings.

J. Keys

- i. Contractor shall establish and implement methods for ensuring that all keys & key cards issued to Contractor by the City of Brea are not lost, misplaced, or used by unauthorized persons.

- ii. No keys or keycards issued to Contractor by the City shall be duplicated without prior written authorization from the City of Brea.
- iii. Contractor shall report to the City the occurrences of lost or duplicated key/keycards. In the event keys/keycards are lost, duplicated, or the City of Brea deems it necessary, Contractor will be required upon direction of City, to re-key or replace the affected lock or locks or perform re-keying or keycard replacement at its cost.
- iv. It is also the responsibility of Contractor to prohibit the opening of locked areas or to permit entrance of unauthorized persons other than
- v. Contractor employees engaged in the performance of assigned work in those areas.

K. Maintenance Repairs

- i. Report any maintenance repairs needed (i.e. leaking faucets; clogged drains; broken electrical plugs; lights out) to the City of Brea Building Maintenance Division by phone (714) 990-7691.

L. Standard Forms

- i. List below are some of the standard forms that will be used to communicate the City of Brea needs and requirements:
  - 1. Performance Inspection Form
  - 2. Service Request Form
  - 3. Service Complaint Form
  - 4. General Notes: E-mails' Memos; Verbal Instructions and Voicemails

M. Contact Information

- i. The Contractor shall provide the City of Brea representative the following information:
  - 1. 24-hour Contact Number
  - 2. Emergency Contact Name and Number
  - 3. E-mail Address
  - 4. General Manager
  - 5. On-Site Supervisor(s) and all day porters

N. Damage to City Property

- i. Damage of City property resulting from contractor shall be reported immediately by the Contractor to the City of Brea. City will repair all damage caused by the Contractor's negligence at the Contractor's expense.
- ii. If the Contractor fails to remedy such damage or theft, a written report of damage or theft shall be submitted to the City of Brea immediately.

O. City of Brea Telephone Usage

- i. City telephones shall not be used by the Contractor or its employees for personal reasons with the following exception(s):

- ii. To report need of medical aid, fire, or need of law enforcement, use the 911 number
- iii. Notification to the City of Brea Building Maintenance Staff of damage as required in this contract
- iv. Any calls to numbers other than those above shall be considered violation of this contract and grounds for immediate termination

P. Building Security

- i. The Contractor shall keep all exterior doors closed and locked during the performance of work or as otherwise directed and ensured that all doors are locked at the end of the shift.
- ii. Contractor's on-site supervisor is required to visit all locations to ensure all buildings are locked.
- iii. Offices with security systems shall have them activated immediately after services are completed in these areas.

Q. Remedy for Failure to Perform Required Service

- i. The Contractor shall be called back to correct deficiencies in adherence to the specifications at no additional charge to the City of Brea. Response time shall be as soon as possible but not more than two (2) hours from the receipt of the call during normal business (including weekends for Community Services Recreation Buildings) hours.
- ii. Hours not worked shall be deducted from monthly payments if these hours are persistent or if a quality problem appears. Deduction for hours not worked does not constitute a waiver of the specifications or acceptance of the conditions or performance. Contractor's failure to perform under the terms and frequencies specified herein, may result in a payment reduction in monthly payment due to the contractor and/or termination of services. The types of reductions described below may, at the City's option, be imposed after notification to the Contractor of any deficiencies and failure to provide remedies.
- iii. Immediate response requires the contractor to report to the site to correct deficiencies from the previous shift worked (i.e. night) . The deficiencies shall be of such nature as to warrant immediate correction or if the use and enjoyment of the building will be negatively affected. Deficiencies requiring immediate response are those that adversely affect the buildings' occupants. These can include, but are not limited to, failure to restock dispensers and failure to clean and or disinfect specific areas. If cleaning is not accomplished because of lost keys, the lack of service shall be deducted from payment. Should the contractor fail to respond as required to make corrections, the City of Brea may deduct a portion of payment for one day or multiple days depending on the nature of the infraction.
- iv. Contractor may be assessed penalties by City up to one hundred percent (100%) of the monthly value of a site for nonperformance and up to sixty percent (60%) of the monthly value of a site for substandard performance.

Such penalties shall be assessed at the discretion of the City. Contractor shall be notified of any penalties in accordance with the terms of this Contract.

- v. Contractor shall be notified of service failure by delivery of a "Performance Deficiency Notification" form to Contractor by City. Said notice will serve as formal notification that Contractor has incurred a service deficiency sufficiently material that contract termination may result if satisfactory corrective action is not taken by Contractor.
  - vi. The Performance Deficiency Notification will contain the acceptable time period for service correction. Upon Deficiency Notification, the correction will either be accepted or rejected. If accepted, part or all of the penalties may be waived, regardless of whether City has incurred loss as a result of said service failure.
  - vii. Contractor will be notified of correction acceptance status by delivery of a Performance Deficiency Status Memorandum. Should correction not be accepted, a separate additional Performance Deficiency Notification will be delivered to Contractor, thus increasing the number of Deficiency Notices received by Contractor.
- R. Vehicles used by the Custodial Contractor
- i. Vehicles are to be identified with magnetic door signs (approx. 20" x 16") or equivalent with the company name and phone number.
- S. Requirements for Custodial
- i. Each custodian working within City facilities shall be in a Contractor's uniform or an identifying shirt.
  - ii. Each custodian shall have in his/her possession a company photo identification badge at all times.
  - iii. All custodial supervisors and at least one (1) person on each custodial crew shall be able to communicate verbally in the English language.
- T. Safety and Security Requirements
- i. All safety warning devices shall be used by the Contractor when waxing or wet mopping floors or any other area.
  - ii. All City buildings are NON-SMOKING facilities; no custodian is allowed to smoke while in City buildings.
- U. Schedule
- i. Contractor shall provide the City of Brea with a comprehensive Monthly Schedule listing all monthly/quarterly service dates and locations.
- V. Environmental Requirements

The Contractor is required to adhere to the provisions of the Federal Clean Water Act as regulated by the U.S. Environmental Protection Agency in Code 40, Code of Federal Regulations (CFR) Parts 122, 123, 124, the Porter-Cologne Act (California Water Code), the Waste Discharge Requirements for Municipal Storm Water Discharges within the County of Orange and the National Pollution Discharge Elimination System (NPDES). Copies of the suitable Best Management Practices (BMPs) from the California Storm water Quality Association (CASQA),

Storm water Best Management Practice Handbook for Construction Activities are available for review at the offices of the City Engineer or can be found at [www.cabmphandbooks.com](http://www.cabmphandbooks.com).

**EXHIBIT B  
PAYMENT SCHEDULE**

A. Pricing Rates

Custodial Services

Item No.	Location	Schedule	Area Sq. Ft.	Unit Price	Qty	Unit	Total
1.	Civic Center – 3 <sup>rd</sup> Floor Offices	Administrative Offices, Public Service Counters, three (3) restrooms, five (5) Conference Rooms, and four (4) kitchenettes: Monday-Friday week one, Monday – Thursday week two, 7:00PM-6:00AM.  95% Carpet Flooring.	25,700 sf	\$ <u>1162</u>	12	Month	\$ <u>13,944</u>
2.	Civic Center – 2 <sup>nd</sup> Floor North	Administrative Offices, five (5) Conference Rooms, two (2) restrooms, one (1) TV Studio, and one (1) Lunch Room: Monday-Friday week one, Monday – Thursday week two, 7:00PM-6:00AM. Lawyer’s Offices: Monday-Friday, 7:00PM-6:00AM, excludes holidays.  Janitorial will not be responsible for cleaning School District Offices.	9,000 sf	\$ <u>476</u>	12	Month	\$ <u>5,712</u>
3.	Civic Center – 2 <sup>nd</sup> Floor South	Administrative Offices, Conference Room, Community Rooms A and B, EOC, two (2) restrooms, commercial kitchen, Employee Breakroom Kitchenette: Monday-Sunday. 6:00PM-12:00AM  95% Carpet Flooring.	7,800 sf	\$ <u>427</u>	12	Month	\$ <u>5,124</u>
4.	Civic Center – 2 <sup>nd</sup> Floor	Conference and Training Center, 65 seats with tables, two (2) restrooms: Monday – Sunday 7:00PM- 6:00AM 95% Carpet Flooring.	3,244 sf	\$ <u>240</u>	12	Month	\$ <u>2,880</u>
5.	Civic Center – 1 <sup>st</sup> Floor, Art Gallery	Administrative Office and Exhibit Area, and flooring (only during exhibitions, please see exhibit schedule): Tuesdays and Fridays, 10:00PM and thereafter.	6,256 sf	\$ <u>363</u>	12	Month	\$ <u>4,356</u>

City of Brea—Maintenance Services Agreement

6.	Civic Center -1 <sup>st</sup> Floor, Police Department	Administrative Offices and Public Service Counter, and two (2) restrooms: Monday-Sunday, 6:00PM-2:00AM.	4,500 sf	\$ <u>291</u>	12	Month	\$ <u>3,492</u>
7.	Civic Center - 1 <sup>st</sup> Floor Council Chambers	Chambers: Needs to be cleaned after rentals, refer to schedule. Monday-Sunday, including holidays, 9:00PM-6:00AM.  One (1) Restroom: Monday-Sunday, including holidays, 9:00PM-6:00AM.	2,500 sf	\$ <u>209</u>	12	Month	\$ <u>2,508</u>
8.	Civic Center - 1 <sup>st</sup> Floor Library	Library Lobby and Brea Resource Center: Monday-Sunday, including holidays, 9:00PM-6:00AM.	1,217 sf	\$ <u>156</u>	12	Month	\$ <u>1,872</u>
9.	Civic Center - 1 <sup>st</sup> and P-2 Floors, Curtis Theater	Administrative Office (5) times a week, Monday-Friday, 4:00PM-9:00AM.  Lobby, 199 Seating Area, four (4) restrooms, Green Room, three (3) Dressing Rooms w/showers: Monday-Sunday, 4:00PM-9:00AM, only after Theater rentals, per rental schedule.	12,500 sf	\$ <u>627</u>	12	Month	\$ <u>7,524</u>
10.	Civic Center - P-2, Police Department and 911 Dispatch	Dispatch and Administrative Offices, two (2) restrooms, two (2) kitchenettes, and four (2) locker rooms: Monday-Sunday, 6:00PM-12:00AM.  90% of carpet flooring.	4,616 sf	\$ <u>296</u>	12	Month	\$ <u>3,552</u>
11.	Civic Center - P-2, Police Jail	One (1) restroom, one (1) shower, two (2) booking cells, five (5) holding cells, and one (1) safety cell: Monday-Sunday, including holidays, 6:00PM-12:00AM.	2,500 sf	\$ <u>209</u>	12	Month	\$ <u>2,508</u>
12.	Civic Center - P-2	Administrative Offices, Print Shop, one (1) Kitchenette, two (2) locker rooms (with showers only) and corridors: One (1) Week:	4,000 sf	\$ <u>271</u>	12	Month	\$ <u>3,252</u>

City of Brea—Maintenance Services Agreement

	General Services	Monday-Friday, 6:00PM-12:00AM, Following Week: Monday-Thursday, 6:00OM-12:00AM, excluding holidays.  50% carpet flooring.					
13.	Civic Center – P-1 and P-2 Areas	Police trash, mop up spills, empty trashcans: One (1) Week: Monday-Friday, excludes holidays, 6:00PM-12:00AM, Following Week: Monday-Thursday, excludes holidays, 6:00PM-12AM.  Monthly: Power wash and scrub floors.	80,000 sf	\$ <u>3392</u>	12	Month	\$ <u>40,704</u>
14.	City Yard	545 N. Berry St., Brea, CA; Administrative Offices, four (4) restrooms, two (2) locker rooms, lunch room, and kitchen:  Monday-Friday, excludes holidays, 6:00PM-12:00AM.  90% carpet flooring.	7,024 sf	\$ <u>395</u>	12	Month	\$ <u>4,740</u>
15.	Pioneer Hall	304 W. Elm St., Brea, CA; Meeting Facility, two (2) restrooms, and kitchen: Monday-Friday and weekends per rental schedule, 6:00PM-12:00AM.  95% wood flooring.	4,000 sf	\$ <u>271</u>	12	Month	\$ <u>3,252</u>
16.	Senior Center	500 Sievers Ave., Brea, CA; Administrative Offices, three (3) restrooms, four (4) conference rooms, lunch room, and catering kitchen (per Orange County Health Department Standards): Monday-Friday, includes holidays, 6:00PM-12:00AM.	9,000 sf	\$ <u>476</u>	12	Month	\$ <u>5,712</u>
17.	Brea Plunge	440 S, Walnut Ave., Brea, CA; Administrative Office, two (2) locker rooms, exterior benches and tables: Monday-Sunday, includes holidays, 6:00PM-12:00AM.	1,500 sf	\$ <u>168</u>	12	Month	\$ <u>2,016</u>

City of Brea—Maintenance Services Agreement

		Seasonal: June 1-August 31: Monday-Sunday, includes holidays, 6:00PM-12:00AM.			
18.	Brea Downtown	Birch St., and Brea Blvd: Monday-Sunday, includes holidays; Porter required to be on-site 6:00PM-10:00PM.  Service includes: Police satellite office, sidewalks, trashcans, pick up trash, and parking lot behind Yard House and Improv.  Brea Blvd, from Imperial HWY to Ash St.: Pick up litter and empty trashcans.  Birch St., from Orange to Madrona: Both sides of streets, (22) trashcans on Birch St. and eight (8) trashcans on Brea Blvd.	<u>\$ 3640</u>	12 Month	<u>\$ 43680</u>
19.	Brea Community Center	695 E. Madison Way, Brea, CA; Administrative Offices and Family Resource Center: Monday-Friday 6:00PM-6:00AM.  Tiny Tots, Kid Watch, Gym, Fitness Area, Aerobics Room, Catering Kitchen, Meeting Hall, Conference Rooms, five (5) restrooms, two (2) locker rooms: Monday-Sunday, includes holidays, 6:00PM-6:00AM  10% carpet flooring.	<u>\$ 4320</u>	12 Month	<u>\$ 51840</u>
20.	Day Porters	Civic Center and Community Center: three (3) full-time day porters: Schedules will be determined by the Public Works Manager, or designee.	<u>\$ 15600</u>	12 Month	<u>\$ 187,200</u>
<hr/>					
	<i>Total</i>				<u>\$ 395,868.00</u>

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**  
**[SUBJECT TO RISK MANAGER APPROVAL]**

1. Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

2. Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence and \$4,000,000 aggregate per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

(C) Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty

to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement.

(D) Additional Insured. The City of Brea, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Contractor's and its subcontractors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3. Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Brea, its officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth herein, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section.

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth herein, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

4. Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, officers, employees, agents, and volunteers. All policies except professional liability if required, shall waive all rights of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

5. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, officers, employees, agents, and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

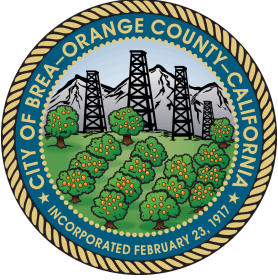
6. Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

7. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

8. Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and

approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

9. Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services.



# CITY of BREA

Finance Committee Communication

June 9, 2026

Item No. 3D.

## Landscape Maintenance Services Agreement

TO	PREPARED BY
Finance Committee Members	Eric Aulls, Public Works Manager
DEPARTMENT HEAD APPROVAL	CITY MANAGER APPROVAL
Michael Ho, Public Works Director	Kristin Griffith, City Manager

### RECOMMENDATION

Staff recommends that the Finance Committee recommend the City Council to take the following action:

1. Award a contract to Mariposa Landscapes, Inc., for Landscape Maintenance Services in the amount not to exceed \$510,323.50 per year, for a period of three (3) base years; and
2. Authorize the City Manager to approve up to four (4) additional one (1) year extensions.

### BACKGROUND/DISCUSSION

The Public Works Department is responsible for landscape maintenance services for 11 parks, 5 landscape Maintenance Districts, and 43 City locations. Currently, the City contracts with three (3) landscape maintenance services: Nieves Landscape, LLC., Mariposa Landscapes, Inc., and Tropical Plaza Nursery, Inc. The City's current contract with Nieves Landscape, LLC., for landscape maintenance services, located at Wildcatters Park, Maintenance District #1, Maintenance District #3, Maintenance District #6, Maintenance District #7, Medians, Greenbelts, Entry Markers, Parkways, and Parks (mowing), will expire June 30, 2026.

In April 2026, staff prepared a Request for Proposals (RFP) for Landscape Maintenance Services on the City website and the Public Purchase platform for prospective contractors to determine their capabilities in providing the needed landscape services located at Wildcatters Park, Maintenance District #1, Maintenance District #3, Maintenance District #6, Maintenance District #7, Medians, Greenbelts, Entry Markers, Parkways and Parks (mowing). After reviewing the proposals, staff ranked the bidders as follows:

BIDDER NAME	ANNUAL PROPOSED AMOUNT	EVALUATION SCORE
Mariposa Landscapes, Inc.	\$510,323.50	100/100
Tropical Plaza Nursery, Inc.	\$615,657.50	92.5/100
Nieves Landscape, LLC	\$924,978.00	80/100
JAS Landscape	INCOMPLETE SUBMISSION	0

Staff identified Mariposa Landscapes, Inc., as the most qualified proposer to provide landscape maintenance services. Mariposa Landscapes, Inc., demonstrated the ability to perform work at a competitive price and meet the City of Brea's requirements for high-quality work. The review process showed that Mariposa Landscapes, Inc., scored higher across all categories, including pricing, than Tropical Nursery, Inc., and Nieves Landscape, LLC. JAS Landscape did not provide a complete proposal. Mariposa Landscapes, Inc. has provided high-quality landscape services throughout the City of Brea for five (5) years. For this reason, staff recommends awarding the contract to Mariposa Landscapes, Inc., for a three-year base term, with the option of four (4) one (1) year period extensions, in the amount not to exceed \$510,323.50. Mariposa Landscapes, Inc. will have the option to request a Consumer Price Index (CPI) adjustment effective year two (2), July 1, 2027, and thereafter capped at 5% annually.

### **FISCAL IMPACT/SUMMARY**

The Public Works Department has identified sufficient funds in the FY 2026-27 operating budget, with no additional appropriation. A Consumer Price Index (CPI) adjustment will be effective in year two (2), July 1, 2027, and Mariposa Landscapes, Inc. may request a CPI adjustment, capped at 5%, in accordance with the CPI for the Los Angeles-Long Beach-Anaheim area, with any approved adjustment incorporated into future budgets for consideration.

### **Attachments**

[Mariposa Landscape Agreement 2026signed.pdf](#)

**CITY OF BREA  
MAINTENANCE SERVICES AGREEMENT**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2026 by and between the City of Brea, a municipal corporation (“City”) and Mariposa Landscapes, Inc., a Corporation (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

- A. The City heretofore sought proposals for performance of the following maintenance services: To provide landscape services located at Wildcatters Park, Maintenance District #1, Maintenance District #3, Maintenance District #6, Maintenance District #7, Medians, Greenbelts, Entry Markers, Parkways and Parks (mowing).The required maintenance services are more fully described herein.
- B. Contractor timely submitted a responsive proposal to the City to provide the maintenance services, referenced in Recital “A”, above.
- C. After reviewing all proposals, including qualifications, experience, proposed staffing, working plans, response time, and the proposed cost, Staff recommended and the City Council approved Contractor to be awarded a contract to provide the required maintenance services.
- D. The City enters this Agreement with Contractor in reliance on Contractor’s represented experience and qualifications to perform the required services, and in order to set forth terms and conditions for Contractor’s performance of such services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, the Parties agree as follows:

**1. SCOPE OF SERVICES AND TERM.**

1.1 Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the maintenance services described in the Scope and Schedule of Services, Exhibit “A” hereto, and the City’s solicitation document, if issued (collectively, “Services”). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, statutes, orders, rules and regulations.

1.2 Term. The term of this Agreement shall be from July 1, 2026 to June 30, 2029, with the option of four (4) one-year period extensions, unless earlier terminated, or extended, as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by

written agreement, extend the term of this Agreement if necessary to complete or provide additional Services.

## **2. RESPONSIBILITIES OF CONTRACTOR.**

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

The Parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Contractor agrees that, in providing its employees and any other personnel to City to perform any work or other Services under this Agreement, Contractor shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code § 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Contractor shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations

2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Scope and Schedule of Services set forth in Exhibit "A" hereto. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

2.4 City's Representative. The City hereby designates Public Works Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

2.5 Contractor's Representative. Contractor hereby designates Terry Norlega, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent

and act on behalf of the Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.6 Standard of Care; Performance of Employees; Warranty. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor warrants that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or any subcontractor who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from performing the Services by the Contractor and shall not be re-employed to perform any of the Services. All parts and components furnished hereunder, if any, shall be warranted in accordance with the applicable manufacturer's express warranty for such goods. Contractor's performance of the Services are warranted to be free from defects and in compliance with all requirements of this Agreement, for a period of one (1) year. The warranties shall not limit the City's rights under Section 13.2.

2.8 Period of Performance. Contractor shall perform all Services in strict accordance with the Scope and Schedule of Services in Exhibit "B" hereto. If the Services are not completed in accordance with the Schedule of Services, it is understood, acknowledged and agreed that the City will suffer damage.

### **3. DISPUTES.**

Should any dispute arise respecting the true value, quality, or sufficiency of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Services pending resolution of the dispute by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

### **4. LAWS AND REGULATIONS; EMPLOYEE/LABOR CERTIFICATIONS.**

Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the

Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to State law including certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and compliance therewith by Contractor is required.

4.1 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

4.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

4.3 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine.

4.4 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §13000, et seq.); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Contractor's failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall indemnify the City as to any fines or penalties, as required herein.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants

that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

## **5. INSURANCE.**

Before commencing the Services, Contractor shall procure and throughout the term hereof maintain, insurance in such form and with such limits as set forth in Exhibit "C hereto.

## **6. SAFETY.**

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

## **7. PAYMENT BOND.**

7.1 Payment Bond. If required by law or by City, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in such form as approved by the City Attorney, in the amount of the total, not-to-exceed compensation indicated in this Agreement. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

7.2 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post an acceptable replacement bond at least ten (10) days prior to expiration of the original bond. No further payments shall be deemed due or will be made under this Agreement until any replacement bond required by this Section is accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bond shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the

Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

7.3 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

## **8. ACCOUNTING RECORDS.**

Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

## **9. FEES AND PAYMENTS.**

9.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in the Payment Schedule, Exhibit "B" hereto. The total compensation shall not exceed Five Hundred Ten Thousand, Three Hundred Twenty-Three and 50/100 dollars (\$510,323.50) without written approval of City's City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

9.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the Services provided since the commencement of Services, or since the start of the subsequent billing periods, as applicable, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

9.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

9.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be outside of the Scope of Services. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

9.5 Price Adjustment. During the second twelve (12) month period of the Agreement, the Base Sum per month is subject to a cost-of-living adjustment (Stepped Up Base). The cost-of-living adjustment shall be set at the beginning of the second period adjustment date) in the following manner: The Consumer Price Index for all Urban Consumers (base year 1982-84 = 100) for the Los Angeles-Long Beach-Anaheim area published by the United States

Department of Labor, Bureau of Statistics (Index) which is published for the month immediately preceding the adjustment date (Adjustment Index) shall be compared to the Index which was published for the date immediately preceding the beginning of the first twelve (12) month period (Beginning Index). The CPI adjustment will be capped at no more than 5% annually.

If the Adjustment Index has increased over the Beginning Index, the monthly payment shall be increased by the amount obtained by multiplying the base sum by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

## **10. CALIFORNIA LABOR CODE REQUIREMENTS.**

10.1 Contractor is aware of the requirements of California Labor Code Sections 1720 through 1861 which require the payment of prevailing wage rates and compliance with other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). The Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws. Pursuant to Labor Code Section 1771, Contractor agrees to fully comply with such Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all applicable California Labor Code requirements, which include, but are not limited to, payment of prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), maintenance and submission of certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

10.2 Pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Agreement and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

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

## **11 TERMINATION OF AGREEMENT.**

11.1 Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time with or without cause by giving written notice to

Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination and provided Contractor is not then in breach, Contractor shall be compensated for those services which have been adequately rendered to City up to the effective date of termination. Contractor may not terminate this Agreement except for City's failure to cure a material default following Contractor's service of a thirty (30) day notice to cure.

11.2 Effect of Termination. Upon termination for other than City's default, City may require Contractor to provide all finished or unfinished Work Product and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall provide all Work Product within fifteen (15) days of the request.

## **12. OWNERSHIP OF WORK PRODUCT**

12.1 Except as otherwise provided in Section 11.2, above, and unless otherwise agreed upon in writing, all draft and final reports, documents, and other written material, and any and all images, ideas, concepts, designs including website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Contractor in the performance of this Agreement (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of City. All Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City upon final payment being made provided that any such use shall be at City's sole risk. Contractor shall not obtain or attempt to obtain copyright protection as to any of the Work Product. Work Product does not include intellectual property owned by or licensed to Contractor as of the effective date of this Agreement.

12.2 Contractor hereby assigns to City all rights of ownership to the Work Product, including any and all related intellectual property and proprietary rights, that are not otherwise vested in the City pursuant to subsection 12.1, above.

## **13. GENERAL PROVISIONS.**

13.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Contractor:**

Mariposa Landscapes, Inc.  
6232 Santos Diaz, Inc.  
Irwindale, CA 91702

DIR: 1000005079  
CSLB: 592268

**City:**

City of Brea  
1 Civic Center Cl.  
Brea, CA 92821

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 13.2 Indemnification.

(A) Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents ("Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, stop notices, liens, expenses, liability, loss, damage, penalties, fines, and/or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incidental to any breach of this Agreement, any violation of law, and/or any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. The provisions of this subsection (A) shall not apply to claims and liabilities arising out of the sole negligence, violation of law, or willful misconduct of any of the Indemnitees.

(B) Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 13.2(A) that may be brought or instituted against City or any other Indemnitees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or any of the Indemnitees as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or any of the Indemnitees as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City or any of the Indemnitees.

13.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California without regard for conflicts of laws principles. Venue for any legal action arising out of this Agreement shall be in Orange County, California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900, et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

13.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

13.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with the Services required herein.

13.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

13.7 Assignment or Transfer; Subcontracting. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly authorized herein, without prior written approval of City. Contractor shall be responsible for all acts, omissions, and performance of any and all subcontractors, engaged in connection with this Agreement.

13.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. As the context permits, all references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. As the context permits, all references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

13.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

13.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

13.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

13.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

13.13 Prohibited Interests. Contractor warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees, if requested, to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For the term of this Agreement, no official, officer or employee of City, during the

term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

13.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

13.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

13.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

13.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

13.18 Entire Agreement. This Agreement, together with all Exhibits and City's RFP (if issued), each of which are incorporated by reference herein, contains the entire agreement of the parties with respect to the subject matter herein, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties. The provisions of this document shall govern in the event of any conflict with any Exhibit or document incorporated herein. The provisions of this document shall govern over any conflicting provisions in any exhibit hereto and/or Contractor's proposal.

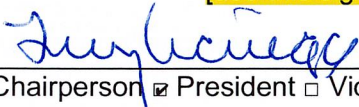
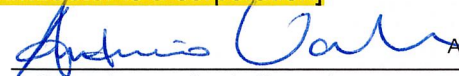
**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT  
BETWEEN THE CITY OF BREA  
AND MARIPOSA LANDSCAPE, INC.**

**TO EXECUTE THIS AGREEMENT**, the parties have caused their authorized representatives to sign below.

**MARIPOSA LANDSCAPE, INC.**

[use this signature block if the Contractor is a corporation]

<p> _____ Terry Noriega <input type="checkbox"/> Chairperson <input checked="" type="checkbox"/> President <input type="checkbox"/> Vice President</p>	<p> _____ Antonio Valenzuela <input checked="" type="checkbox"/> Secretary <input type="checkbox"/> Asst. Secretary <input type="checkbox"/> Chief Finance Officer <input type="checkbox"/> Asst. Treasurer</p>
---	---

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

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

\_\_\_\_\_  
Manager

\_\_\_\_\_  
Manager

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

**CITY OF BREA**

\_\_\_\_\_  
MAYOR

ATTEST:

By: \_\_\_\_\_  
City Clerk

**EXHIBIT A**  
**SCOPE OF SERVICES**

1. Contractor shall furnish all labor, materials and equipment necessary to provide the Services located at Wildcatters Park, Maintenance District #1 (MD #1), Maintenance District #3 (MD #3), Maintenance District #6 (MD #6), Maintenance District #7 (MD #7), Medians, Greenbelts, Entry Markers, Parkways, and Parks (mowing).
2. The Park mowing, edging, blowing, and debris pickup will be completed based on frequencies in the GENERAL SPECIFICATIONS and SPECIFIC BID SPECIFICATIONS for the respective areas. The landscape maintenance will consist of mowing, edging, weeding, fertilizing, pest control and only specific bids have irrigation system maintenance and repair. Irrigation water consumption will be closely monitored. Money will be deducted from invoices for excessive water usage. A large majority of the work will be maintaining the condition of shrubs and ground cover on slopes, medians, and at City facilities. A small amount of tree pruning will be required to clear property lines, separate plant material, maintain safe passage on sidewalks, etc. The Contractor will be responsible to maintain plant material clearance around fences, building, valve boxes, and other obstacles.
3. The work to be done consists of furnishing all materials, implements, machinery, equipment, tools, supplies, transportation, incidentals and labor necessary to the prosecution and completion of the work as required by all specifications, and as directed by the Director of Public Works or a designee.
4. License and Permits
  - A. The contractor The Contractor shall have and maintain a valid C-27 Contractor's license. All applications of pesticides shall be done in compliance with governmental requirements. Applications of such materials shall be done by personnel licensed by the State of California, Department of Pesticide Regulation. Contractor will obtain any permits required by local governmental agency for the use of special chemicals.
  - B. Any subcontractor will also be required to secure and maintain a valid City of Brea Business License. The Contractor also will be required to obtain an Encroachment permit for work on Valencia and Imperial Highway from Caltrans paid for on a separate invoice by the City of Brea.
  - C. Dress Code and Appearance
    - i. The Contractor shall be required to provide uniforms for personnel assigned to the project. Sufficient changes shall be provided to present a neat and clean appearance of the personnel at all times. Contractor personnel shall wear uniforms with Company name and Employee name at all times. Contractor to provide Personal Protective Equipment (PPE) as required.
  - D. Extra Work

- i. In the event the Contractor is required by the City and agrees to perform extra work, the following procedure shall govern such work:
  - 1. Contractor must use separate crews to provide all extra work; may not use regular maintenance crews. Regular maintenance work shall be completed in conjunction with extra work and cannot be postponed to complete extra work. Failure to comply with this requirement shall result in a deficiency deduction.
- ii. When required by City Representative or Landscape Inspector, an estimate of cost will be submitted for approval prior to work being done.
  - 1. Work will be executed under the direction of the City on a time-and-materials basis or an agreed lump sum price depending on the nature of the work.
  - 2. Extra work will not be initiated without written authorization, except in emergency call-out situations.
  - 3. Extra work may include, but not be limited to, the following:
    - a. Replacement of plant materials due to failures beyond the Contractor's control.
    - b. Additional treatment required for planting or soil as not set forth specifically in this Specification.
    - c. Repairs or replacement of irrigation system.
    - d. Remedial landscaping.
    - e. Repairs or replacements due to vandalism or Acts of God.
  - 4. Labor costs shall be based on the prevailing wage scale for each type of workman. Employee payments for payroll taxes and insurance, health and welfare, pension, vacation, and other direct labor costs to be included.
  - 5. Material cost shall be the actual cost of materials purchased by the Contractor and used for the extra work, including sales taxes, freight, and delivery charges.
  - 6. Submittals for Extra-Work Authorization shall include the following and be provided to the City within three (3) business days:
    - a. Complete price for all labor and materials, itemized.
    - b. Proposed schedule and completion date.

E. Project Inspections

- i. Weekly the Contractor's direct field crew supervisor and next higher representative if deemed will walk the project with the City representative for the purpose of determining compliance with the Specifications or to discuss required work. Contractor representative must be authorized to sign documents and effect changes to the job.

F. Vehicles

- i. Contractor vehicles must be parked to allow normal and vehicular traffic; comply with OSHA, CAL-OSHA, and W.A.T.C.H. regulations. Vehicles

shall display the company name and equipment shall be in good repair and not be older than 10 years.

G. Safety

- i. Contractor shall be responsible for providing a safe work place, and compliance standards and regulations of the California Occupational Safety and Health Act (CalOSHA), Federal Occupational and Health Act (OSHA), California Division of Industrial Safety Orders (CDIS), and any other applicable governmental law or City risk management standards. Traffic control will be per the "WATCH" book. The contractor will ensure the safety of all park users when working.

H. Reports and Schedules

- i. The Contractor, as part of this agreement, will submit reports and schedules as requested. Failure to submit reports and schedules in a timely manner may result in a delay of monthly payments or termination of contract. Such reports must be detailed and thorough and may include but not be limited to the following:
  1. Suggestions for improving problem areas, as needed, or as requested by City.
  2. Reports of work planned. Due weekly at meeting with City.
  3. Cost information to perform extra work for upgrading specific areas, as needed or as requested by City, pricing due in three (3) business days.
  4. Weekly Maintenance Schedule(s). Contractor shall provide a weekly maintenance schedule to the City.
  5. Seasonal Irrigation Schedule. Due at last weekly meeting of the month.
  6. Pesticide Use Reports. Due at last weekly meeting of the month,
  7. Accident Reports. Due within twenty-four (24) hours of accident.
  8. Incident Reports. Due within twenty-four (24) hours of incident
  9. Hazard Reports. Due within twenty-four (24) hours of identification/discovery.
  10. Irrigation test reports. Due at last meeting of the month depending on type of site.
  11. Fertilize use reports. Due monthly at last weekly meeting of the month.

I. Protection of Property During Inclement Weather

- i. The Contractor shall adjust work schedule to compensate for all holidays and inclement weather. During periods of storms, the Contractor will provide supervisory inspection of the project during regular hours to prevent or minimize possible damage from inclement weather (this includes having a representative in the City during rain events to inspect and clean areas that

may have drainage issues or problem with vee-ditches). The Contractor shall submit a report identifying any storm damage to the City's representative attached to a site map identifying location of damage and cost estimate to repair/replace. If remedial work is required beyond the scope of this contract, it shall be paid for as extra work.

- ii. Contractor's responsibility for removing branches and leaves downed by high winds or other typical or non-typical environment condition is as follows:
  - 1. Contractor must remove, at no additional cost, all debris on contracted property regardless of disposition of affected tree, shrub, or any other landscape related item, within 48 hours of notification or self-discovery.
  - 2. Leaves or other landscape which accumulates in street gutters adjacent to Contractor's area of work, shall be removed by Contractor at no additional charge to City.
  - 3. Debris inhibiting proper flow of water in V-ditches and other structures shall be removed weekly to prevent flooding or damage to property.
  - 4. Damage caused by or increased cost incurred by the City as a result of Contractor not maintaining site in satisfactory condition prior to inclement weather, will be charged to the Contractor.

J. Protection of Existing Facilities and Structures

- i. The Contractor shall exercise due care in protecting from damage all existing facilities, structures, and utilities both above surface and underground on the City's property. Any damage to City property deemed to be caused by the Contractor's neglect shall be corrected or paid for by the Contractor at no cost to the City.
- ii. If the City requests or directs the Contractor to perform work in a given area, it will be the Contractor's responsibility to verify and locate any hazardous conditions and underground systems, i.e., utility lines. Contractor shall instill reasonable precaution when working in these areas. Any damage or problems shall be corrected or repaired at Contractor's expense and reported immediately to the City.

K. City Liaison

- i. The City and Contractors will meet on a weekly basis with each City's representative. The purpose of this meeting will be to discuss specific project problems. More frequent contact may be required between the City Landscape Inspector and the Contractor's representative separately from these meetings. The Contractor's representative or direct crew supervisor is expected to be available by phone to address any daily needs.

L. Special requests

- i. The Contractor may be requested by the City to perform special tasks which are above his normal scheduled work. It is intended that Special Requests

be considered an extra work item unless the City determines that the Special Request is a direct result of neglect on the part of the Contractor.

M. Supervision and Special Skills

- i. The Contractor shall assign a supervisor working regular working hours for the duration of this Contract. The Contractor shall have a minimum of five (5) years' experience in landscape maintenance supervision. The Contractor shall have expertise and experience in turf management, entomology, pest control, soils, fertilizers, plant identification, and irrigation system maintenance. The crew supervisor shall be capable of communicating effectively both in written and spoken English.
- ii. Each Contractor's working crews shall also have a responsible lead man who may represent Contractor to discuss the work in English with the Director of Public Works, or their designated representative, within twenty-four (24) hours of notification from the Director of Public Works, or his designated representative.

N. Pesticides

- i. General: All materials shall be in strict accordance and applied within the EPA regulations and the California Department of Pesticide Regulation. Current pesticide uses recommendations made by a licensed Pest Control Advisor must be provided to the City prior to the application of any pesticide on City maintained areas.
- ii. The application of pesticides and other chemicals shall be recorded on the Pesticide Use Form and coordinated with City Landscape Inspector.

O. Contractor Neglect

- i. Any damage to the City's property which has been determined to be due to the Contractor's neglect shall be corrected at no additional cost to the City. Loss of plant material due to improper care is also included.

P. Scheduling of Operations

- i. The Contractor shall perform his work at such times as to minimize disturbance or interference to resident convenience, pedestrian or vehicle circulation. Examples of this would be early morning mowing or irrigation checks, etc. The Contractor shall submit a Maintenance Schedule describing maintenance operations and when work and applications of chemicals/fertilizers will be accomplished. Schedule shall be submitted weekly. Annual schedule of work force and maintenance tasks shall be submitted to City July 1, of every year of the contract, prior to starting any maintenance operations. All forms and schedules shall be of a format supplied by, or approved by, City. In addition, if there is a permanent change to the work force size at any time during the year the City shall be notified immediately.

Q. Sound Control Requirements

- i. The Contractor shall comply with all local sound control and noise level rules, regulations, and ordinances which apply to any work performed pursuant to the Contract.
- R. Additions/Deletions to City Landscape Areas
  - i. Changes in the areas to be maintained may be made as the City accepts new areas and/or relinquishes currently maintained areas. Any and all such changes shall only be made upon written notification in the form of a change order which shall clearly state the effective date of the change. Costs to add or delete landscape maintenance areas shall be made on a per square foot cost for planter maintenance or turf mowed per bid pricing or similarly sized landscape area. The City reserves the right to delete any site from the contract with thirty (30) days written notice.
- S. Additions/Deletions to General Maintenance Specifications
  - i. The City reserves the right to make additions, deletions, revisions, and/or otherwise modify the General Landscape Maintenance Specifications.
  - ii. Any changes in the Specifications that causes the Contractor to suffer additional expenses shall be negotiated upon written justification.
- T. Liquidated Damages: Nonperformance
  - i. Contractor may be assessed penalties by City up to one hundred percent (100%) of the monthly value of a site for nonperformance and up to sixty percent (60%) of the monthly value of a site for substandard performance. Such penalties shall be assessed at the discretion of the City. Contractor shall be notified of any penalties in accordance with the terms of this Contract.
  - ii. Contractor shall be notified of service failure by delivery of a "Performance Deficiency Notification" form to Contractor by City. Said notice will serve as formal notification that Contractor has incurred a service deficiency sufficiently material that contract termination may result if satisfactory corrective action is not taken by Contractor.
  - iii. The Performance Deficiency Notification will contain the acceptable time period for service correction. Upon Deficiency Notification, the correction will either be accepted or rejected. If accepted, part or all of the penalties may be waived, regardless of whether City has incurred loss as a result of said service failure.
  - iv. Contractor will be notified of correction acceptance status by delivery of a Performance Deficiency Status Memorandum. Should correction not be accepted, a separate additional Performance Deficiency Notification will be delivered to Contractor, thus increasing the number of Deficiency Notices received by Contractor.
- U. Quarterly Services – General Building and Office Areas (All Areas)
  - i. Clean all refrigerators
  - ii. Deep clean all lockers

## 5. Maintenance District Mowing and Landscape Services

### A. Landscape Maintenance Areas

- i. Landscape maintenance Contractor's irrigation staff will be responsible for repair of all site irrigation from water meter and controller, through lateral lines and sprinkler heads (backflow devices and City mainlines are excluded). Landscape Contractor is fully responsible for irrigation controller programming. City water management directions must be implemented.
- ii. All Contractor-caused irrigation damage will be the responsibility of Contractor to repair within 24-hours of occurrence. Failure to do so will result in City repair and recouping of costs or liquidated damages. In addition, a Performance Deficiency Notice may be issued.

### B. Irrigation/Operation and Maintenance

- i. All landscaped areas shall be irrigated as required to maintain optimum growth and appearance. Irrigation person shall be a separate position and not included in the duties of regularly scheduled staff at the sites.

### C. Irrigation Responsibilities

- i. The Contractor shall conduct monthly irrigation tests. The City may notify Contractor verbally or in writing if discovered damage or defects are found during City inspections of irrigation systems. Contractor shall make needed repairs within 24-hours of notification or self-discovery. Contractor shall submit irrigation test reports, on approved form, at weekly/monthly meeting based on type of site. Failure to submit the required reports will result in issuance of a Performance Deficiency Notice.
- ii. All irrigation systems shall be tested and inspected by the Contractor in accordance with the following:
  1. Operate all valves automatically.
  2. Visually inspect all irrigation heads for proper adjustment, operation, and leakage.
  3. Review program and verify controller is operating correctly.
  4. Record water meter reading at time of test.
- iii. All systems shall be adjusted in order to:
  1. Provide adequate coverage of all landscape areas.
  2. Prevent excessive runoff and/or erosion.
  3. Prevent watering roadways, walkways, trails, fences and private property.
  4. Prevent saturated conditions.
- iv. All system malfunctions, damage, and obstructions shall be recorded and corrective action taken per specifications. A report of required systems testing shall be submitted to the City.
- v. In addition to required testing, all irrigation systems shall be tested and inspected as necessary when damage is suspected, observed or reported, daily if necessary.

1. Repair malfunctioning controllers, quick couplers, manual or automatic valves and sprinkler heads within twenty-four (24) hours of notification or self-discovery. Provide backup or temporary controller should repair of City controller be required.
2. The Contractor shall turn off irrigation system during periods of rainfall and times when suspension of irrigation is desirable to conserve water while remaining within the guidelines of good horticulturally acceptable maintenance practices.
3. Once the City Landscape Inspector acknowledges the necessity to turn on the water again, all controllers shall be activated within twenty-four (24) hours.
4. Failure to turn off controller during rain, or activate following instruction by City to do so will result in the issuance of a Performance Deficiency Notification.

#### D. Materials

- i. All replacement materials are to be with original types and model materials, unless City representative approves a substitute.
- ii. Contractor shall maintain an adequate inventory of medium to high usage stock items for repair of the irrigation systems.
- iii. Contractor shall implement repairs in accordance with all effective warranties, and no separate payment shall be made for repairs on equipment covered by warranty.
- iv. Repairs of equipment or property damaged by Contractor or as a result of an error or omission by Contractor shall not be submitted to City for payment and are the responsibility of the Contractor.
- v. All materials are to be new and identical to existing materials, unless directed otherwise by the City representative. All new irrigation heads installed shall be fitted with appropriate nozzle to match precipitation rate of head being replaced.
- vi. Changes to sprinkler systems are to be designed to achieve matched precipitation rates.

#### E. Water Management

- i. All systems shall be programmed weekly or as needed to maintain plants in a healthy, vigorous condition.
- ii. All program changes shall be recorded and submitted on City approved form.
- iii. Water meter reading for each system is to be submitted with irrigation test report.
- iv. Controller program is to be sufficient to keep the landscape healthy without excessive water use.
- v. Controller programs shall incorporate the following conditions:
  1. Meet City Water Management requirements.
  2. Avoid weekend watering when possible.

3. Maximize repeat operations.
4. Minimize station run times.
5. Reflect actual requirements of soil and plants.
6. Eliminate runoff into streets, sidewalks, and other non-target areas.
7. Provide sufficient time for soil to dry out between irrigations.
8. Maximize community use of City property.

F. Weed and Pest Control

- i. General – Control of horticulturally damaging plant pests (insects, diseases, vertebrates and mites) shall be the responsibility of the Contractor. Written recommendations by a licensed California Agricultural Pest Control Adviser are required to be submitted to the City prior to any application of pesticides. Control shall mean the prevention or eradication of any pest to the satisfaction of the City. The City may determine an acceptable level of impact by any pest and adjust the pest control program of the Contractor accordingly. Proper cultural practices shall be a part of the Contractor's pest control program. Failure to prevent, treat, or manage any pest infestation that results in loss of plant material or creates a risk to public health and safety may be remedied by the City at Contractor's expense in the form of a reduction in payment.
- ii. Landscaped areas (shrub and ground cover)
  1. Weed Control
    - a. All landscaped areas shall be treated with an appropriate pre-emergent herbicide at the maximum allowable rate according to the label and State Regulations.
    - b. All areas within boundaries of site, which are not landscaped, shall be treated monthly to eliminate weeds.
  2. Snail Control
    - a. Snails shall be controlled on an as-needed basis on all plant material, as determined by the City.
  3. Insect and Disease Control
- iii. Turf
  1. Weed Control
    - a. When weed population is excessive as determined by City, an appropriate herbicide shall be applied in accordance with all label specifications.
    - b. In all areas prone to weed intrusion, applications of appropriately labeled pre-emergent herbicide shall be required.
  2. Insect and Disease Control
    - a. All turf areas with fungus infection shall be treated with an appropriate fungicide as directed by City.

- b. All other insect, disease and fungus problems will be treated on a site-and-need-specific basis with the knowledge and consent of the City.
- c. Damaged turf caused by disease shall be repaired or replaced at no extra cost to the City.

G. Rodent Control

- i. Contractor shall be responsible for the eradication and control of all rodents, as necessary, on a continual basis. All mounds, burrows, or other damage shall be repaired by Contractor as required by City. Failure to successfully manage pests will result in city performing work and deducting cost from monthly payments.

H. Weed Control of Paved Surfaces

- i. Contractor shall be responsible for controlling, by mechanical or chemical means, weeds growing cracks, or expansion joints, and areas contiguous to the City landscape.

I. Landscape Improvement Maintenance

- i. Landscape improvement maintenance shall include shrubs, ground cover, irrigation, and drainage structures. Slope maintenance includes the pruning of shrubs and routine pruning to maintain a neat appearance. Remove weeds that are not controlled by herbicides before size or abundance become a cause of complaint. Generally, weeds that exceed 3-5 inches in height, or predominate a bare area, are unacceptable. Keep all areas in a neat, clean and well-maintained condition at all times.
- ii. Maintain all drainage structures to avoid obstruction at all times. Keep sidewalks free of obstructions, water, mud, algae, slime, leaves or other potentially hazardous debris at all times. Keep adjacent plant material from encroaching public right-of-way.

J. Guarantee and/or Replacement Policy

- i. All new plant material and irrigation installations or repairs shall be guaranteed for a period of one (1) calendar year except due to "Act of God," i.e., damage or death of plant material due to wind or storm, or vandalism, theft, or other willful acts over which the maintenance Contractor has no control. Existing plants shall be replaced by Contractor if they die due to Contractor's negligence. All replacement plants shall be inspected and approved by City prior to installation. All landscape or irrigation installations or repairs shall conform to Landscape and Irrigation Specifications accepted by Director of Public Works or his designee.

K. Landscape Maintenance (All landscaped areas)

- i. Turf
  - 1. Mowing - The contractor shall mow all turf grass with properly sharpened and maintained equipment in a manner that ensures a smooth surface without ridges, depressions or scalping. Mowing patterns shall be alternated on a weekly basis.

2. Frequency - Turf grass shall be mowed 42 times per year as City schedules.
3. Height - Mowing heights will be determined by the Park Supervisor. Turf grass mowing heights may be adjusted by the City during turf grass renovations, special events, or if deemed necessary to promote the health and vigor of the grass.
4. Machine Type - Warm/cool season turf blends may be mowed with rotary or reel type mowers. All warm season turf grasses shall be cut with reel type mowers, unless otherwise approved by City. All cool season turf grasses shall be cut with rotary type mowers. The City encourages the use of mulching mowers whenever possible. Flail mowers may be used only by specific approval of the City.
5. Clippings - All clippings shall be efficiently mulched to leave no visible trace or picked up and removed to a designated dumping site. At no time shall unsightly clippings be left following mowing operation.
6. Edging - All edges of turf shall be mechanically edged. Turf grass edging and trimming shall be performed weekly at the time of mowing. All clippings shall be removed before vacating the site. All edging shall be done with a power edger containing a steel blade. In certain situations where a string trimmer may be more effective, the City may allow its use.
7. Weeds - All turf grass areas shall be kept free of weeds at all times. Weed removal shall consist of complete eradication or removal of all weeds including top growth and roots.
8. Pre-emergent Herbicide - Pre-emergent herbicides labeled for use on turf shall be applied one time per year.
9. Fertilizer - Fertilizer application will be in April and October with a 16-6-8 Type fertilizer. The Contractor shall notify the City in writing five (5) working days prior to any fertilizer application. This notification shall include the following: Location and exact date the fertilizer application will be performed; type of fertilizer and method of application to be used. The Contractor shall immediately notify the City so irrigation can be scheduled. All fertilizer applications shall be performed with properly calibrated equipment to provide a uniform application. All fertilizer shall be removed from hardscape and other non-target areas. Any damage or streaking of turf shall be repaired at no cost to City.
10. Irrigation Management
  - a. Contractor shall provide a monthly report for each site that records all irrigation repairs, controller programming, and status of overall system. The report shall be in a form and content acceptable to the City and shall be submitted with

the monthly invoice. All turf areas shall be irrigated as required to maintain adequate growth and appearance.

- i. Inspection - Contractor shall conduct weekly irrigation system tests.
- ii. Repairs - Contractor shall make all repairs within 24-hours of self-discovery or notification. Replacement of irrigation components shall be with originally installed materials of the same size and quantity. Substitutions must be approved by the City. All mainline repairs must be inspected and approved by the City.

ii. Shrub Maintenance

1. Shape - All shrubs to be trimmed symmetrically in a natural form and proportion, but not to interfere with vehicular and pedestrian clearance, visibility and access, unless otherwise directed by the City's representative.
2. Fertilizer - Fertilize all ground cover and shrub beds in March with a 15-15-15 Type fertilizer.
3. Pre-emergent - To be completed two (2) times per year by the end of the first week of each of the following months of March and October.
4. Pruning - Prune shrubs to encourage healthy growth habits, natural form and proportion, symmetrical appearance and proper vertical and horizontal clearance.
5. Shearing- Only those plants specifically designated by the City's representative shall be sheared. These plants may also require additional thinning to maintain a healthy look and condition.

iii. Ground Cover Maintenance

1. Trimming – All ground cover is to be trimmed not to interfere with irrigation operation or to encroach on to private property or right-of-way. All dead, diseased and unsightly branches, vines or other growth shall be removed as they develop. All ground cover areas shall be pruned to maintain neat but natural (not sheared) edges. All ground cover is to be kept a minimum of six (6) inches from, but not limited to, all tree, shrubs, walls and fences. All hillside ground cover shall be topped a minimum of six (6) times a year to maintain a height of no more than twelve (12) inches unless otherwise directed by City representative.
2. Fertilizer - Fertilize all ground cover and shrub beds in March with a 15-15-15 Type fertilizer.
3. Pre-emergent - To be completed two (2) times per year by the end of the first week of each of the following months of March and

October; at the maximum allowable rate per the manufacturers labeled recommendation.

L. Clean-Up

- i. At time will it be allowed to blow grass cuttings/debris into public streets or gutters without being swept or vacuumed clean.
- ii. Contractor shall remove all debris resulting from the maintenance operations and dispose of it off-site at the time of occurrence.
- iii. All debris resulting from any of the Contractor's operations shall be removed and disposed of legally at the Contractor's expense. No debris will be allowed to remain at the end of the work day.
- iv. All walkways will be kept clean/clear of debris and plant growth. Care shall be taken not to create unnecessary hazards to foot or wheelchair traffic during maintenance operations.
- v. All shrub areas not interplanted with ground cover will be raked clean of all leaves, dead branches, and debris a minimum of once a month.
- vi. The Contractor shall provide a general clean-up operation on a weekly basis for the purpose of picking up papers, trash or debris which may accumulate in the landscape areas, caused by winds or normal conditions.
- vii. Trashcans provided by City shall be emptied weekly (District #3 only). Contractor shall provide and install plastic liners for all trashcans at contractor's expense.

M. General Landscape Maintenance

- i. Watering – A regular, deep watering program shall be accomplished to give the best results. The established turf should not be kept moist but should dry out somewhat between watering. Allow turf to dry out before mowing. Provide watering schedule to City as required by this specification.
- ii. Pest Control - Apply all pesticides necessary to control pests. Pests shall include, but are not limited to insects, diseases, vertebrates, snails and slugs.
- iii. Fertilization - All landscaped areas shall be fertilized as specified. Contractor shall coordinate fertilizer applications with City for verification. All products must be applied per manufacturer's label and be suitable for the plants being fertilized.
- iv. All turf areas shall be fertilized as specified. Contractor shall coordinate fertilizer scheduling with City. Application must be verified by City Landscape Inspector.
- v. Refurbishment of Turfgrass - Turf areas that thin out due to shading effect of trees, structures, foot traffic and irrigation problems, etc., will be reseeded with an approved grass seed to restore thinning areas, at no additional cost to the City throughout the year.
- vi. Weed Control - Contractor shall maintain a turf free of weed infestations over ten.
- vii. Ten (10) percent of total turf area at all times by either chemical or mechanical means. Pre-emergent herbicide applications shall be required to

control crabgrass in all turf areas. The Contractor shall be especially careful if applying chemicals to control weeds because of possible damage to the lawn. Before such applications are made, the turf should be well established and in a vigorous condition. All chemicals applied shall be recorded and coordinated with the City.

- viii. String Trimmers - Care shall be exercised with regard to the use of string trimmers to prevent damage to building surfaces, walls, header board, light fixtures, signage, etc. No string trimmers shall be used around trees. A six (6) inch bare soil buffer zone shall be maintained around the circumference at the base of all trees, unless otherwise directed by City.

**EXHIBIT B  
PAYMENT SCHEDULE**

**CITY OF BREA LANDSCAPE MAINTENANCE SERVICES**

Item No.	Location	Total
1.	Wildcatters Park	\$ <u>35,365.44</u>
2.	Maintenance District # 1	\$ <u>20,055.72</u>
3.	Maintenance District # 3	\$ <u>34,038.60</u>
4.	Maintenance District # 6	\$ <u>85,428.24</u>
5.	Maintenance District # 7	\$ <u>13,625.64</u>
6.	Medians, Greenbelts, Parkways & Entry Markers	\$ <u>177,541.60</u>
7.	Parks Mowing and Edging	\$ <u>144,268.30</u>
<b>Annual</b>		<b>\$ <u>510,323.50</u></b>
<b>Total:</b>		

**OPTIONS FOR EXTRA SERVICES**

Item No.	Description	Total
1.	Labor Cost per Hour	\$ <u>55.00</u>

**Landscape Maintenance – Wildcatters Park**

Item No.	Description	Qty in Square Feet	Unit Price	Unit	Total
1.	Weekly Landscape Maintenance	165,060	Monthly	12 mo	\$ <u>35,365.44</u>
				Annual Total:	\$ <u>35,365.44</u>

**Staffing Requirements – Wildcatters Park, Bi-Weekly Services**

Item No.	Description Bi-Weekly Services	Qty
1.	Staff per Day	3
2.	Staff Hours per Day	8
Total Staff Hours:		24

**Landscape Maintenance – Maintenance District 1 (MD #1)**

Item No.	Description	Qty in Square Feet	Unit Price	Unit	Total
1.	Mowing	2,210	Per Mow	42 mows	\$ 264.98
2.	Weekly Landscape Maintenance	165,060	Monthly	12 mo	\$ 19,790.74
				<b>Annual Total:</b>	<b>\$ 20,055.72.</b>

**Staffing Requirements – Maintenance District 1 (MD #1)**

Item No.	Description	Qty
1.	Number of Days per Week	1
2.	Staff per Day	3
3.	Staff Hours per Day	8
<b>Total Staff Hours:</b>		<b>24</b>

**Landscape Maintenance – Maintenance District 3 (MD #3)**

Item No.	Description	Qty in Square Feet	Unit Price	Unit	Total
1.	Mowing	94,062	Per Mow	42 mows	\$ <u>18,623.92</u>
2.	Weekly Landscape Maintenance	56,364	Monthly	12 mo	\$ <u>15,414.68</u>
				Annual Total:	\$ <u>34,038.60</u>

**Staffing Requirements – Maintenance District 3 (MD #3)**

Item No.	Description	Qty
1.	Number of Days per Week	1
2.	Staff per Day	3
3.	Staff Hours per Day	8
Total Staff Hours:		24

**Landscape Maintenance – Maintenance District 6 (MD #6)**

Item No.	Description	Qty in Square Feet	Unit Price	Unit	Total
1.	Mowing	12,400	Per Mow	42 mows	\$ <u>1,519.90</u>
2.	Weekly Landscape Maintenance	684,560	Monthly	12 mo	\$ <u>83,908.34</u>
				<b>Annual Total:</b>	\$ <u>85,428.24</u>

**Staffing Requirements – Maintenance District 6 (MD #6)**

Item No.	Description	Qty
1.	Number of Days per Week	2
2.	Staff per Day	3
3.	Staff Hours per Day	8
<b>Total Staff Hours:</b>		<b>48</b>

**Landscape Maintenance – Maintenance District 7 (MD #7)**

Item No.	Description	Qty in Square Feet	Unit Price	Unit	Total
1.	Mowing	14,796	Per Mow	42 mows	<u>\$ 3,513.93</u>
2.	Weekly Landscape Maintenance	42,577	Monthly	12 mo	<u>\$ 10,111.71</u>
				Annual Total:	<u>\$ 13,625.64</u>

**Staffing Requirements – Maintenance District 7 (MD #7)**

Item No.	Description	Qty
1.	Number of Days per Week	1
2.	Staff per Day	2
3.	Staff Hours per Day	6
Total Staff Hours:		12

**Landscape Maintenance – Medians, Greenbelts, Entry Markers, and Parkways**

**MEDIANS**

Item No.	Location	Turf Square Footage	Planter Sq. Footage	Unit Price	Qty (Per Year)	Total
1.	N. Berry St. Central to Northwood	0	6,218	\$ <u>50.56</u>	42	\$ <u>2,123.52</u>
2.	Northwood Berry St to Dorothy	Debris Pickup Only		\$ <u>16.35</u>	42	\$ <u>686.70</u>
3.	Northwood Juniper; Dorothy to Puente	0	6,060	\$ <u>49.55</u>	42	\$ <u>2,081.10</u>
4.	Lambert Rd.; Pointe to Starflower	0	23,174	\$ <u>158.40</u>	42	\$ <u>6,652.80</u>
5.	Old Associated; Eucalyptus to Imperial	0	17,840	\$ <u>124.47</u>	42	\$ <u>5,227.74</u>
6.	State College Blvd.; Trail to Imperial	0	14,550	\$ <u>103.55</u>	42	\$ <u>4,349.10</u>
7.	Brea Blvd.; Tracks to Juniper	0	30,925	\$ <u>207.69</u>	42	\$ <u>8,722.98</u>
8.	Birch St; Poplar to just Pass Associated	0	32,440	\$ <u>217.33</u>	42	\$ <u>9,127.86</u>
9.	Imperial; East Entry Marker to Berry	0	11,000	\$ <u>80.97</u>	42	\$ <u>3,400.74</u>
10.	Wardman/Southridge	0	1,620	\$ <u>21.31</u>	42	\$ <u>895.02</u>
11.	Havenhurst/Whittier; Baywood to Whittier	0	1,800	\$ <u>22.46</u>	42	\$ <u>943.32</u>
12.	Sports Park; Sunflower to Valencia	0	10,543	\$ <u>78.06</u>	42	\$ <u>3,278.52</u>
13.	Central; Site to Tamarack	0	4,310	\$ <u>38.42</u>	42	\$ <u>1,613.64</u>

Item No.	Location	Turf Square Footage	Planter Sq. Footage	Unit Price	Qty (Per Year)	Total
14.	Kraemer; Birch to Imperial	0	4,275	\$ <u>38.20</u>	42	\$ <u>1,604.40</u>
15.	Valencia; Imperial to Sandpiper	0	18,085	\$ <u>126.03</u>	42	\$ <u>5,293.26</u>
16.	Puente (artificial turf-blow) (hand water trees) Central to Whittier	575	0	\$ <u>14.67</u>	42	\$ <u>616.14</u>

**GREENBELTS**

Item No.	Location	Turf Square Footage	Planter Sq. Footage	Unit Price	Qty (Per Year)	Total
17.	Pyramid Park; Northwood & La Canada	0	4,131	\$ <u>37.28</u>	42	\$ <u>1,565.76</u>
18.	Brea Blvd., (NE Corner); Brea Blvd & Central	7,893	2,720	\$ <u>91.72</u>	42	\$ <u>3,852.24</u>
19.	Lambert & State College	0	63,752	\$ <u>400.12</u>	42	\$ <u>16,805.04</u>
20.	Laurel Connector Park; Laurel at Birch	2,420	880	\$ <u>45.21</u>	42	\$ <u>1,898.82</u>
21.	Parking Structure1; Walnut & Ash	0	5,329	\$ <u>44.90</u>	42	\$ <u>1,885.80</u>
22.	PK Burgers; PK East to City Limit	0	84,764	\$ <u>550.11</u>	42	\$ <u>23,104.62</u>
23.	Kraemer Greenbelt; Channel	0	16,377	\$ <u>115.17</u>	42	\$ <u>4,837.14</u>

**ENTRY MARKERS/OTHER**

Item No.	Location	Turf Square Footage	Planter Sq. Footage	Unit Price	Qty (Per Year)	Total
24.	Trail @ Birch Hills; Kraemer to Cage	0	1,700	\$ <u>21.82</u>	42	\$ <u>916.44</u>
25.	Orbitor St. Slope; Kraemer to Saturn	0	60,120	\$ <u>393.37</u>	42	\$ <u>16,521.54</u>
26.	Central Entry Marker; Central to Vallejo	0	150	\$ <u>11.96</u>	42	\$ <u>502.32</u>
27.	Lambert/Pioneer Marker	0	1,053	\$ <u>17.71</u>	42	\$ <u>743.82</u>
28.	State College Entry Marker; State College & Elm	0	1,600	\$ <u>21.18</u>	42	\$ <u>889.56</u>
29.	Imperial Frontage; Imperial & Jasmine Dr.	0	6,700	\$ <u>53.62</u>	42	\$ <u>2,252.04</u>
30.	Imperial @ Taps; Imperial & Orange St.	0	840	\$ <u>16.35</u>	42	\$ <u>686.70</u>
31.	Imperial Bus Stop; Imperial & Laurel	0	1,936	\$ <u>23.32</u>	42	\$ <u>979.44</u>
32.	Imperial Sound Wall; Associated to East End of Wall	0	16,950	\$ <u>118.81</u>	42	\$ <u>4,990.02</u>
33.	Brea Blvd.; South of Dentist Office	0	140	\$ <u>11.86</u>	42	\$ <u>498.12</u>
34.	Whittier Circle; Between Havenhurst/Puente	0	314	\$ <u>13.01</u>	42	\$ <u>546.42</u>
35.	Lambert Wall; Cliffwood to State College	0	12,566	\$ <u>90.93</u>	42	\$ <u>3,819.06</u>

**PARKWAYS**

Item No.	Location	Turf Square Footage	Planter Sq. Footage	Unit Price	Qty (Per Year)	Total
36.	Lambert N. Side Pkwy/Planter; Wildcat to Wandering	11,850	33,930	\$ <u>315.38</u>	42	\$ <u>13,245.96</u>
37.	Lambert S side; Pkwy/Planter; Associated to HOA Border East	13,985	5,300	\$ <u>146.87</u>	42	\$ <u>6,168.54</u>
38.	New Associated Rd; Lambert to Sleepy Hallow	0	8,935	\$ <u>67.84</u>	42	\$ <u>2,849.28</u>
39.	Aurora St.; Eucalyptus to Hillhaven	0	9,445	\$ <u>71.08</u>	42	\$ <u>2,985.36</u>
40.	Catalpa; Imperial to Catalpa	700	810	\$ <u>33.82</u>	42	\$ <u>1,420.44</u>
41.	Randolph Circle; South of Imperial Highway	0	7,635	\$ <u>59.57</u>	42	\$ <u>2,501.94</u>
42.	Orange Street; Imperial to Ash	2,500	0	\$ <u>26.91</u>	42	\$ <u>1,130.22</u>
43.	N. Berry St.; Central to Stonebridger	10,728	0	\$ <u>79.24</u>	42	\$ <u>3,328.08</u>
					Annual Total:	\$ <u>177,541.60</u>

**Staffing Requirements – Landscape Maintenance – Medians, Greenbelts, Entry Markers, and Parkways**

Item No.	Description	Qty
1.	Number of Days per Week	4
2.	Staff per Day	3
3.	Staff Hours per Day	8
Total Staff Hours:		96

**PARKS LOCATIONS TO MOW AND EDGE**

Item No.	Location	Turf Square Footage	Unit Price Per Mow	Qty (Per Year)	Total
43.	Country Hills Park; 182 N. Associated Rd.	246,427	\$ <u>549.58</u>	42	\$ <u>23,082.36</u>
44.	City Hall Park; 201 S. Brea Blvd	114,244	\$ <u>273.98</u>	42	\$ <u>11,507.16</u>
45.	Arovista Park (Phase 1, Fields/Slope/Grove); Imperial Hwy @ Berry St.	288,298	\$ <u>636.88</u>	42	\$ <u>26,748.96</u>
46.	Arovista Park (Phase 2, Playground); 501 Sievers Ave.	12,000	\$ <u>60.80</u>	42	\$ <u>2,553.60</u>
47.	Founders Park; 777 Skyler Way	66,400	\$ <u>174.22</u>	42	\$ <u>7,317.24</u>
48.	Greenbrair Park; Greenbriar & Associates	166,700	\$ <u>383.35</u>	42	\$ <u>16,100.70</u>
50.	Lagos de Moreno Park; 322 E Birch	23,300	\$ <u>84.36</u>	42	\$ <u>3,543.12</u>
51.	Olinda Ranch Park; 4001 Carbon Canyon Rd.	220,970	\$ <u>496.50</u>	42	\$ <u>20,853.00</u>
52.	Olinda Oil Museum & Trail; 4025 Santa Fe Rd.	10,750	\$ <u>58.19</u>	42	\$ <u>2,443.98</u>
53.	Tamarack Park; 500 N. Tamarack	178,470	\$ <u>407.89</u>	42	\$ <u>17,131.38</u>
54.	Wildcatters Park; 3301 E Stanta Fe	95,503	\$ <u>234.90</u>	42	\$ <u>9,865.80</u>

Item No.	Location	Turf Square Footage	Unit Price Per Mow	Qty (Per Year)	Total
55.	Woodcrest Park; Woodcrest @ Cedarcrest	18,480	\$74.31	42	\$3,121.02
				<b>Annual Total:</b>	<u>\$144,268.30</u>

**Staffing Requirements – Parks Locations to Mow and Edge**

Item No.	Description	Qty
1.	Number of Days per Week	4
2.	Staff per Day	3
3.	Staff Hours per Day	8
<b>Total Staff Hours:</b>		<b>96</b>

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**  
**[SUBJECT TO RISK MANAGER APPROVAL]**

1. Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

2. Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence and \$4,000,000 aggregate per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage; and (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

(C) Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty

to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement.

(D) Additional Insured. The City of Brea, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Contractor's and its subcontractors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3. Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Brea, its officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth herein, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section.

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth herein, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

4. Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, officers, employees, agents, and volunteers. All policies except professional liability if required, shall waive all rights of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

5. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, officers, employees, agents, and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

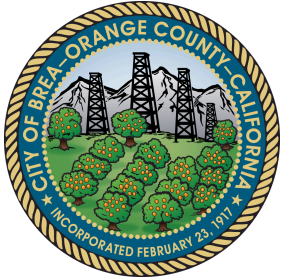
6. Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

7. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

8. Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and

approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

9. Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services.



# CITY *of* BREA

Finance Committee Communication

June 9, 2026

Item No. 3E.

## ActiveNet Software Agreement

TO	PREPARED BY
Finance Committee Members	Anthony Godoy, Senior Management Analyst
DEPARTMENT HEAD APPROVAL	CITY MANAGER APPROVAL
Sean L. Matlock, Interim Community Services Director	Kristin Griffith, City Manager

### RECOMMENDATION

Staff recommends that the Finance Committee recommend the City Council approve the following:

1. Approve a three (3) year Agreement with Active Network, effective July 1, 2026, with optional three (3) year renewals at the end of each term, to provide ongoing software and support for the Community Services recreation program, ActiveNet; and
2. Authorize the City Manager or designee to execute the Agreement.

### BACKGROUND/DISCUSSION

ActiveNet is a comprehensive web-based management platform that supports the Community Services Department's daily operations by handling the full cycle of program administration, which includes managing enrollments for various community classes, programs, events, facility rentals, fitness memberships, point-of-sale transactions, payment processing, and financial reporting. This software application has been a core component of the Community Services Department's operational success since its implementation in 2016, when it replaced the former recreation solution, Class Software.

Community Services staff have been focused on identifying ways to improve efficiency and reduce costs department-wide. In partnership with Active Network representatives, staff conducted an internal review of our existing software agreement to explore alternative pricing models in hopes of identifying opportunities for cost savings. Active Network is a leading provider of recreation software, and the Community Services Department is highly satisfied with the performance of the ActiveNet solution. This product is widely used by neighboring government agencies and is already deeply integrated into the operations of the Community Services Department. Renegotiating the terms of the agreement with the current software provider offers a more cost-effective and operationally efficient approach than going through a formal bid process and potentially transitioning to new software, which would require significant time and resources.

The current pricing model for this application is based on a percentage of all transactions processed through the system, as well as specific rates for payments received. These charges scale with sales volume and are subject to annual rate increases, which result in total costs rising each year as activity grows and program fees are adjusted. The fees associated with our current software agreement are listed below:

<b>Fee Type</b>	<b>Current Fees</b>
Per Transaction Fee	1.9045%
Card Processing Fee	3.4917%
Online Payment Fee	5.3963%
Electronic Check Processing	0.5000%

Using a one-year sample of transaction history, the total payments processed through the software annually amount to just over \$3.1 million. The fee for processing these payments under the current pricing model is approximately \$161,210 (5.2%).

The proposed fees under the new agreement would transition to a hybrid pricing model that incorporates a flat annual subscription amount instead of a per-transaction fee and reduced rates for payment processing. The fees associated with the proposed new software agreement are listed below:

<b>Proposed Fee Type</b>	<b>Proposed Fees</b>
Annual Subscription Fee	\$ 65,000.000
Card Processing Fee	3.0000%
Online Payment Fee	3.0000%
Electronic Check Processing	0.5000%

Using the same transaction history but applying the proposed new pricing structure results in an annual cost of approximately \$145,238, which would be an estimated annual savings of \$15,972 (4.7%) compared to our current pricing. The potential savings would be even greater considering the annual software fee increases that typically occur, and the Community Services program fee increases that go into effect on July 1 of the new fiscal year.

Community Services staff recommend entering a new three (3) year agreement with Active Network, with optional three (3) year renewals at the end of each term, which allows the department to maintain access to the existing software application, ActiveNet, while taking advantage of a more cost-beneficial pricing structure. This ensures that there is no operational impact on staff and no service impact on customers.

### **FISCAL IMPACT/SUMMARY**

No budget adjustment is being requested at this time. The proposed savings will reduce actual costs and bring them into better alignment with budgeted expenditures in Fiscal Year 2026-27. The Community Services Department will continue to evaluate these costs on an ongoing basis and will work to absorb any variance between budgeted and actual expenditures within the already adopted operating budget for Fiscal Year 2026-27.

### **Attachments**

[Active Software Agreement 2026.07.01.pdf](#)

**PRODUCT AND SERVICES AGREEMENT**

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	<b>City of Brea</b>	ADDRESS:	1 Civic Center Circle Brea, CA 92821
CONTACT NAME:	Nicole Andrews	TELEPHONE:	
EMAIL:	<a href="mailto:nicolea@ci.brea.ca.us">nicolea@ci.brea.ca.us</a>		

OVERVIEW OF AGREEMENT
This Agreement consists of this cover page, the Schedule, the General Terms, and the following Product Attachments:
Recreation and Membership Management Product Attachment
Third Party Hardware Product Attachment

**NOTE:** If Client is tax exempt, certificate must be provided along with signed contract.

In consideration of the mutual promises and covenants contained in this Agreement, Client and Active hereby agree to be bound by this Agreement. By signing below, Client acknowledges and confirms that it has read this Agreement.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Active Network, LLC  
 3400 N. Central Expressway, Suite 300, Richardson, TX 75080  
 Telephone: (469) 291-0300

## Products and Services General Terms

Client's relationship with Active and Client's use of Active's products and services (including Client's licensing of Active's SaaS, Client's use of Services, and/or Client's purchase or leasing of Hardware) are subject to the terms and conditions set forth herein and are between Client and Active. Capitalized terms are defined in [Section 7](#) below, unless otherwise defined within the body of this Agreement, the applicable Product Attachment, or Schedule. In order to use the Products, Client must first agree to this Agreement. Client represents and warrants that Client has the necessary and full right, power, authority, and capability to accept this Agreement, to bind Client's organization, and to perform Client's obligations hereunder. Client can accept this Agreement by: (a) clicking to accept or agree to this Agreement, where this option is made available to Client by Active in the user interface for any Product; (b) signing a document where a link to this Agreement appears in an order form, Schedule, or other document provided to Client by Active; (c) by signing this Agreement, if there is a designated area to sign; or (d) by actually using the Products. In the case of (d), Client understands and agrees that Active will treat Client's use of the Products as acceptance of this Agreement from that point onwards. Client may not use the Products and may not accept this Agreement if (i) Client is not of legal age to form a binding contract with Active, or (ii) Client is a person barred from receiving the Products under the laws of the United States or other countries, including the country in which Client is a resident or from which Client uses the Products. Client may not use the Products if Client does not accept this Agreement. By accepting this Agreement, Client agrees as follows:

### 1. AGREEMENT STRUCTURE AND SCOPE.

**1.1. General Terms and Incorporation of Product Terms.** This Agreement establishes the general terms and conditions to which the parties have agreed to in order to facilitate the licensing of the Products. Additional Product-specific terms and conditions are set forth in one or more documents referenced in the applicable Schedule, each of which is incorporated herein (each, a "**Product Attachment**"). All references to the "**General Terms**" mean this document, exclusive of Product Attachments and Schedules.

**1.2. Incorporation of Schedules.** The parties may enter into new Schedules from time to time. Each Schedule incorporates the terms of these General Terms and the applicable Product Attachment.

**1.3. Incorporation of EULAs.** Client's use of any Third-Party Products hereunder may be subject to, and Client will comply with, this Agreement and any applicable Third-Party EULA(s).

**1.4. Incorporation of Exhibits.** Client's use of any payment processing services hereunder will be subject to, and Client will comply with, this Agreement and an applicable Exhibit(s).

**1.5. Affiliates.** Client's Affiliates may order Products from Active (or one of Active's Affiliates) by entering into a Schedule. In the event that a Client Affiliate enters into a Schedule with Active (or an Affiliate of Active), reference in this Agreement to "**Client**" and "**Active**" will mean the respective entity that accepts (as described in the Preamble) the applicable Schedule. Each such Schedule will be deemed to be a separate agreement.

### 2. FINANCIAL TERMS.

**2.1. Payment Terms.** Unless otherwise specified in the Schedule, all amounts owed by Client that are not directly collected by Active are due from Client within thirty (30) days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. If the Agreement Effective Date is on or before the fifteenth (15th) day of the month, Active will invoice Clients on the fifteenth (15th), or on the following business day when such date falls on a weekend day. If the Agreement Effective Date is after the fifteenth (15th) day of the month, Active will invoice Clients on the first (1st) day of the following month, or on the following business day when such date falls on a weekend day. Notwithstanding the foregoing, Active shall invoice Client for fifty percent (50%) of total Service costs at Service initiation. The remaining fifty percent (50%) of the total Service costs will be invoiced at Service completion. Past due fees will accrue interest at the lesser of the annual rate of ten percent (10%) per annum or the maximum amount permitted by applicable law. In the event of any non-payment or delay in paying a fee, Client agrees to reimburse Active for any fees and expenses incurred in its collection efforts.

**2.2. Fees and Currency.** Fees and currency, are specified in the applicable Schedule. Payment of fees is under no circumstances subject to, or conditioned upon, the delivery of future Products or functionality. Active shall have the right, once per calendar year, to increase the subscription fees by two percent (2%) and/or the transaction fees by four percent (4%) (the "**Annual Fee Increase**"), as applicable.

**2.3. Additional Payment Terms.** If Active reasonably believes that a transaction by Client, licensee, or End User, as applicable, may be fraudulent or otherwise contrary to law, Active may issue an invoice or offset an equivalent amount from Client's account or any payment Active owes to Client and return the value to the End User (as set forth below) and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

**2.4. Credit Card Surcharging.** All fees described in the applicable Schedule are in consideration of the Products that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any End User.

**2.5. Taxes.** The prices stated in this Agreement do not include Taxes. Client is responsible for, and agrees to pay, any and all required Taxes which may be assessed on Client's invoices. If Client is tax-exempt, Client will send Active a copy of its valid tax-exempt certificate (or, as applicable, its reseller's certificate) prior to execution of any Schedule. Client is solely responsible for determining which, if any, Taxes apply to End Users or licensees in connection with Client's use of the Products and for collecting, remitting, and reporting the correct amounts of all such Taxes to the applicable governmental authorities, even if Active provides Client with tools that assist Client in doing so. In the event that a governmental authority requires Active to pay any Taxes attributable to Client's use of the Products, to the extent not prohibited by law, Client agrees to defend, indemnify, and hold Active harmless from all such Taxes and all costs and expenses related thereto. Active reserves the right to modify this section and apply all required Taxes to this Agreement upon providing a thirty (30) day written notice to Client in order to comply with applicable laws. When Active is acting as the payment facilitator and Client elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the Term of the Agreement, Active may, upon at least five (5) business days' prior written notice, (a) require Client to send to Active Client's books and records related to its sales tax payments, and/or (b) visit Client's premises during Client's normal business hours to review Client's sales tax payments.

### 3. LIMITED RIGHTS AND OWNERSHIP; INDEMNIFICATION; CONFIDENTIALITY.

**3.1. Reservation of Rights.** All rights not expressly granted in this Agreement are reserved by Active and its licensors. Client acknowledges that: (a) all Protected Materials are licensed and not sold; (b) Client acquires only the right to use the Products in accordance with this Agreement, and Active and/or its licensors will retain sole and exclusive ownership of and all right, title, and interest in the Products, including the following: (i) all Intellectual Property embodied or associated with the Products, (ii) all deliverables and work product associated with the Products, and (iii) all copies and derivative works thereof; and (c) the Products, including the source and object codes, logic, and structure, contain and constitute valuable trade secrets of Active and its licensors.

**3.2. Restrictions.** Unless otherwise set forth in a EULA, Product Attachment, or Schedule, Client will not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party: (a) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Protected Materials; (b) decipher, decompile, disassemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Products in whole or in part, for competitive purposes or otherwise; (c) allow access to, provide, divulge, or make available the Protected Materials to any user other than those who are licensed pursuant to this Agreement to have such access; (d) write or develop any derivative works based upon the Products; (e) modify, adapt, translate, or otherwise make any changes to the Products or any part thereof; (f) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a service bureau basis; (g) disclose or publish, without Active's prior written consent, (i) performance or capacity statistics, or the results of any benchmark test performed on the Products, or (ii) valuable trade secrets of Active or its licensors; (h) without Active's prior written consent, perform or disclose or cause to be performed or disclosed any information related to any security penetration or similar tests; (i) disclose or otherwise use or copy the Protected Materials except as expressly permitted herein; (j) remove from any Products identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices' functionality or features; (k) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or Intellectual Property rights, title, or interests of Active in and to any Products; (l) use the Products for other than authorized and legal purposes, consistent with this Agreement and all applicable laws, regulations, and the rights of others; (m) take any steps to avoid or defeat the purpose of security measures associated with the Products, such as sharing of login and password information, or attempt to circumvent any use restrictions; or (n) except as expressly permitted by this Agreement, use the Protected Materials for hosting purposes. Further, Client will: (o) not use the Products to transmit, publish, or distribute any material or information: (i) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the Intellectual Property rights of any third party; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the Products; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable person would consider private in nature; (p) not attempt to gain access to any systems or networks that connect to the Products except for the express purpose of using the Products for their intended use; (q) not engage in any activity that interferes with or disrupts the Products; and (r) not use the Products in violation of the CAN-SPAM Act, Canadian Anti-Spam Legislation, or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.

**3.3. Enforcement.** Client will (a) ensure that all Client users of Products comply with the terms and conditions of this Agreement; (b) promptly notify Active of any actual or suspected violation thereof; and (c) cooperate with Active with respect to any investigation and enforcement of this Agreement.

**3.4. Active Indemnification.** Active agrees to defend, settle, and pay damages (including reasonable attorneys' fees) ("**Client Losses**") relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("**Claim(s) Against Client**") against Client to the extent that such claim is based upon Active's proprietary Products (excluding Professional Services and Third Party Products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement; provided Client shall (i) promptly give Active written notice of the Claim Against Client; provided, however, that Client's failure to give or delay in giving such notice to Active shall not relieve Active of any liability it may have to Client except to the extent that Active demonstrates that the defense of such Claim Against Client is prejudiced thereby, (ii) gives Active sole control of the defense and settlement of the Claim Against Client; provided that Active may not settle any Claim Against Client without Client's prior written consent unless such settlement includes a complete and final release of liability and Client Losses against Client and does not impose any obligations on Client, and (iii) gives Active all reasonable assistance, at Active's expense.

**3.5. Infringement.** Active shall have no liability or obligation under Section 3.4 above or otherwise to the extent a Claim Against Client is based upon (i) use of the Products in combination with software or hardware not provided by or specified by Active in the Documentation, if infringement would have been avoided in the absence of such combination; (ii) modifications of the Products made by any individual or entity other than Active or at Active's written direction; or (iii) use of the Products by Client or any User in a manner not expressly permitted by the Agreement. If Active has reason to believe that the Products may infringe or misappropriate any third party Intellectual Property right or otherwise give rise to an infringement or misappropriation Claim Against Client, Active may in its sole discretion and at no cost to Client (a) modify the Products so that they no longer infringe or misappropriate or (b) obtain a license for Client's continued use of that Products in accordance with this Agreement. If Active determines (a) and (b) above are not reasonably practicable, Active may (x) terminate Client's subscriptions for the Products, if applicable, or (y) terminate this Agreement, if Client is not using the Products on a subscription basis, upon thirty (30) days' written notice and Active will refund to Client any prepaid fees covering the remainder of the Term (as defined in the applicable Product Attachment) of the subscription(s). Active's defense and indemnification obligations in Section 3.4 above do not apply to the extent a Claim Against Client arises from Client's breach of this Agreement.

**3.6. Client Indemnification.** To the extent not prohibited by law, Client will defend Active, and hold Active and its Affiliates and their respective employees, directors, successors and permitted assigns harmless, against any claim, action, regulatory action, demands, lawsuit or proceedings (whether threatened, asserted, or filed) made or brought against Active by a third party to the extent that such claim is based upon (a) any actual, alleged or anticipated breach by Client of this Agreement; (b) injury or death to a person or damage to property resulting from the participation in an Event (as defined in the applicable Product Attachment) operated by Client in connection with the Products; (c) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the Intellectual Property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (d) use or unauthorized disclosure of Participant Information by Client or other third parties to whom access is given to Participant Information as provided hereunder; (e) Client's use of the Products in violation of Section 3.2 (Restrictions) of these General Terms; and/or (f) any claims for refunds or chargeback requests from End Users ("**Claim(s) Against Active**"). To the extent not prohibited by law, Client will indemnify Active from any damages, liabilities, losses, expenses, fines, penalties and/or judgments, attorney fees and costs finally awarded against Active as a result of, or for any amounts charged to Active, recoverable from Active and/or paid by Active under a Client and court-approved settlement of, a Claim Against Active ("**Active Losses**"); provided Active (i) promptly gives Client written notice of the Claim Against Active; provided, however, that Client shall not be excused from its indemnification obligations unless a delay in providing such notice impairs Client's ability to defend the Claim Against

Active; (ii) gives Client sole control of the defense and settlement of the Claim Against Active (except that Client may not settle any Claim Against Active unless it unconditionally releases Active of all liability), and (iii) gives Client all reasonable assistance, at Client's expense. The above defense and indemnification obligations do not apply to the extent a Claim Against Active arises from Active's breach of this Agreement.

**3.7. Sole Remedy.** This "Mutual Indemnification" Section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for a third-party claim that constitutes either a Claim Against Client or a Claim Against Active as described in this Section.

**3.8. Definition of Confidential Information.** During the Term (as defined in the applicable Product Attachment) of this Agreement and for a period of three (3) years after the expiration of or the termination of this Agreement each party acknowledges and agrees that "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Client includes Client data; Confidential Information of Active includes the Products; and Confidential Information of each party, solely by way of illustration, and not in limitation, shall include the following information: financial data, plans, forecasts, Intellectual Property, methodologies, as well as business and marketing plans, technology and technical information, product plans and designs, Client information, strategic analyses and business processes, in each instance disclosed by such Disclosing Party or any of its Representatives regarding it and its Affiliates. However, Confidential Information does not include any information that the Receiving Party can demonstrate (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as evidenced by prior documentation or tangible embodiments of such information

**3.9. Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its respective Affiliates' employees, officers, directors, agents, representatives and contractors, including, legal counsel, tax advisors and/or accountants who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with or are otherwise subject to enforceable obligations to the Receiving Party that contain protections no less stringent than those herein ("**Representatives**").

**3.10. Required Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

#### 4. DISCLAIMERS AND LIMITATION OF LIABILITY.

**4.1.** EXCEPT AS OTHERWISE SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, CLIENT ACKNOWLEDGES AND AGREES THAT THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES, IF ANY, SET FORTH HEREIN AND IN THE PRODUCT ATTACHMENTS ARE LIMITED TO THEIR EXPRESS TERMS AND ARE IN LIEU OF, AND ACTIVE, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY (a) WARRANTY THAT THE PRODUCTS ARE ERROR-FREE OR "BUG"-FREE, ACCURATE, SECURE, OR RELIABLE; (b) WARRANTY THAT THE PRODUCTS WILL OPERATE WITHOUT INTERRUPTION; (c) WARRANTY THAT ALL ERRORS WILL BE CORRECTED OR THAT THE PRODUCTS WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (d) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (e) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (f) WARRANTY THAT THE PRODUCTS WILL MEET CLIENT'S REQUIREMENTS. ACTIVE WILL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, STATUTE, TORT, OR OTHERWISE), INCLUDING DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT PRODUCTS, LOST DATA, LOSS OF USE OF INFORMATION OR PRODUCTS, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT ACTIVE HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOWEVER, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION ONLY APPLIES WHERE ALLOWED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO (I) THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SPECIFIC PRODUCT UNDER THE APPLICABLE SCHEDULE GIVING RISE TO SUCH CLAIMS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE LESS ANY AMOUNTS PAID BY ACTIVE WITH RESPECTIVE TO LIABILITIES UNDER THIS AGREEMENT, OR (II) IF NO SUCH PAYMENTS HAVE BEEN MADE OR SUCH AMOUNTS CANNOT BE CALCULATED, 10,000 U.S. DOLLARS (OR THE EQUIVALENT THERETO AS DETERMINED BY THE APPLICABLE COUNTRY'S CURRENCY), AS APPLICABLE. NOTWITHSTANDING THE ABOVE, IF CLIENT RESIDES OUTSIDE OF THE U.S., THIS DOES NOT AFFECT ACTIVE'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE, NOR FOR FRAUDULENT MISREPRESENTATION, MISREPRESENTATION AS TO A FUNDAMENTAL MATTER, OR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

**4.2.** TO THE EXTENT THIS AGREEMENT IS GOVERNED BY ENGLISH LAW, THE FOLLOWING APPLIES: ACTIVE IS LIABLE UNDER APPLICABLE STATUTORY PROVISIONS FOR INTENT AND GROSS NEGLIGENCE. THE SAME APPLIES TO ASSUMPTIONS OF GUARANTEES, STRICT LIABILITY, OR INJURY TO LIFE, LIMB, OR HEALTH. ACTIVE IS LIABLE FOR ANY NEGLIGENT BREACHES OF ESSENTIAL CONTRACTUAL OBLIGATIONS BY ACTIVE BUT THE AMOUNT SHALL BE LIMITED TO THE TYPICALLY OCCURRING FORESEEABLE DAMAGE. ANY ADDITIONAL LIABILITY OF ACTIVE IS EXCLUDED.

**4.3.** TO THE EXTENT THIS AGREEMENT IS GOVERNED BY AUSTRALIAN LAW, THE FOLLOWING APPLIES: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND EXCEPT FOR ANY CONDITION OR WARRANTY, THE EXCLUSION OF WHICH COULD BE VOID OR OTHERWISE CONTRAVENE THE TRADE PRACTICES ACT 1974 (CTH) OR ANY OTHER APPLICABLE LAW ("**NON EXCLUDABLE CONDITION**"), ALL SOFTWARE AND SERVICES OF ACTIVE ARE PROVIDED TO CLIENT ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY NON-EXCLUDABLE CONDITION OR OTHERWISE AS CONTAINED IN THIS AGREEMENT, ACTIVE EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES

WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SPECIFICATIONS WILL MEET CLIENT'S REQUIREMENTS. WHERE LEGISLATION IMPLIES INTO THIS AGREEMENT ANY NON-EXCLUDABLE CONDITION, ACTIVE'S LIABILITY FOR ANY BREACH OF SUCH NON-EXCLUDABLE CONDITION WILL BE LIMITED AT ACTIVE'S SOLE DISCRETION TO ONE OR MORE OF THE FOLLOWING: (1) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (II) THE REPAIR OF THE GOODS; (III) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (IV) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; (2) IN THE CASE OF SERVICES: (I) THE SUPPLYING OF THE SERVICES AGAIN; OR (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. (B) ACTIVE SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFIT, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, ANTICIPATED SAVINGS OR COMPUTER FAILURE WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ACTIVE OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH LOSS OUGHT REASONABLY TO HAVE BEEN IN THE CONTEMPLATION OF THE PARTIES AT THE AGREEMENT DATE. DESPITE ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE LESS ANY AMOUNTS PAID BY ACTIVE WITH RESPECTIVE TO LIABILITIES UNDER THIS AGREEMENT.

**4.4.** FOR THE PURPOSES OF THIS SECTION 4 AND ANY INDEMNIFICATION PROTECTING ACTIVE UNDER THIS AGREEMENT, REFERENCE TO ACTIVE WILL ALSO INCLUDE ITS SUPPLIERS AND LICENSORS.

## **5. TERM AND TERMINATION.**

**5.1. Term.** The Term (as defined in the applicable Product Attachment) for each Product offered under this Agreement will be as set forth in the applicable Product Attachment. This Agreement will continue until either party terminates all Schedules and Product Attachment as provided hereunder.

**5.2. Termination.** Either party may terminate this Agreement, including any or all Product Attachments and Schedules executed hereunder, immediately upon written notice: (a) in the event that the other party commits a non-remediable material breach of this Agreement and/or the applicable Product Attachment or Schedule, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within thirty (30) days of being notified in writing of such breach, except for breach of Section 2 of these General Terms which will have a ten (10) day cure period; or (b) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Where a party has the right to terminate this Agreement, such party may at its discretion either terminate the entire Agreement or the applicable Product Attachment or Schedule; provided however, that termination of a Product Attachment will automatically terminate all Schedules entered into pursuant to such Product Attachment. Product Attachments and Schedules that are not terminated will continue in full force and effect under the terms of this Agreement. Following termination of this Agreement or a Product Attachment (for whatever reason), if requested by Active, Client will certify that it has returned or destroyed all copies of the applicable Protected Materials and acknowledges that its rights to use the same are relinquished. Except for the refund of prepaid fees set forth in Section 3.5 (Infringement), as applicable, termination for any reason will not excuse Client's obligation to pay in full any and all amounts due, nor will termination by Active result in a refund of fees paid.

**5.3. Suspension.** Active will be entitled to suspend any or all Products or deactivate Client's account, including suspending its performance and obligation to remit payments hereunder, upon ten (10) days' written notice to Client in the event Active reasonably believes that Client is in breach of this Agreement, Client's use of the Products is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. Further, Active, in its sole discretion, may terminate Client's password, accounts (or any part thereof), and/or Client's right to use the Products, and remove and discard any and all of Client's content within the Products, at any time for any reason or no reason, including, without limitation, for lack of use, failure to timely pay any fees or other monies due Active, or if Active believes Client has violated or acted inconsistently with the letter or spirit of this Agreement. Client agrees that any termination of its use of the Products may be effected without prior notice, and acknowledges and agrees that Active may immediately deactivate or delete Client's account and all related content and files related to Client's account and/or bar any further access to such files or Products. Further, Client agrees that Active shall not be liable to Client or any third party for any termination of use of or access to the Products. All provisions of this Agreement that by their nature should survive termination of Client's right to use the Products shall survive (including, without limitation, all limitations of liability, releases, indemnification obligations, disclaimers of warranties and Intellectual Property protections and licenses).

## **6. GENERAL PROVISIONS.**

**6.1. Force Majeure.** Neither party will incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without any negligence on the part of the party seeking protection under this subsection, including internet service provider or third party payment delays or failures, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a time equal to the time lost due to the delay so caused.

**6.2. Assignment.** Active may assign this Agreement and any or all of its rights and obligations herein without Client's approval, but must provide at least thirty (30) days written notice (which may be sent by email) to Client in the event that such assignment takes place. Client may not resell, assign, or transfer any of its rights or obligations under this Agreement except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without the prior written consent of Active will be null and void.

**6.3. Change of Control.** Client will cause each Schedule hereunder to be assigned to (a) the purchaser of all or substantially all of Client's assets or equity securities or (b) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((a) and (b) together, a "**Change of Control**"). Client will provide written notice to Active of any proposed or completed Change of Control as soon as permissible and in any event within five (5) days of the public announcement or close of the transaction, whichever occurs first. Within the thirty (30) day period following such notice, Active will have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee is a competitor of Active or a party with whom Active does not want

to do business. Client agrees to require that the purchaser or assignee (as outlined in this Section 6.3) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule.

**6.4. Export; Anti-Bribery.** The Products may include encryption software or other encryption technologies that may be controlled for import, transfer, export, or other purposes under Export Laws. Client may not export, re-export, transfer, or re-transfer or assist or facilitate in any manner the export, re-export, transfer, or re-transfer of, or provide access to, any portion of the Products in violation of Export Laws, as determined by the laws under which Client operates, including: (a) to any country on Canada's Area Control List; (b) to any country subject to U.N. Security Council embargo or action; (c) contrary to Canada's Export Control List Item 5505; (d) to countries subject to U.S. economic sanctions and embargoes; and (e) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items, including, to any person or entity appearing on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; the Bureau of Industry and Security's Denied Persons List, Entity List, or Unverified List; or the Department of State Debarred List. Client hereby represents and covenants that: (i) Client is eligible to access the Products under Export laws and all other applicable laws; and (ii) Client will import, export, re-export, transfer, or re-transfer the Products to, or use or access the Products in, any country or territory only in accordance with Export Laws and all other applicable laws. Furthermore, Client hereby represents and covenants that, in connection with its respective activities conducted under this Agreement, it will comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act of 2010, as amended, and the Convention on Combating Bribery of Foreign Public Officials and has not, and will not, make or receive, directly or indirectly, any payments or gifts, or offers or promises of payments or gifts or things of value in exchange for anything that may arise out of this Agreement in a manner that would violate these laws and rules or any other applicable anti-corruption or anti-bribery laws or regulations.

**6.5. Notices.** Any notices required to be given under this Agreement will be in writing sent to the address on file with Active for Client or, in the case of Active, to the address set forth in Section 7 of these General Terms to the attention of Legal Department. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or three (3) days after deposited in the mail sent certified or registered.

**6.6. Relationship.** This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

**6.7. Severability.** If any part or provision of this Agreement is held to be unenforceable, illegal, or invalid by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the unenforceable, illegal, or invalid provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable, illegal, or invalid provision and this Agreement will be deemed amended accordingly.

**6.8. Survival.** The following provisions will survive any termination, cancellation, or expiration of this Agreement: Sections 1, 2, 3.2, 3.5, 3.6, 3.7, 3.8, 3.9, 4, 5.2, 6, and 7 of these General Terms, and such other provisions that should reasonably survive termination, cancellation, or expiration hereof.

**6.9. Amendments; No Waiver.** No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by both parties.

**6.10. Entire Agreement.** This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. All pre-printed terms of any Client purchase order, business processing document, or on-line terms will have no effect. There have been no material representations or statements by any person or party to this Agreement as an inducement for a party hereto to accept this Agreement other than what is expressly set forth in writing herein.

**6.11. No Third-Party Beneficiaries.** This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Active under this Agreement will apply equally to its licensors and suppliers, and the owner of the Third-Party Products with respect to the Third-Party Products, and such third parties are intended third party beneficiaries of this Agreement, with respect to the Third-Party Products as applicable.

**6.12. Governing Law and Venue.** Except as set forth below, this Agreement will be governed by the laws of the State of California, without giving effect to the conflict of law provisions thereof and as applicable under United States federal law. The parties irrevocably agree that any legal action or proceeding relating to this Agreement will be instituted only in any state or federal court in California. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement. THE PARTIES HERETO IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Notwithstanding the above, for purposes of this Agreement, certain of the terms and conditions will vary depending on the location of the Client. If a country or term is not specified below, then the Governing Law and Venue set forth above shall apply.

If Client's principal place of business is in:	The governing law is:	The courts having exclusive jurisdiction are:
Canada	Province of British Columbia	Province of British Columbia
United Kingdom, Ireland, Germany, France, or Austria	England	England
Singapore	Singapore	Singapore
New Zealand	England	England
Hong Kong	Hong Kong	Hong Kong
Australia	New South Wales	Sydney, New South Wales
Switzerland	England	England
Denmark	England	England
Netherlands	England	England
Spain	England	England
Sweden	England	England

**6.13 Order of Precedence.** To the extent any terms and conditions of these General Terms conflict with the terms and conditions of any Product Attachment, the provisions of the Product Attachment will control. To the extent any provision of these General Terms or any Product Attachment conflict with the provisions of a Third-Party EULA, the Third-Party EULA will control. In the event of a conflict between a Schedule and these General Terms or the applicable Product Attachment, the General Terms or the applicable Product Attachment will control, provided, however, that such standard variable terms such as price, quantity, license scope, payment terms, shipping instructions, and the like will be specified on each Schedule. Further, Client agrees and acknowledges that it shall not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party, amend, alter, or contract away (or seek to amend, alter, or contract away) any of its rights, liabilities, or obligations under this Agreement through any means (including, but not limited to, through any waiver, contract, terms, or communication with End Users (individually and collectively, "**Client Terms**"). Client agrees and acknowledges that any such amendment, alteration, or contracting away of any such liabilities, or obligations under this Agreement shall be void, and of no force or effect. Active shall bear no liability or obligation to any End User under any Client Terms, and any provision of any Client Terms that is inconsistent with this Agreement, or that expressly, implicitly, or effectively imputes any liability or obligation upon Active to any End User or to any other third party shall be void, and of no force or effect.

**6.14 Interpretation.** Any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time. The headings and pronouns contained herein are for convenience and ease of reference only and will not affect the construction or interpretation of this Agreement. The word "including" in this Agreement means "including, without limitation." All references to days means calendar days. This Agreement will not be construed in favor of or against a party based on the author of the document.

**6.15 Counterparts.** These General Terms and each Product Attachment, Schedule, and any exhibits thereto may be executed in one or more counterparts, each of which will constitute an enforceable original of this Agreement, and the parties agree that electronic or digital signatures, as well as PDF scanned copies of signatures, will be as effective and binding as original signatures.

**6.16 Remedies Cumulative; Injunctive Relief.** All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Furthermore, in the event of a breach or threatened breach of the Intellectual Property obligations in this Agreement, Active, in addition to any and all other rights (at law or in equity) which may be available, will have the right of injunctive relief and other appropriate equitable remedies to restrain any such breach or threatened breach, without the requirement of posting a bond.

**6.17 U.S. Government Restricted Rights.** The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Active Network, LLC or one of its Affiliates or subsidiaries.

## 7. DEFINITIONS.

"**Active**" means Active Network, LLC, or, if Client's principal place of business is in Canada, The Active Network, Ltd., together with their Affiliates, with an office located at 3400 N. Central Expressway, Suite 300, Richardson, TX 75080.

"**Affiliates**" of a designated corporation, company, partnership, or other entity means all entities which control, are controlled by, or are under common control with the named entity, whether directly or through one or more intermediaries. For purposes of this definition "controlled" and "control" mean ownership of more than 50% of the voting capital stock or other interest having voting rights with respect to the election of the board of directors or similar governing authority.

"**Agreement**" means these General Terms, together with all Product Attachments and Schedules accepted by the parties (as described in the Preamble).

"**Client**" means the individual who accepts this Agreement (as described in the Preamble) and any business entity on behalf of which such individual accepts this Agreement.

"**Documentation**" means the user instructions, release notes, manuals, or on-line help files in the form generally made available by Active, regarding the use of the applicable Products, as updated by Active from time to time.

"**Effective Date**" means the date of last signature on page one of this Agreement.

"**End Users**" means users who register for, sign up, or otherwise use the Products in connection with the Events (as defined in the applicable Product Attachment).

"**Export Laws**" means export control laws and regulations of the countries and/or territories in which Active operates or in which the Products are used, accessed, or from which the Products are provided.

"**Hardware**" means computer hardware, equipment, and/or utilities supplied by Active pursuant to a Schedule.

"**Intellectual Property**" means any and all intellectual property and proprietary rights (in whole or in part) recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed, or recorded, including inventions, technology, patent rights (including patent applications, divisions, and disclosures), copyrights and all works of authorship (whether or not copyrightable), moral rights, trade secrets, trademarks and other indicators of source (and the goodwill associated therewith), service marks, trade dress, logos, methodologies, procedures, processes, know-how, tools, utilities, techniques, protocols, various concepts, ideas, methods, models, templates, software, source code, algorithms, tools, utilities, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, layouts, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which Active has created, acquired, or otherwise has rights in, and may, in connection with the Products or the performance of Services hereunder, create, employ, provide, modify, create, acquire, or otherwise obtain rights in, and in each case includes any derivative works, alterations, and other modifications using, incorporating, based on, or derived from the foregoing.

**"Maintenance Services"** means the provision of Updates and Upgrades related to the SaaS all as more particularly set out in the applicable Product Attachment and/or Schedule.

**"Participant Information"** means certain information that Active collects from End Users, individuals, and/or licensees as part of the registration process for Events (as defined in the applicable Product Attachment).

**"Preamble"** means the first paragraph of these General Terms.

**"Products"** means, collectively, SaaS, Services, Hardware, and all other services, products, or materials provided by Active to Client under the terms of this Agreement.

**"Professional Services"** means the implementation, site planning, configuration, integration, and deployment of the SaaS, training, project management, or other consulting services.

**"Protected Materials"** means Products, except for Hardware.

**"SaaS"** means (a) the software as a service which is hosted by Active or its hosting providers and which is accessed by Client and its users via the internet; (b) Active's web sites; and (c) associated services, as more fully described in the applicable Product Attachment. SaaS functionality is subject to change from time to time at Active's sole discretion.

**"Services"** means, collectively, (a) Professional Services; (b) Maintenance Services; (c) Support Services; and (d) any other services set forth in a Schedule.

**"Schedule"** means the document, schedule, quote, pricing form, web page, order form, or similar document and the terms and conditions contained therein "accepted" (as described in the Preamble) by the parties that describes order-specific information, such as a description of Products ordered, features, options, license details, and fees.

**"Support Services"** means the provision of technical assistance for SaaS or Hardware as further described in an applicable Product Attachment and/or Schedule.

**"Taxes"** means any and all applicable taxes, including sales, use, excise, withholding, assessments, stamp, transfer, value-added, duties, tariffs, export charges, import charges, and other taxes or assessments (however designated) imposed by any foreign, federal, provincial, state, or local governmental authority upon or applicable to Products arising out of this Agreement, other than those based on Active's net income.

**"Third Party EULA"** means the end user license agreement, if any, that accompanies the Third-Party Products, which governs the use of or access by Client to the applicable Third-Party Products.

**"Third Party Products"** means that hardware, firmware and/or software products, including updates and enhancements thereto, if any, owned by third parties, together with all user manuals and other documents accompanying the delivery of the Third-Party Products.

**"Updates"** means bug fixes, patches, error corrections, minor releases, or modifications or revisions that enhance existing performance of the SaaS that are provided as part of Maintenance Services. Updates exclude Upgrades.

**"Upgrades"** means a new SaaS release that contains major functionality enhancements or improvements; and which is designated by an incremental increase in the release number to the left of the decimal point (by way of example only, release 5.0 designates an Upgrade from release 4.x). Upgrades exclude new products, modules or functionality for which Active generally charges a separate fee.

**"User"** means an individual who is authorized by Client to use the Products and to whom Client (or Active at Client's request) has supplied a user identification and password. Users may include employees, consultants, contractors and agents of Client, and third parties with which Client transacts business, but shall not include Client's End User.

## Recreation and Membership Management Product Attachment

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

**1. SERVICES.** Active will provide the Products related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "**Events**"), including without limitation access to its Products. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Products. Products provided hereunder are deemed delivered when access is made available to Client.

### 2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

**2.1.** Active hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license during the Term of this Product Attachment (a) to use the Products for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with Client's Event(s) solely in accordance with the Agreement and the Schedule, which for purposes hereof will include the support and maintenance handbook applicable to the Products (available for review in the Client portal), as may be updated from time to time, and (b) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this [Section 2](#). Client hereby grants to Active a limited license to use information provided by Client relating to Client's organization and Event, which may include content regarding the Event, Client's organization's name, trademarks, service marks, and logo (collectively, the "**Marks**"), in connection with the promotion of Client's organization or Events and the Products that Active provides.

**2.2.** Client will make reasonable efforts to promote and encourage the use and availability of the Products in connection with the promotion of Events. During the Term of this Product Attachment, Active will be the sole and exclusive provider of registration software and other services similar to the Products provided to Client hereunder for all of Client's Events for which registration begins during the Term of this Product Attachment until the Event occurs. For clarity, if an Event occurs after this Agreement is terminated, other than for Active's uncured material breach, and registration for such Event begins during the Term of this Agreement, then Active Products shall be used. Client expressly understands and agrees that the exclusivity set forth in this Section 2.2 is consideration in exchange for the pricing and other benefits being provided to Client hereunder. Without limiting the foregoing, Client will not enter into any agreement, arrangement, or relationship with any other party that offers online registration or transaction processing services similar to the Products provided to Client hereunder.

**2.3.** Active may present commerce offers to users who register for, sign up, or otherwise use the Products in connection with the Events ("**End Users**"). Any such End Users may opt in to receive information, items, or promotions/deals from Active or third parties, in which case, Active or such third party will be responsible for fulfillment and providing customer service for any such offers. Client will not present any competing offers to End Users.

### 3. PRIVACY AND DATA PROTECTION.

**3.1 [End User Personal Information.](#)** The Products are designed to enable Client to collect information from and about End Users. Information that identifies, relates to, describes, is reasonably capable of being associated with or could reasonably be linked, directly or indirectly, with a particular End User shall be referred to herein as "**End User Personal Information.**" The Products process two forms of End User Personal Information:

**3.2 [End User Accounts.](#)** When an End User interacts with the Products for the first time, Active creates an account for that End User ("**End User Account**"). Active authenticates the End User in future interactions with the Products by requiring the End User to log in to their End User Account. Active maintains End User Accounts pursuant to the Terms of Use and Privacy Notice that Active displays to the End User when the End User creates the End User Account.

**3.3 [Participant Information.](#)** Client will have the ability to use the Products to collect a wide variety of End User Personal Information from authenticated End Users, including through the use of forms and features that enable the collection of images and other attachments ("**Participant Information**"). As between the Parties, Client is exclusively responsible for providing any notices, procuring any consents, and otherwise taking any steps that are necessary to ensure that Active's collection, storage, and processing of Participant Information on behalf of Client, as contemplated by this Agreement, is compliant with Data Protection Laws. For the purposes of this Product Attachment, "**Data Protection Laws**" means all local, state, federal and foreign privacy, security, marketing and consumer protection laws and regulations applicable to the processing of Participant Information. Active will process Participant Information solely for the purpose of providing the Products to Client, and as otherwise permitted by Data Protection Laws. Client agrees that it will process Participant Information at all times in compliance with Data Protection Laws, and that it will not use any Participant Information to communicate with any End User in a manner that violates the CAN-SPAM Act, the Canadian Anti-Spam Legislation, the Telephone Consumer Protection Act, or any other law or regulation applicable to Client's outreach to End Users via email or SMS. Client further agrees that Client will not permit any Affiliate or third party to access or process any Participant Information in a manner inconsistent with this Agreement, or in a manner which would cause Active's processing of such Participant Information, as contemplated by this Product Attachment, to violate Data Protection Laws. If Client is subject to a Data Protection Law that requires the Parties to enter into a Data Protection Addendum that includes terms supplemental to this Product Attachment, it is Client's obligation to notify Active of that requirement.

**3.4 [Data Retention.](#)** The Products are not designed to serve as a permanent system of record. During the Term, Active reserves the right to delete any Participant Information that has not been accessed or modified within a trailing period of five (5) years. At the conclusion of the Term, Active will: (i) convert all Participant Information to a backup format approximately thirty (30) days after the end of the Term; and (ii) permanently delete all Participant Information approximately one (1) year after the end of the Term. If Client is subject to any legal obligation that would require Client to maintain any Participant Information for a longer period than those set forth in this Section 3.2, it is Client's responsibility to retrieve that Participant Information from the products and to store it in another format within the time periods allotted. Notwithstanding anything else set forth in the Agreement or in this Product Attachment, Active shall not be in any way responsible for any negative consequences associated with Client's failure to adhere to the requirements set forth in this Section 3.2.

**3.5 [Prohibition on Certain Categories of Participant Information.](#)** The Products are customizable, meaning Client has the ability to choose what kinds of Participant Information Client will use the Products to collect. Client agrees, however, that Client will not use the Products to collect or otherwise process: (i) any personal health information that is subject to the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and its accompanying regulations, or any relevant amendments thereto; (ii) any Participant Information from or about a minor, without procuring and documenting a prior consent that meets the requirements of any applicable Data

Protection Laws, and maintaining such documentation for the duration of the Term; (ii) any cardholder data subject to the Payment Card Industry Data Security Standard (“**PCI-DSS**”), or any other payment card or financial account information, except within pre-defined fields designed for that purpose; or (iii) any unredacted social security numbers or other similar government identifiers, except within pre-defined fields designed for that purpose. If Active discovers any violation of this Section 3.3 by Client, Active reserves the right to promptly and securely dispose of any prohibited Participant Information found within the Products.

**3.6 User Accounts.** Client is exclusively responsible for: (a) creating and defining under Client’s account in the Products any logons or IDs for Client’s Users of the Products; and (b) defining and maintaining at all times with respect to each such logon or ID the appropriate scope of the applicable User’s authority and permission with respect to the use of the Products and the security controls, restrictions, and limitations that apply with respect to each such User and his or her use of the Products. Client is solely and exclusively responsible for all access and use of the Products (and for any resulting activity or communications) by Client or its Users or that occurs through the use of any logon or ID established by or with respect to Client or any of its Users. Active shall not be liable or responsible for any activity, loss, or damage arising from any unauthorized access to or use of any such logons or IDs or resulting from any failure by Client or its system administrator to establish or assign an appropriate scope of authority or permission, or appropriate security controls, restrictions, or limitations, with respect to any given User, logon, or ID. Client shall immediately notify Active of any known or suspected unauthorized access to or use of Client’s account, or of any logons or IDs established or assigned with respect to Client or its Users, of which Client becomes aware.

#### **4. FEES.**

**4.1.** Client will pay the fees as more fully described in the applicable Schedule. Unless otherwise set forth in the applicable Schedule, Active will charge registration fees to individuals who register for the Events or purchase goods or services online, and will process and collect such fees as a payment facilitator according to the card networks. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay Client sums due to Client based on the total fees collected, net of Active’s service fees as set forth in the applicable Schedule and any other deductions provided herein. The applicable currency will be set forth in the Schedule.

**4.2.** If applicable, any minimum volume commitment will be set forth in the applicable Schedule. The minimum volume calculation will begin on the date of the first live operational use of the Products for the Event(s) (“**Go-Live Date**”). If the Schedule indicates that Client is paying on a subscription basis, unless otherwise specified in the applicable Schedule, Client will be invoiced for the first month of subscription fees upon the Go-Live Date, with subsequent subscription fees being invoiced monthly.

**4.3.** If (a) there are any overdue or overage amounts owed by Client; or (b) there are returned charges or items, including those resulting from any error or complaint related to an Event, Active has the right to charge fees owed to Active by Client by issuing an invoice, or by offsetting the deficiency from any account balance Client maintains with Active or any payment Active owes Client.

**4.4.** In the event Client is entering into this Product Attachment and using the Products for the benefit of a third-party Event or organization (“**Third Party Recipient**”), Client agrees that Active can remit amounts directly to the Third Party Recipient identified by Client. In addition, Client will cause each Third Party Recipient to agree to and comply with provisions that are at least as protective of Active as Sections 3 and 4 of the General Terms in Client’s agreement with such Third Party Recipient. Should Client fail to obtain such agreement to such provisions and the failure results in costs or damages to Active, to the extent not prohibited by law, Client agrees to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys’ fees. In addition, Client is responsible and liable for each Third Party Recipient’s compliance with the terms and conditions of the Agreement.

**4.5.** It is Client’s responsibility to notify End Users of Client’s refund policy. Client must ensure that Client’s refund policies are consistent with the Agreement. Client agrees that all fees for a given Event are earned by Client only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to Client will be net of all service fees, reversals, refunds, disputed charges, chargebacks and other deductions whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event or otherwise. No payments will be made to Client with respect to any Event that is cancelled. If payments have already been made by Active to Client for a cancelled Event or if Active reasonably determines that it is prudent or otherwise necessary to pay a refund to or honor a chargeback request from an End User, Active may issue an invoice or offset an equivalent amount from Client’s account or payment owed by Active to Client and return the value to the End User, and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

**4.6.** Client hereby authorizes and appoints Active as its limited agent to initiate payment card and ACH credit or debit entries to and from Client’s bank account. Payment by Receiver (in the case of ACH entries) or card networks (in the case of Payment Card transactions) to Active is considered the same as payment made directly to Client. Client, upon receipt of funds by Active, must (1) provide the purchased goods or services to the End User, or (2) credit the End User for the full amount of funds received by Active, which credit is not revocable by Client, and evidence this credit in writing in a form capable of being retained for future reference. For transactions involving goods or services, Client must provide the purchased goods and services as agreed to between Client and End User, regardless of whether Active transmits the funds to Client.

#### **5. TERM AND TERMINATION.**

**5.1.** Unless otherwise set forth in the applicable Schedule, this Product Attachment will commence on July 1, 2026 and will continue in effect until the earlier to occur of (i) its termination in accordance with the terms and conditions below and (ii) the third anniversary of the Effective Date (the “**Initial Term**”). This Product Attachment shall renew automatically following the Initial Term for subsequent renewal terms thereafter of three (3) years (the “**Renewal Term(s)**”, and, together with the Initial Term, the “**Term**”) unless either Party delivers written notice (may be sent by email) to the other Party at least six (6) months prior to the expiration of the then-current Term of its intent to terminate this Product Attachment upon the completion of the Initial Term or any Renewal Term. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Products that are related to or interoperable with the Products set forth in a previously entered into Schedule, the Term of such subsequent Schedule will be concurrent and coterminous with the Term of the previously entered into Schedule.

**5.2.** If Client has entered into a sub-merchant agreement for payment processing services, and such agreement is terminated by the applicable acquiring bank, Active may terminate this Product Attachment and the effected Schedule.

## 6. NON-APPROPRIATION.

Client's obligations and all amounts payable hereunder are contingent upon sufficient appropriations therefore by Client's Governing Body. If sufficient appropriations are not made, Client will notify Active of the same, and this Agreement will terminate forthwith. Client represents that it intends to fulfill its obligations under this Agreement and reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, Client shall use its best efforts to satisfy any requirement for payment from any other source of funds legally available for this purpose. Notwithstanding the foregoing, Client shall notify Active within ten (10) days of any action by Client's governing body not to appropriate funds for payment of Client's obligations hereunder, and will provide with such notice a copy of the resolution, minutes or recording of such action.

## 7. MISCELLANEOUS.

7.1. Sections 5 and 7 of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

7.2. The "**Liquidated Damage Amount**" equals the "Annual Projected Contract Value" (to the extent such amount is specified in the applicable Schedule(s)) times the number of years in the then-current Term, minus the amount of revenue already paid to Active during the then-current Term, net of all refunds, credit card chargebacks, and all other deducted amounts. Client agrees that (a) it will pay Liquidated Damages to Active if (i) Client breaches its exclusivity obligations under Section 2.2 of this Product Attachment; (ii) Active terminates a Schedule and/or the Agreement in accordance with Section 5.2 of the General Terms; (iii) Client fails to cause an assignment as specified in Section 6.2 of the General Terms; and/or (iv) Active terminates a Schedule and/or the Agreement pursuant to Section 6.3 of the General Terms; (b) all Liquidated Damage Amounts set forth in the Agreement will automatically reset during each Renewal Term; (c) Active may offset any Liquidated Damages Amount set forth in the Agreement from any account balance Client maintains with Active or any payment Active owes Client; (d) because of the difficulty in making a precise determination of actual damages incurred by Active, the Liquidated Damage Amount will be assessed, not as a penalty, but as a reasonable approximation of costs incurred by Active and Active's loss of revenue; and (e) that in any suit or other action or proceeding involving the assessment or recovery of liquidated damages, the reasonableness of the Liquidated Damage Amount will be presumed and the liquidated damages assessed will be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Agreement.

**THIRD PARTY HARDWARE PRODUCT ATTACHMENT**

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

**1. PURCHASE AND SALE; DELIVERY.**

**1.1** Active hereby agrees to sell to Client, and Client hereby agrees to purchase from Active, the Third-Party Products listed in the applicable Schedule in the volumes and at the prices described therein. For purposes of this Product Attachment, "**Third Party Products**" means those hardware, firmware and/or software products, provided to Active by third parties, listed in the Schedule, together with all user manuals and other documents accompanying the delivery of the Third Party Products, provided that the Third Party Products shall not include Products developed by Active.

**1.2** Active will ship all or any part of the Third Party Products to Client as soon as reasonably practicable (or, if the below-described purchase order documentation does not seek immediate shipping, at the time Active considers reasonable in order to meet the desired delivery date described) after receipt by Active of a purchase order from Client specifying the particular Third Party Products sought, the number of such Third Party Products sought, the price payable therefore, and the desired date and location of delivery thereof. Any such purchase order must, at a minimum, reference quantity, description and price.

**1.3** Following delivery by Client of any purchase order documentation described in Section 1.2, no changes by Client to the shipment schedule described therein will be permitted unless Active is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

**1.4** Purchase orders delivered by Client to Active in respect of Third-Party Products are not binding upon Active until accepted by Active in writing. In any case, despite any indication to the contrary contained in any such purchase order documentation, no terms or conditions on purchase order documentation issued by Client, other than the information required by Active as set forth expressly in this Agreement, will be binding upon Active, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that Active may accept or otherwise approve such purchase orders. Active reserves the right to refuse any such purchase order for any reason not contrary to this Agreement, including without limitation pricing differences as described in Section 2.2.

**1.5** Client may purchase Third Party Products in addition to those listed in the Schedule by issuing additional purchase order documentation as described herein, provided that the supply (or non-supply) of such additional Third Party Products will be subject to this Agreement as though such additional Third Party Products had been included in the Schedule on the date of execution of Schedule subject to the following: (a) the price for such additional Third Party Products is subject to agreement between the parties each in their own absolute discretion, and (b) Active shall have the right to discontinue delivery of such additional Third Party Products upon at least ninety (90) days written notice to Client without any liability to Client whatsoever for such discontinuance.

**2. CHARGES AND PAYMENTS.**

**2.1** The pricing applicable to Third Party Products is as set out in the Schedule in the form finally agreed to by the Parties.

**2.2** Client acknowledges that: (a) the prices described in the Schedule are applicable for thirty (30) days after the date of execution hereof, and such prices are based upon Client taking delivery of the full number of any particular Third Party Product listed in the Schedule in a single shipment; and (b) Client hereby agrees that after the expiry of such initial thirty (30) day period or, in case of Client seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed the Schedule, the actual prices may be higher. Prior to shipment of any Third-Party Products that would be subject to pricing that differs from that described in the Schedule, Active will notify Client of any such different pricing and Client will accept such different pricing, as mutually agreed between Client and Active, in writing.

**3. SUPPORT FOR THIRD PARTY PRODUCTS.**

**3.1** For the purpose of isolating support issues and responsibility in respect of Third-Party Products and their interaction with any Products, Active will provide initial first-tier support, to a maximum of fifteen (15) minutes per support inquiry.

**3.2** Client may return certain purchased Third Party Products for a refund or credit, minus the Restocking Fee, as further described in the applicable schedule. To be eligible for such refund, the equipment must be: (i) returned within forty-five (45) days of the original purchase; (ii) returned in its undamaged packaging without any labels or writing on the packaging; (iii) no additional transactions ran on the device, with the exception of test transactions made by Active support. Third Party Products received by Active not in their original condition will be returned to Client at Client's expense.

**4. PROPRIETARY RIGHTS.**

**4.1** Client acknowledges that any Third-Party Products supplied by Active hereunder are supplied by Active as a reseller thereof and that the Third-Party Products are subject to the Intellectual Property rights of the various third-party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights. Client will maintain in confidence and not use or disclose any and all confidential business or technical information connected with any Third Party Product except as specifically permitted by a party having legal control of such rights, and Client will defend or settle any claim made or any suit or proceeding brought against Active insofar as such claim, suit, or proceeding is based on an allegation that any Third Party Product provided to Client hereunder has been installed, used, or otherwise treated by Client or any client or customer of Client in violation of the proprietary rights of any third party or on an allegation that Client or any client or customer of Client has disclosed or used any confidential business or technical information connected with any Third Party Product, provided that Active will notify Client in writing promptly after the claim, suit, or proceeding is known to Active and will give Client such information and assistance as is reasonable in the circumstances. Client will have sole authority to defend or settle any such claim at Client's expense. To the extent not prohibited by law, Client will indemnify and hold Active harmless from and against any and all such claims and will pay all damages and costs finally agreed to be paid in settlement of such claim, suit or proceeding.

**4.2** Client acknowledges that the possession, installation and use of all Third-Party Products which are software shall be governed by the terms of the software license(s) of the persons other than Active who possess the rights to control such possession, installation and use.

**5. WARRANTY.**

**5.1** Active warrants to Client that Active has the right to deliver the Third-Party Products subject to any documentation accompanying such Third-Party Products at the time of delivery and/or any licensing mechanisms, physical, electronic or otherwise, included in any Third-Party Products that are software.

**5.2** Third Party Products are warranted by the manufacturers, suppliers or licensors thereof in accordance with the warranty statements accompanying delivery of the Third-Party Products, and Client agrees that Client will rely solely on such Third-Party Product warranties. Client agrees not to make a claim against Active on account of any warranty, express or implied, which may apply to any Third-Party Product. If Client notifies Active of a defect or nonconformity within thirty (30) days of the date of delivery of such Third-Party Product, Active will assist Client in troubleshooting such Third-Party Product in accordance with Section 3. If such defect or nonconformity cannot be remedied during such troubleshooting and such Third-Party Product is still under the Third-Party Product warranty, Active shall contact the applicable manufacturer, supplier or licensor of such Third-Party Product to coordinate any returns or refunds. If a notice of a defect or nonconformity is received by Active from Client of the defect or nonconformity following the initial thirty-day (30) period, Active's sole obligation and liability will be to provide support in accordance with Section 3. Returns and refunds are at the sole discretion of the applicable manufacturer, supplier or licensor.



# Schedule

This is a Schedule pursuant to that certain (Agreement) entered into between (Active) and City of Brea (Client) with an effective date as of 01/01/2026.

Company Address Three Alliance Center, 29th Fl.  
3550 Lenox Rd. #3000  
Atlanta, GA 30326  
US

Schedule # 00139230  
Created Date 2/3/2026  
Quote Expiration Date 2/27/2026  
Currency USD

Customer Legal Entity Name City of Brea

Opportunity Owner Christopher Quinonez  
Owner Email [christopher.quinonez@activenetwork.com](mailto:christopher.quinonez@activenetwork.com)

Schedule Signatory Nicole Andrews

Schedule Signatory Email nicolea@ci.brea.ca.us

Billing Entity City of Brea  
Billing Contact Nicole Andrews  
Billing Address 1 Civic Center Circle  
Brea, CA 92821 United States

Shipping Contact Nicole Andrews  
Shipping Address 1 Civic Center Circle  
Brea, CA 92821 United States

First Year Registrations 53,585  
Average Registration Cost USD 50.00  
Total Processing Volume USD 2,679,250.00

Product	Product Type	Description	Quantity	Sales Price	Fee %	Total Price
ACTIVENet (invoiced annually)	Subscription Software		1	65,000.00		65,000.00
ACTIVENet - Facility Reservation	NC		1			
ACTIVENet - FlexReg	NC		1			
ACTIVENet - League Management	NC		1			
ACTIVENet - Memberships	NC		1			
ACTIVENet - Point of Sale (POS) / Equipment Lending	NC		1			
ACTIVENet - Program & Activity Registration	NC		1			
ACTIVENet - Projected Annual Processing						
ACTIVENet - Public Interface Fee Setup (absorbed by agency)	NC		1			
		Fee for consumer online transactions,				



## Schedule

ACTIVENet - Public Interface: Transaction Fee (%)	Transactional Software	separate from in-person (Staff Interface) transactions	1		3.00	
ACTIVENet - Staff Interface Fee Setup: Credit Card (absorbed by agency)	NC		1			
ACTIVENet - Staff Interface: Credit Card Fee (%)	Transactional Software		1		3.00	
ACTIVENet - Staff Interface: Credit Card Refund Fee (Flat)	Transactional Software		1	0.10		0.10
ACTIVENet - Staff Interface: eCheque/eCheck Fee (%)	Transactional Software		1		0.50	
ACTIVENet Connect (invoiced monthly)	Subscription Software		12	200.00		2,400.00

Total Price USD 67,400.00

Annual Projected Contract Value USD 147,777.50

Active reserves the right and may take additional measures to verify Client's account which may consist of reviewing publicly available data and/ confirmation of Client provided information. Such verification measures will be completed in advance of remittance.

All fees described herein are in consideration of the Products that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User.

The payment options we offer may include MasterCard, Visa, American Express and Discover.

If your order includes hardware, please note that all hardware orders have a 30-day return policy, and it is recommended that you inspect your purchases upon delivery.

\*Sales tax and shipping not included in total price. Sales tax and shipping, where applicable, will be added to your invoice.

**Capitalized terms used in this Schedule and not defined have the meaning set forth in the General Terms or Product Terms, as applicable.**

### Schedule Acceptance Information

**Customer Legal Entity**

**Active Network, LLC**

Signature:

Signature:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

PO# (if applicable):



Schedule