

# REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

**SEPTEMBER 16, 2013**

TITLE:

**AGREEMENT WITH EVAN BROOKS ASSOCIATES FOR PROJECT MANAGEMENT AND ADVOCACY ON THE STREETCAR PROJECT**

  
CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1<sup>st</sup> Reading
- Ordinance on 2<sup>nd</sup> Reading
- Implementing Resolution
- Set Public Hearing For \_\_\_\_\_

CONTINUED TO \_\_\_\_\_

FILE NUMBER \_\_\_\_\_

## RECOMMENDED ACTION

Authorize the City Manager and Clerk of the Council to execute an agreement with Evan Brooks Associates, subject to nonsubstantive changes approved by the City Manager and City Attorney, to provide project management and advocacy services for the Santa Ana-Garden Grove Fixed Guideway (Streetcar) project in an amount not to exceed \$75,000.

## DISCUSSION

The recommended action will assist the City in guiding the Streetcar Project during the remaining critical steps to deliver the environmental certification and to help build consensus for the selection of the Locally Preferred Alternative (LPA). Ongoing project management is essential to project delivery, especially now that the original consulting agreement with Cindy Krebs Consulting, Inc. (CKC), has expired. The firm of Evan Brooks Associates has the transportation and land-use planning background, and the staff to handle the daily and weekly tasks. The firm's principal, Hal Suetsugu, is experienced with transportation projects and regional consensus building. The contract is on a not-to-exceed format, whereby the City will only be charged for actual hours worked; the services delivered under this agreement will be closely monitored by the Public Works Director in consultation with the City Manager when appropriate.

On May 12, 2008, the OCTA Board allocated \$5.9 million to Santa Ana for the modern streetcar transit concept for detailed planning, preliminary design, financial planning, and environmental work. Additionally, on May 18, 2009, the City approved a contract with CKC to provide transit manager consultant services for this project. Work on the environmental documentation and alternatives analysis has been ongoing. The project involves a number of cities and, to be successful, will require both local and regional support.

For a variety of reasons, the preparation of the environmental and alternatives analysis has taken longer than originally anticipated and the agreement with CKC expired on June 30, 2013. When a possible extension was discussed with the principal of the firm, the City was informed that other professional commitments had been made and CKC's services were no longer available. As a result, staff contacted OCTA and other resources to identify other firms that could provide these transit project management services. The search culminated with the proposal from the firm of Evan Brooks Associates.

The proposal scope has been incorporated in the agreement (Exhibit 1). The billing rates are very reasonable and the effort, in terms of hours, will bridge the existing project management gap. The services have been proposed in three phases: a) Environmental Documentation Certification and Alternatives Analysis, b) Public and Government Outreach, c) Regional Outreach and Project Advocacy.

**ENVIRONMENTAL IMPACT**

There is no environmental impact associated with this action.

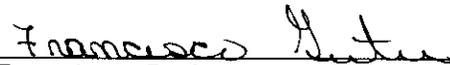
**FISCAL IMPACT**

The proposed contract will have a limit of \$75,000. Funds for this project are available in the Traffic Signal Maintenance account (No. 02917620).

APPROVED AS TO FUNDS AND ACCOUNTS:



Edwin "William" Galvez, P.E.  
Interim Executive Director  
Public Works Agency



Francisco Gutierrez  
Executive Director  
Finance & Management Services Agency



WG

Exhibit: 1. Consultant Agreement

## CONSULTANT AGREEMENT

THIS AGREEMENT, made and entered into this 16<sup>th</sup> day of September, 2013 by and between Evan Brooks Associates, a California corporation, (hereinafter "Consultant"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

### RECITALS

- A. The City desires to retain a consultant having special skill and knowledge in the field of strategic planning for transportation projects.
- B. Consultant represents that it is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

### **1. SCOPE OF SERVICES**

Consultant shall provide project management services for the Santa Ana Fixed Guideway Project ("Project") to guide the certification of the environmental documentation, and to select a local preferred alternative (LPA), as set forth in Exhibit A, attached hereto and incorporated by this reference. Consultant may provide outreach services at the written request of the Executive Director of Public Works or his designated representative.

Additionally, Consultant shall administer City's consultant contracts related to the Project to ensure the services and deliverables comply with the guidelines of the City's funding partners and regulatory agencies, including but not limited to OCTA, and the Federal Transit Administration (FTA). Consultant shall review deliverables submitted by consultants, then forward to City staff. Consultant shall meet with the Executive Director of Public Works on a regular basis to keep him informed regarding the progress of the Project, issues which may arise to threaten the schedule or budget, and to receive direction regarding City's concerns, interests and vision regarding the Project. Consultant shall not take a position on any policy without first obtaining the direction of the Executive Director.

Consultant shall represent the City at meetings with OCTA, FTA and other regulatory agencies; develop written correspondence including memos, letters, staff reports, meeting minutes, agendas and presentations to the City Council and OCTA Board as necessary to keep the City, its funding partners and regulatory agencies informed of the progress of the Project; and provide written and oral progress reports to the Project team, including consultants and the Executive Director and his staff.

### **2. COMPENSATION**

a. City agrees to pay, and Consultant agrees to accept as total payment for its services, the rates and charges identified in Exhibit B. Consultant shall ensure that the task hours comply with the proposed hourly effort. The total sum to be expended under this Agreement shall not exceed \$75,000 during the term of this Agreement.

EXHIBIT 1

**25B-3**

b. Payment by City shall be made within thirty (30) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

### **3. TERM**

This Agreement shall commence on the date first written above and terminate on June 30, 2014, unless terminated earlier in accordance with Section 12, below. The term of this Agreement may be extended upon a writing executed by the Executive Director of the Public Works Agency and the City Attorney.

### **4. INDEPENDENT CONTRACTOR**

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

### **5. INSURANCE**

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability Insurance. Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence. Consultant shall supply City with a fully executed additional insured endorsement in substantially the form attached hereto as Exhibit B upon execution of this Agreement and shall be approved in form by the City Attorney.

b. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

c. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.

d. If Consultant is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim.

The following requirements apply to the insurance to be provided by Consultant pursuant to this section:

- (i) Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
- (ii) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved in form by the City Attorney.
- (iii) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.
- (iv) Certificates and renewals shall be sent to:

Public Works Agency  
Jason Gabriel  
20 Civic Center Plaza (M-36)  
Santa Ana, CA 92702

f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not effect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

## 6. INDEMNIFICATION

Consultant agrees to and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the direct or indirect operations of the Consultant or its contractors, subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in section 1 of this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding.

## 7. CONFIDENTIALITY

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary

and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

## 8. CONFLICT OF INTEREST CLAUSE

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

## 9. NOTICE

With the exception of insurance certificates and renewals covered by Section 5.e.iv, above, any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by telefacsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
Fax 714- 647-6956

With courtesy copies to:  
Public Works Agency – Design Engineering  
Jason Gabriel  
City of Santa Ana  
20 Civic Center Plaza (M-36)  
P.O. Box 1988  
Santa Ana, California 92702  
Fax 714- 647-5635

and

City Attorney  
City of Santa Ana  
20 Civic Center Plaza (M-29)  
P.O. Box 1988  
Santa Ana, California 92702  
Fax 714- 647-6515

To Consultant: Evan Brooks Associates  
Hal Suetsugu  
215 West Seventh Street, Suite 610  
Los Angeles, California 90014  
Fax 888-421-8798

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication

shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

#### **10. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

#### **11. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

#### **12. TERMINATION**

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.

b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

#### **13. DISCRIMINATION**

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

**14. JURISDICTION - VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**15. PROFESSIONAL LICENSES**

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

**16. MISCELLANEOUS PROVISIONS**

a. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

**ATTEST:**

**CITY OF SANTA ANA**

\_\_\_\_\_  
MARIA D. HUIZAR  
Clerk of the Council

\_\_\_\_\_  
KEVIN O'ROURKE  
Interim City Manager

**APPROVED AS TO FORM:**

SONIA R. CARVALHO  
City Attorney

By: \_\_\_\_\_  
Laura Sheedy  
Assistant City Attorney

**RECOMMENDED FOR APPROVAL:**

**EVAN BROOKS ASSOCIATES**

\_\_\_\_\_  
Edwin "William" Galvez, P.E.  
Interim Executive Director  
Public Works Agency

\_\_\_\_\_  
HAL SUETSUGU  
Vice Principal

## EXHIBIT A

### Scope of Work

#### Project Management – Santa Ana Fixed Guideway

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The City of Santa Ana requires professional assistance to guide the environmental certification and selection of a locally preferred alternative (LPA) for the Santa Ana Fixed Guideway Project (hereinafter "Project"). Evan Brooks Associates (EBA) will provide the following services:

- a. In cooperation with the Executive Director, manage and oversee the City of Santa Ana consultant team lead by Cordoba Corporation, to develop and deliver the environmental certification and select a an LPA for Santa Ana's Fixed Guideway Project.
- b. Consultant shall:
  1. Develop and maintain the schedule for the Project environmental certification. Prepare updates for presentation as necessary to the Executive Director or his designee.
  2. Receive and implement direction regarding the Project from the Executive Director or his designee.
  3. Review and evaluate OCTA and FTA processes to ensure the consultant team submittals comply with statutory, regulatory and administrative requirements. Consultant shall review and provide comments on documents produced by the technical team before they are forwarded to OCTA and/or FTA, in addition to tracking key deliverables and implementation schedules and issues.
  4. In cooperation with the Executive Director, coordinate Project team meetings required to deliver the environmental certification and to select the LPA, including:
    - Discuss Project status
    - Identify issues
    - Develop solutions
    - Provide oversight and direction for the Project
    - Prepare meeting minutes.
  5. Attend the Orange County Transportation Authority (OCTA) Board of Directors and Transit Committee meetings in relation to the Project, and prepare meeting summaries for each. Meeting summaries shall include decisions approved, new issues presented, responsible personnel and timelines for completion of tasks/deliverables.
  6. As necessary, attend meetings of the Mayor and City Council to provide information and status updates on the Project environmental certification and LPA.
  7. Receive and review for completeness and accuracy, consultant deliverables, prior to submittal to OCTA, CalTrans, FTA and/or other regulatory or funding agencies.

EXHIBIT B  
CONSULTING FEES

Our firm's fees include time and materials charges directly related to client services. This includes hours for work tasks, project management and coordination services such as staff meetings and public presentations, and project direct expenses. The following Table provides a breakdown of the Firm's hourly rate for consulting work. These rates are subject to change.

REIMBURSABLE HOURLY BILLING RATES

Project Principal	\$160
Project Manager	\$140
Project Planner	\$120
Environmental Specialist	\$100
Grants Analyst	\$90
Research Analyst	\$80
Graphics/Mapping	\$70
Administrative Support	\$55

EBA also invoices its clients for the full cost of out-of-pocket expenses directly related to project assignments under contract.

The following page provides an estimated breakdown of hourly effort by staff for the proposed services:

PROPOSED HOURLY EFFORT

evan brooks associates

City of Santa Ana Fixed Guideway EIR/AA							
PROJECT - BUDGET							
Task Number	Task Title	Project Principal	Project Manager	Proj Engineer	Environ Specialist	Admin Support	
Tasks		\$160	\$140	\$120	\$100	\$55	
1	Administration and Project Delivery - Environmental Certification and Alternatives Analysis	7	52	20	120	40	
		\$ 1,120	\$ 7,280	\$ 2,400	\$ 12,000	\$ 2,200	\$ 25,000
2	Administration and Coordination - Public and Government Outreach and Stakeholder Meetings	29	39	19	10	30	
		\$ 4,640	\$ 5,460	\$ 2,280	\$ 1,000	\$ 1,650	\$ 15,030
3	Administration and Coordination - Government Stakeholders Outreach and Project Advocacy	100	79	18	30	50	
		\$ 16,000	\$ 11,060	\$ 2,160	\$ 3,000	\$ 2,750	\$ 34,970
<b>Totals</b>		\$ 21,760	\$ 23,800	\$ 6,840	\$ 16,000	\$ 6,600	\$ 75,000