

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **ENVIRONMENTAL IMPACT SCIENCES** herein after referred to as "CONTRACTOR".

### RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council Resolution No. 9212-14 (January 28, 2014).
2. CITY desires to utilize the services of CONTRACTOR to **provide preparation and processing of California Environmental Quality Act (CEQA) compliance documents for the proposed 13650 Harbor Boulevard Hotel Project.**
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

### AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall remain in effect until completion of the services to be provided by CONTRACTOR hereunder, unless earlier terminated by CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with proposal which is attached as Attachment "A" and is hereby incorporated by reference. Contractor is required to present evidence to support performed work.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Proposals. The Proposals are attached as Attachment "A" (preparation and processing of California Environmental Quality Act (CEQA) compliance documents for the proposed 13650 Harbor Boulevard Hotel Project), and is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
  - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of Eighty One Thousand Five Hundred Thirty Two

Dollars (\$81,532.00), payable in arrears and in accordance with combined proposals in Attachment "A".

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by the Community and Economic Development Director will be required, and amendment to the budget will be requested before proceeding, and payment shall be based on the **Billing Rates for Environmental Impact Services** which is attached as Attachment "A".
- 3.3 Records of Expenses. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY and CONTRACTOR shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

#### 4. **Insurance requirements.**

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:
  - (a) Commercial general liability in an amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (b) Automobile liability in an amount of \$1,000,000.00 combined single limit (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
  
- (c) Professional liability in an amount not less than \$1,000,000. Insurance companies must be admitted and licensed In California and have a Best's Guide Rating of A-Class VII or better, as approved by the City. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, it's officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, it's officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

*If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.*

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - a. Environmental Impact Sciences  
26051 Via Concha  
Mission Viejo, CA 92691  
Attention: Peter Lewandowski
  - b. (Address of CITY) (with a copy to):  
City of Garden Grove Garden Grove City Attorney  
11222 Acacia Parkway 11222 Acacia Parkway  
Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.
15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

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(Agreement Signature Block On Next Page)

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

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

**"CITY"  
CITY OF GARDEN GROVE**

By: \_\_\_\_\_  
**City Manager**

**ATTESTED:**

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

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

**"CONTRACTOR"  
Environmental Impact Sciences**

By: P. Lewandowski

Name: PETER LEWANDOWSKI

Title: PRINCIPAL

Date: 10/30/17

Tax ID No. 545-86-1462

Contractor's License: \_\_\_\_\_

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

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

**APPROVED AS TO FORM:**

[Signature]  
Garden Grove City Attorney

11-17-17  
Date

**Attachment "A"**  
**Preparation and Processing of California Environmental Quality Act (CEQA)**  
**Compliance Documents for the Proposed 13650 Harbor Boulevard**  
**Hotel Project**



# PROPOSAL

## PREPARATION AND PROCESSING OF CEQA-COMPLIANCE DOCUMENTS

### HARBOR BOULEVARD HOTEL PROJECT 13650 Harbor Boulevard, Garden Grove, California



Lead Agency:  
**City of Garden Grove**  
**Community Development Department**  
11222 Acacia Parkway  
Garden Grove, California 92840

Project Proponent:  
**BN Hotel Group, LLC**  
1848 Commercial Drive  
Harvey, Louisiana 70058

Prepared by:  
**Environmental Impact Sciences**  
26051 Via Concha  
Mission Viejo, California 92691

October 4, 2017  
Revised October 24, 2017

# PROPOSAL

## PREPARATION AND PROCESSING OF CEQA-COMPLIANCE DOCUMENTS

### HARBOR BOULEVARD HOTEL PROJECT

13650 Harbor Boulevard  
Garden Grove, California

Lead Agency:

**City of Garden Grove**  
**Community Development Department**  
11222 Acacia Parkway  
Garden Grove, California 92840  
(714) 741-5312

Project Proponent:

**BN Hotel Group, LLC**  
1848 Commercial Drive  
Harvey, Louisiana 70058  
(504) 371-6666

Prepared by:

**Environmental Impact Sciences**  
26051 Via Concha  
Mission Viejo, California 92691  
(949) 837-1195

October 4, 2017

Revised October 24, 2017

October 4, 2017  
Revised October 24, 2017

Paul Guerrero, Senior Program Specialist  
**City of Garden Grove**  
**Community Development Department**  
11222 Acacia Parkway  
Garden Grove, California 92840

VIA EMAIL (paulg@ci.garden-grove.ca.us)

**Subject: Garden Grove Hotel Project (13650 Harbor Boulevard)**

Dear Paul:

**Environmental Impact Sciences** (EIS or Consultant) appreciates the opportunity to submit this combined technical and cost proposal to the City of Garden Grove's (City or Lead Agency) Community Development and Economic Development Department – Planning Division (Department) and to **BN Hotel Group, LLC** (BNG) for the preparation and processing of environmental documents under the provisions of the California Environmental Quality Act (CEQA) and the Guidelines for the Implementation of the California Environmental Quality Act (Guidelines). The scope of services presented herein is confined to the project description and set of assumptions specified in the Department's September 15, 2017 solicitation for environmental consulting services.

The California Supreme Court has held that the word "project" is "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" (Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora [2007]). As defined by CEQA, a "project" is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (Section 21065, CEQA).

As defined in Section 21063 of CEQA and Section 15378(a) of the Guidelines, a "project" means:

[T]he whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700. (2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

As further defined in Section 15378(d) of the Guidelines:

Where the lead agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivision (a)(2) or (a)(3), the lead agency shall describe the project as the development proposal for the purpose of environmental analysis.

The City has indicated that the proposed project includes: (1) an amendment to the "City of Garden Grove General Plan 2030" (General Plan or GP) to increase allowable floor-area-ratio (FAR) within for City's "Heavy Commercial" district; and (2) revisions to certain development standards in Section 9.16.040.010, Title 9 (Land Use) of the "City of Garden Grove Municipal Code" (Municipal Code or MC). Although not identified therein, the project also includes the execution of a development agreement, issuance of one or more conditional use permits (CUP), site plan approval (Section 9.18.050.080, MC), lot consolidation (Section 9.30.200, MC), and such other associated discretionary actions as may be required by or from the City for the construction and operation of BNG's proposed hotel project located 13650 Harbor Boulevard, Garden Grove).

With the exception of that hotel, while the broad nature of the City's actions are identified, no replacement language has yet to be presented by the Department. Because the precise wording of the proposed revisions could have substantive ramifications as to the resulting work plan, pending the clear articulation of that replacement language and the Consultant's independent review thereof, the resulting CEQA-based project description could be materially altered. Similarly, since the initial step in any entitlement process for a private development project is the filing of a complete development application by the project proponent, that filing serves, in whole or part, to frame the project subject to CEQA and dictate the content of any resulting CEQA documentation. Because that development application was not included as part of the City's solicitation, following the Consultant's independent review thereof, it is possible that some of the assumptions presented herein may need to change.

As required under Section 15124(b) of the Guidelines, in an environmental impact report (EIR), the project description shall include a "statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project."

Under CEQA, citing *Nollan v. California Coastal Commission* [1987] and *Dolan v. City of Tigard*, [1994]), a "lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the 'nexus' and "rough proportionality' standards established by case law." Since a reduction in the acreage potentially impacted by the proposed General Plan amendment (GPA) and Title 9 revisions would likely reduce the proposed project's potential environmental effects and since such action would continue to allow BNG's hotel project to proceed, those "nexus" and "rough proportionality" standards may be exceeded based on the identified project acreage and the CEQA-compliance obligations identified herein.

BNG's "underlying purpose" is to construct and operate an economically feasible hotel on a BNG-owned site (13650 Harbor Boulevard) within the City. Because the City can more narrowly define the boundaries of the project site, the City's and BNG's objectives do not appear identical.

In an August 21, 2017 article in the "Orange County Business Journal" ("Garden Grove Plots Ambitious Hotel Growth Plan"), labeling Garden Grove as "Southern California's undiscovered jewel," the City outlined its plans to grow transient occupancy taxes (bed tax) by 21 percent in the next five years. Additionally, as reported on February 13, 2017 in the "Voice of Orange County": "The [Shanghai Construction Group] company purchased the Hyatt Hotel last year for \$137 million in cash, and will be a construction partner for a \$400 million project on Harbor Boulevard, which will include three hotels for a total of 769 new hotel rooms, 39,000 square feet of conference space and 45,000 square feet of commercial space. The children's media group Nickelodeon is also considering constructing its flagship Nickelodeon-themed hotel in Garden Grove, which

would include a pool, outdoor theater and other themed amenities.” While most of that hotel development will occur to the north of the Garden Grove (SR-22) Freeway, the cited media references demonstrate that additional hotel development is presently planned within the City.

The following policies are extracted from the City’s General Plan:

- Continue to encourage the development and expansion of hotel facilities in key corridors of the City (i.e., Harbor Boulevard) (Economic Development, Policy ED-1.1);
- Concentrate tourist supported commercial activities in selected areas of the City in order to create identifiable centers of interest for visitors (Economic Development, Policy ED-IMP-1C);
- Capture the benefits of the tourist trade generated by the Disneyland Resort and the Anaheim Convention Center (Land Use, Policy LU-9.1);
- Target future sites for hotels and other tourist-serving uses within International West (Land Use, Policy LU-IMP-9A);
- Allow expansion of the International West land use designation south of the Garden Grove Freeway (SR-22) to the area that is generally bounded by Harbor Boulevard on the east, Newhope Street on the west, and Westminster Boulevard on the south. The designation will be extended to this approximately 167-acre area at such time as developers are actively working on large-scale resort center projects (Land Use, Policy LU-IMP-9D); and
- Provide criteria for permitted uses, capacities, activities, landscaping and maintenance standards for tourist- and entertainment-related uses seeking to locate in the City (Land Use, LU-IMP-9E).

Although predicated, in whole or in part, in response to the Department’s receipt of a development application from BNG, the City’s solicitation did not clearly articulate the “underlying purpose” of the proposed GPA/Title 9 revisions. If that statement of purpose is solely to accommodate BNG’s proposed hotel, a less onerous course of action may be available to the City (e.g., smaller project site). If the City’s “underlying purpose” includes the promotion of hotel development throughout the City, either that elevated purpose should be divested from BNG’s CEQA process or a greater emphasis should be placed on the resulting public-private partnership.

In recognition of the policy directives presented in the General Plan and the documented hotel demand in central Orange County, the expansion of existing transient lodgings within the City would appear an appropriate economic development objective.

## **1.0 INTRODUCTION**

In the preparation of the proposed project’s CEQA documentation, the “2008 Garden Grove General Plan Update, SCH No. 200841079” (GP-FPEIR) will be used as a reference document; however, because the proposed project includes a GPA, this second-tier CEQA-compliance document cannot be “tiered” therefrom (Section 21094, CEQA). Additionally, the proposed project is neither eligible for an abbreviated environmental review pursuant to Section 21083.3 of CEQA nor is the project eligible for an exemption as an “infill project” pursuant to Section 21094.5 therein.

Independent of the form and format of the project’s environmental documentation, the proposed actions includes a number of disparate features and/or elements that require recognition and add complexity to the CEQA process. Those features and elements are briefly outlined below.

### **“Hotel” Defined**

Three separate definitions of “hotel” are provided in the Municipal Code:

- “‘Hotel’ means any structure, or any portion of any structure, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and

includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, hostel, bed and breakfast, apartment house, dormitory, time-share project, public or private club, mobile home, or house trailer at a fixed location, or other similar structure or portion thereof" (Section 3.12.020, MC).

- "'Hotel' means a building in which there are six or more guest rooms, where lodging with or without meals is provided for compensation, and where no provision is made for cooking in any individual room or suite. Occupancy for more than 30 consecutive days is allowed in hotels. A hotel shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar buildings where human beings are housed and detained under legal restraint or for care or treatment" (Section 5.07.200, MC).
- "'Hotel'" means a building in which there are six or more guest rooms, where lodging with or without meals is provided for compensation, and where no provision is made for cooking in any individual room or suite. A maximum of 10% of the customers may remain in any one establishment for 30 consecutive days. No consecutive occupancy shall exceed 30 days, nor shall any non-consecutive occupancy exceed 30 days in 45 consecutive days. A hotel shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes and similar buildings where human beings are housed and detained under legal restraint or for care or treatment (Section 9.04.060, MC).

Different hotel classifications have been established based on the range of services provided. Those classification include economy or limited-service, mid-range, and full-service hotels. With the exception of "extended stay business hotels," because the City's definition makes no distinction between those categories, if a distinction is intended, changes to the Municipal Code may be more extensive than presently contemplated.

"Extended stay business hotels" are separately defined as "a group of attached or detached buildings in which there are 100 or more guest rooms consisting of individual sleeping units, with or without kitchen facilities, that are intended to provide extended-stay transient lodging to travelers, for compensation, with or without meals. Occupancy for more than 30 consecutive days may be permitted in a maximum of 10% of the rooms rented each month. Any guest staying more than 30 consecutive days must re-register every 30 days. No consecutive occupancy shall exceed 120 days, nor shall any nonconsecutive occupancy exceed 120 days in 145 consecutive days. An extended-stay business hotel shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes and similar buildings where human beings are housed and detained under legal restraint or for care or treatment" (Section 9.06.060, MC).

Although applicable to only those "mixed use regulations and development standards" outlined in Chapter 9.18 of the Municipal Code: "All hotels and motels shall be subject to the following conditions: (A) The minimum site area shall be 30,000 square feet. (B) The minimum street frontage of the site shall be 100 feet. (C) Occupancy Restriction. No consecutive occupancy shall exceed 30 days, nor shall any nonconsecutive occupancy exceed 30 days in 45 consecutive days. (D) Additional Regulations. Hotels and motels are also subject to Chapter 8.70 (Public Lodgings) of the Municipal Code. (E) Cooking Facilities in Hotels. In hotels, no provisions for cooking facilities shall be provided within individual rooms or suites. (F) Kitchen Facilities in Motels. In motels, no more than 10% of the individual living units shall contain kitchen facilities" (Section 9.18.030.220, MC).

Based on the differences described above, it may first be necessary to describe the precise nature of the land use under consideration and the development standards applicable thereto. For example, although the term "hotel" is presented generically, under the provisions of the "Grove District Hotel Resort Development Agreement" (as dated on April 9, 2013), a distinction is made

between “full service” (upper-scale) and “limited service” (mid-scale) hotels. Unspecified is whether the proposed GPA/Title 9 revisions are to apply equally to all categories of transient lodgings, including extended stay business hotels, or only to a specified segment thereof.

### **General Plan Amendment and Revisions to the City of Garden Grove Municipal Code**

BNG seeks entitlements from the City to construct and operate a 5-story, 60-foot tall, 124-room hotel, totaling 62,764 square feet at the site of the former Harbor Auto Center (13650 Harbor Boulevard). The approximately 1.45-acre (63,217 square foot) site is designated “Heavy Commercial (HC)” in the General Plan and zoned “General Commercial (C-3).”

The General Plan indicates that the “Heavy Commercial (HC) designation is intended to provide for a variety of more intensive commercial uses, some of which may be incompatible with residential neighborhoods. The Heavy Commercial (HC) designation includes automotive repair, sales, and services; wholesaling; automotive body work, or contractors’ storage yards. Zoning districts that implement the Heavy Commercial designation are: C-3, General Commercial, which allows a Floor Area Ratio of 0.55” (Land Use Element, p. 2-24). More specifically, the HC district allows a FAR of “0.55 to 0.60” (Ibid.). Because that FAR is insufficient to accommodate BNG’s proposed development, with regards to the subject property, in order to accommodate a 62,764 square foot development on an approximately 63,217 square foot site, BNG seeks authorization to increase that FAR limit from 0.6 to 1.0 (representing a FAR increase of 0.40).

It is the Consultant’s understanding that, pursuant to the Department’s directive, any such accommodation shall not be limited solely to BNG’s proposed hotel site but would extent to encompass other comparably designated properties throughout the City. As noted by the City: “The request to amend the Garden Grove General Plan 2030, will be to increase the floor area ratio found in the GP, Chapter 2, Land Use Element, 2.4.2 Land Use Designation, Heavy Commercial. The change will increase the allowable floor area ratio ranging from 0.55 to 0.60; to the Heavy Commercial designation allows a floor area ratio ranging to 1.0.”

The General Plan includes a “Light Commercial” and a separate “Heavy Commercial” district. The “Light Commercial” district is represented by both C-1 and C-2 zones; the “Heavy Commercial” district is represented by the C-3 zone (Land Use Element, Table 2-4, p. 2-29). If the Department’s goal is to “facilitate hotel development” and not merely to “remove height restricts in the ‘Heavy Commercial’ district), because “hotels” and “motels” are conditionally permitted uses in the C-1, C-2, and C-3 (and M-1) zones, unless otherwise restricted, the acreages associated therewith might also need to be included in the project description and the combined acreage used in any assessment of potential direct and/or indirect physical changes resulting from the proposed GPA.

With regards only to the “Heavy Commercial” district, although the precise number of parcels is not known, there exists multiple grouping of HC-designated properties throughout the City, collectively totaling 91.07 acres (Land Use Element, Table 2-3, p. 2-20). Based on a total project area of 91.07 acres, assuming maximum allowable buildout, a 0.4 FAR increase could hypothetically translate into an additional 1,586,804 square feet (91.07 acres x 43,560 square feet per acre x 0.4 FAR increase = 1,586,804 square feet) of allowable uses throughout the City. Unless otherwise restricted, that increase would not be limited to hotel uses alone but would include, among others, “automotive repair, sales, and services; wholesaling; automotive body work, or contractors’ storage yards” (Land Use Element, p. 2-24).

In comparison, the General Plan estimated that the “maximum permitted growth” throughout the entirety of the HC district by 2030 would total just 1,666,144 square feet (Land Use Element, p. 2-20). Assuming that buildout of the additional square footage would also occur by 2030, the

proposed GPA would nearly double the estimated HC square footage throughout the City. The scale of that development could have broad-ranging environmental impacts.

As noted in the General Plan:

General Plan Buildout traffic forecasts have been modeled by Iteris, Inc., based on data provided by the Orange County Transportation Authority and the City of Garden Grove Planning Department. Modeled forecast volumes are used to anticipate possible improvements associated with future traffic volume growth. In this way, arterial and intersection capacity will be sufficient to accommodate the traffic generated by the future land uses, and the Circulation Element is balanced with the Land Use Element (Circulation Element, p. 5-10).

Programmatically, the introduction of an additional 1,586,804 square feet of "Heavy Commercial" uses at multiple locations throughout the City would alter the traffic modeling performed as part of the General Plan and likely predicate the need to update and rerun that model (based on the additional traffic associated therewith) for some or all of the "64 study intersections" (Circulation Element, p. 5-9) examined therein. In addition, a separate project-level traffic analysis (including an assessment of ingress/egress, internal circulation, parking, and public transit) is required for BNG's proposed hotel project.

Hotels generate much of their associated traffic during non-peak-hour periods. In contrast, commercial uses generate most of their trips during morning (AM) and evening (PM) peak hours. The greater the number of peak-hour vehicle trips associated with the proposed project, the greater the likelihood of participation by the California Department of Transportation (Caltrans) and the greater the number of freeway ramps that might be potentially impacted.

As indicated in the General Plan: "Zoning districts that implement the Heavy Commercial designation are: C-3, General Commercial" (Land Use Element, p. 2-24). As noted in Section 9.16.020.030 of the "Municipal Code, "hotels" and "motels" are not permitted by right in the C-3 zone but are noted as: (1) a "use eligible for consideration under conditional use procedures and permitted use if the conditional use permit is approved, subject to the specific conditions of such permit"; and (2) a "use [which] shall be subject to specific conditions or specific restrictions as listed in this section."

Typically, when examining potential environmental effects at the General Plan/Municipal Code level, the impact analysis is based on those uses permitted by right therein. Since they are not immediately authorized and remain subject to a second tier of review, any analysis of conditionally permitted uses potentially allowable within the corresponding district/zone are deferred to the project level once an actual use has been identified. As a result, unless otherwise specified, since a separate conditional use permit (CUP) would be required, any programmatic analysis of the proposed GPA would: (1) focus exclusively on those "automatically permitted uses" allowable within the C-3 zone; and (2) neither include an analysis of nor presuppose other "conditionally permitted use" (e.g., airport/helistop, hotels and motels, indoor multi-tenant retail shopping centers, golf courses, movie theaters, public buildings, and water-oriented parks) thereupon.

Based on an examination of other non-residential zones within the City, a "hotel/motel" is also identified as a conditionally permitted use in the "Neighborhood Commercial (C-1)," "Community Commercial (C-2)," and "Limited Industrial (M-1)" zones. To the same level of comparability to that which is to be provided for the C-3 zone, since no "draft" text has been provided relative to the proposed changes to the General Plan or the Municipal Code, unless restricted solely to the C-3 zone, the program-level CEQA analysis may need to more broadly examine the potential



environmental impacts associated with the resulting revisions to existing development standards within the C-1, C-2, C-3, and M-1 zones, as established in Title 9 of the Municipal Code.

Pursuant to Section 9.16.040.010 of the Municipal Code, within both the C-2 and C-3 zones, the maximum building height is three stories or 35 feet. As an exception, in all “commercial, office professional, industrial, and open space” zones where “hotels” are authorized, “hotels” are allowed a building height of “four stories and/or 55 feet (hotel only)” (Section 9.16.020.050[AJ][5][f], MC).

Based on the project’s projected 60-foot height, at least with regards to BNG’s existing real property holdings, as directed by the Department, BNG seeks to amend the Municipal Code to accommodate that increased height. Unlike the GPA, the proposed revisions to Sections 9.16.040.010 and 9.16.020.050 of the Municipal Code would apply to “hotels only” but would also appear to be inclusive of all “commercial, office professional, industrial, and open space” (inclusive of all C-1, C-2, C-3, and M-1) zone throughout the City. As a result, the City’s declaration that the project site is limited to “all 91.07 acres in the Heavy Commercial area” appears to overlook the additional 335.42 acres within the “Light Commercial” district and the 584.00 acres within the “Industrial” district (Land Use Element, Tables 2-3 and 2-4, pp. 2-20 and 2-29). Because the “Industrial” district already allow a FAR of 1.0 (Land Use Element, p. 2-28), the revisions to Section 9.16.020.050(AJ)(5)(f) of the Municipal Code, would not appear to produce any physical changes thereto.

When the “Light Commercial” acreage is added to the “Heavy Commercial” acreage, the proposed project could hypothetically add a total of 5,844,450 square feet  $([91.07 + 335.42 \text{ acres}] \times 43,560 \text{ square feet per acre} \times 0.4 \text{ FAR increase} = 5,844,450 \text{ square feet})$  of hotel use to the City and not merely the 1,586,804 square feet within the HC district.

While acknowledging that all lands within the C-1, C-2, and C-3 zones are not likely to transition to hotels, no methodology has been presented that documents market demands and absorption rates for hotel development within the City. As a result, from that increase, there presently exists no definitive means of differentiating hotel from non-hotel development.

To support the development-related assumptions in the project’s CEQA documentation, the Department should: (1) initiate a market study indicating the number of hotel rooms that could be accommodated within the City by 2030; and (2) determine the square footage of hotel space associated therewith. In addition, in order to determine whether the proposed GPA/Title 9 revisions have the potential to alter the economics of real estate development so as to create a fiscal incentive promoting hotel development over other competing land uses (e.g., allowing for the construction of more hotel rooms than otherwise permissible and enhanced income opportunities therefrom), the Department should consider obtaining a professional opinion from a qualified real estate appraiser. Absent some factual basis (substantial evidence) supporting the establishment of some lesser square footage, the perceived randomness of any development assumptions directly or indirectly attributable to the proposed GPA/Title 9 revisions would be subject to challenge.

Unless rectified, the resulting dichotomy in the Department’s project description creates an internal inconsistency in the project’s CEQA documentation, namely the GPA is “not hotel specific” but the proposed Municipal Code revision is limited to “hotels only.” Additionally, the potential square footage of development attributable to the GPA (not “hotel only”) is likely to be substantially larger than the potential square footage of development attributable to the Title 9 revisions (“hotel only”). If included in the upcoming program-level analysis, the larger of the two calculations: (1) becomes the bases for assessing potential environmental effects; (2) bears no relationship to the project-level analysis required for BNG’s proposed hotel; (3) suggests that the environmental consequence of BNG’s hotel project are substantially greater than would otherwise be presented if that hotel were

to be examined in isolation of the GPA/Title 9 revisions; and (4) likely changes the resulting CEQA documentation for that hotel from a "mitigated negative declaration" (MND) to a EIR.

In addition to those "findings" required under Sections 65358(a), 65455, and 65867.5 of the California Government Code (CGC), relating to general plan amendments, zone changes, and development agreements, respectively, the City Council's approval of a zone change must be supported by the following findings: (1) That the proposed zone change is consistent with the City's general plan; and (2) That the proposed zone change will ensure a degree of compatibility with surrounding properties and uses (Section 9.32.030[D][2][a], MC). Because there likely exists many areas within the City where commercial districts/zones abut non-commercial districts/zone, the latter finding thus necessitates an examination of not only the subject properties but the existing land uses located in proximity thereto.

The Department's solicitation incorrectly states: "Parcels 101-080-66, 101-080-27 (the 'Project Site')." Under CEQA, the area requiring analyses is not 1.45 acres or 91.07 acres or 426.49 acres but an area that is substantially larger than represented. To the extent that there may exist other unrelated projects now proposed, pending, or approved (but not yet operational) within the City's "Light Commercial" and "Heavy Commercial" district and/or within the City's C-1, C-2, C-3, and M-1 zones, if conducted, those projects would need to be identified and considered as part of an cumulative impact analysis accompanying this CEQA process.

With the single exception of BNG's hotel project, the current administrative records does not support findings that current FAR and height restrictions are, in fact, impediments to the development of hotels within the City. Assuming that it is the Department's intent to promote additional hotel development throughout the City, although it may remove possible development constraints germane to mid-range and full-range hotels, the resulting CEQA analysis cannot fulfill that intent because: (1) hotels are a conditionally permitted use and thus fall outside the scope of the program-level analysis; and (2) the GPA is not explicitly limited to "hotel only."

### **Level of Specificity**

As specified under Section 15146 of the Guidelines:

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. (a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy. (b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow."

BNG has submitted a detailed site plan depicting building placement, dimensions, and elevations; ingress and egress, including driveway placement, parking layout, aisle widths, and parking ratios; and landscape plans. In clear contrast, no development plans or proposals have been submitted for any of the other properties within the City that might benefit from the proposed GPA and revisions to the existing development standards outlined in Section 9.16.040.010 of the Municipal Code. Much is, therefore, knowable about BNG's hotel project while substantially less is knowable about any of the other benefiting properties. BNG's hotel project constitutes a "project-level" action while, in the absence of any formal development plans, the likely environmental effects of the GPA/Title 9 revisions on the other benefitting properties constitutes a "program-level" action.

A “project EIR” is prepared for a construction-level project, and “should focus primarily on the changes in the environment that would result from the development project [and] examine all phases of the project including planning, construction, and operation” (Section 15161, Guidelines). In contrast, a “program EIR” evaluates the broad policy direction of a planning document, such as a general plan, but does not examine the potential site-specific impacts of the many individual projects that may be proposed in the future consistent with the plan (Sections 21068.5 and 21093, CEQA; Sections 15168 and 15385, Guidelines). Program EIRs play a key role in a “tiered” CEQA analysis” (Section 15152[h], Guidelines).

Courts strive to avoid attaching too much significance to titles in ascertaining whether a legally adequate CEQA document has been prepared for a particular project. As explained in *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000): “Designating an EIR as a program EIR. . . does not by itself decrease the level of analysis otherwise required in the EIR. ‘All EIR’s must cover the same general content. The level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason,’ rather than any semantic label accorded to the EIR.’”

The proposed project includes both programmatic and project-level analyses. Independent of any labels assigned and independent of the proposed project’s programmatic component, the Lead Agency must produce an adequate programmatic and project-specific analyses to satisfy CEQA’s analytical and disclosure obligations.

### **Identification of the Applicant**

With regards to GPAs, referencing Section 9.32.030(D)(1)(a) of the Municipal Code:

- (a) **Applicability:** (i) An amendment to any element of the City’s general plan or zoning code may be initiated by the City Council, the Planning Commission or the City Manager. (ii) If the following findings are met, a citizen may request an amendment to any element of the City’s general plan or zoning code, and shall pay an amount equal to the estimated cost of preparing the amendment.
- (b) **Required Findings.** All the following findings must be made in the affirmative by the hearing body in order for this application to be approved: (i) That the amendment is internally consistent with the goals, objectives and elements of the City’s general plan; (ii) That the amendment is deemed to promote the public interest, health, safety and welfare; (iii) That in the case of an amendment to the general plan land use map or the zoning map, the subject parcel(s) is physically suitable for the requested land use designation(s), compatible with surrounding land uses, and consistent with the general plan.

As defined under Section 15351 of the Guidelines, the “applicant” is defined to mean the “person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.” The term “person” includes “any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of those entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions” (Section 21066, CEQA).

Because BNG seeks requisite “approvals” from the City, pursuant to Sections 15378(a)(2)-(3) of the Guidelines, that hotel becomes a “project” subject to CEQA. In contrast, because it affects properties over which BNG has no control or other interests, BNG lacks either the authority or the authorization to petition the City for any discretionary actions affecting those properties. For

comparison, assume a single property owner sought to “down zone” (e.g., by removing, limiting, or otherwise restricting the rights of other property owners) of comparably zoned properties, the accompanying application filed with the Department would likely be rejected for lack of standing.

BNG’s hotel constitute a “project” under the provisions of Section 15378(a)(2)-(3) of the Guidelines; however, the GPA/Title 9 revisions constitute a “project” under Section 15378(a)(1) therein. From a regulatory perspective, to the extent it extends beyond BNG’s current real property interests, the City (not BNG) is the advocate for the GPA/Title 9 revisions and the “applicant” for those programmatic components. The proposed project, therefore, involves two separate “applicants” and contains separate programmatic and project-level component parts.

CEQA generally discourages “piecemealing” or the practice of breaking up a larger project into smaller components and subjecting those components to separate CEQA processes so as to minimize the appearance of the larger project’s potential environmental effects. Citing *Banning Ranch Conservancy v. City of Newport Beach* (2012), in *Aptos Council v. County of Santa Cruz* (2017), a California appellate court recently held that “[t]here is no piecemealing when ‘projects have different proponents, serve different purposes, or can be implemented independently.’”

Based on the presence of separate programmatic and project-level actions (including the analytical differences associated therewith), separate and distinct “applicants,” and different geographic area sites (i.e., 426.49 or 91.07 acres and 1.45 acres), notwithstanding CEQA’s tenet that lead agencies examine the “whole of the action” (Section 15378[a], Guidelines), rather than consolidating the GPA, the Title 9 revisions, and BNG hotel development into a single CEQA document, the Lead Agency may have the ability to sequential process two separate CEQA documents (i.e., a MND for the GPA/Title 9 revisions and a separate MND for BNG’s hotel project).

Because the project’s existing administrative record has established a compelling linkage between each of the actions contemplated herein, while the first two elements would appear to be satisfied, by foreclosing all other entitlement strategies for BNG’s hotel project, it remains uncertain whether the third factor (i.e., the independency of the two actions) can be demonstrated. If that independency can be demonstrated, there may exist a benefit from separate processing.

### **Other “Benefiting Properties”**

In the absence of other terminology, the term “benefitting properties” is used to describe the other HC-designated and C-3-zoned properties located throughout the City which would gain benefits (added value) through the removal of existing development constraints thereupon. While those benefitting property owners are not formally “applicants” to this action, the Lead Agency has specific noticing and other obligations with regards to each of those owners and their tenants, including additional owners and tenants within a specified radius thereof.

Since it is unlikely that the Department has actively sought to determine the interest of those benefitting owners to either the requested GPA or to future hotel development on those properties, it is unknown what sort of feed-back the Department might anticipate from those parties. Additionally, absent a more thorough assessment of those existing land uses that about those benefitting properties, the level of community concern, support, and/or opposition cannot be reasonably assessed.

It can be surmised that the City’s provision of additional allowance for height and bulk and the removal of development constraints thereupon will increase the valuation of those benefitting properties. Assuming that BNG were to bear the singular responsibility for the payment of all City-incurred costs associated with the CEQA processes, the creation of any added value (to other unrelated parties) associated therewith is being borne solely by BNG.

Although not promoting the use of a “specific plan” under this proposal, under State planning law (Section 65456, CGC), if the project were a “specific plan,” the City would be authorized to impose a fee for the purpose of recovering the fair-share costs from those property owners located within the plan’s boundaries associated with the plan’s preparation and adoption, including associated CEQA costs. While that “specific plan fee” is not applicable to the proposed project, the City might consider the establishment of a “benefit district” or similar mechanism allowing BNG to recover from each benefitting property a cost-recovery mechanism.

### **Smaller Project Area**

As indicated and graphically depicted in the General Plan, in describing “Focus Area A: International West (Harbor Boulevard)”:

This approximately 235-acre area, generally referred to as The International West Resort Area, is located in the eastern portion of the City, generally along Harbor Boulevard, between Chapman Avenue on the north and the Garden Grove Freeway on the south. This area holds critical importance for the City for revitalization and economic stimulus purposes. Ideally situated south of Disneyland, this area has opportunities to capitalize and expand tourist-based and entertainment-related uses. Several full-service hotels and new restaurants have been constructed; predominately at the intersection of Chapman Avenue and Harbor Boulevard. In 2006, an Economic Impact and Master Plan Document was prepared for the International West Resort Area. The Master Plan is intended to complement existing entertainment, hospitality, and sports venues in the surrounding areas by planning for three entertainment centers that would be connected by themed dining and retail facilities, entertainment, hotels, theaters, and parkland. In 2007, the City began working with a developer on a 35-acre site bordered by Buaro Street on the west and Harbor Boulevard on the south and east. The 35-acres is being referred to as the “Central Hub” within International West and would include such uses as a water park, hotels, dining and entertainment, and retail. The International West designation will allow for a variety of land uses including Mixed-Use Resort, Entertainment/Hotel, and some residential.

For the General Plan 2030, the International West designation will not be applied to an area south of the Garden Grove Freeway (SR-22) that is generally bounded by Harbor Boulevard on the east, Newhope Street on the west, and Westminster Boulevard on the south. The designation will be extended to this approximately 167-acre area at such time as developers are actively working on large-scale resort center projects.

The Department’s receipt of BNG’s development application would appear to serve as a supportable basis for extending the International West designation “south of the Garden Grove Freeway.” To the extent that such a designation would be beneficial to BNG, subject to the limitation imposed under Section 9.16.030.020(C)(3) of the Municipal Code, the designation of BNG’s hotel site as a “Planned Unit Development” (Sections 9.16.030.020 and 9.18.160.010, MC) may allow for the establishment of site-specific development standards thereupon.

At a recent meeting with representatives of the City’s Community and Economic Development Department and Community Development Department regarding BNG’s hotel project, a map was disseminating by the Department depicting nine separate and distinct “areas” (totaling 24.98-acre) that needed to be included in any programmatic assessment of that proposed hotel. At that time the geographic extent of the proposed GPA/Title 9 revisions were limited to only those “areas.”

At that meeting, the Department’s Planning Services Manager indicated that the Department would consider an even smaller planning area. For example, if the project site were limited to

Harbor Boulevard between State Route 22 on the north and Westminster Boulevard on the south, the project site would be confined to 20.59 acres (358,743 square feet of additional C-3 uses).

Based on a similar rationale supporting the restriction on "extended stay business hotels" to only those properties containing a minimum 80,000 square feet (Section 9.16.050[Z][2], MC), if those identified "areas" less than 50,000 square feet were excluded (i.e., Areas 5, 8, 9) therefrom, the project area would further diminish to only 18.10 acres (315,410 square feet of additional C-3 uses). In contrast, as indicated in the Department's solicitation, absent any supporting rationale, the project site has now grown in size since that meeting to a total of 91.07 acres (1,586, 804 square feet of additional C-3 uses).

From a traffic perspective, since all the project on Harbor Boulevard would be anticipated to share a common distribution pattern, that commonality would appear to support limiting the project site to only those properties.

### **"Speculative" verse "Reasonably Foreseeable" Indirect Physical Changes**

In *Aptos Council v. County of Santa Cruz* (2017), California's Sixth District Court of Appeal upheld, under the non-deferential "fair argument" standard of review, a negative declaration prepared for an ordinance that "up-zoned" property to allow for higher-density hotel development with reduced parking. Notably, the court held that CEQA does not require a lead agency to analyze the potential environmental effects of future development authorized by relaxed land-use restrictions in the absence of "substantial evidence" that future development is "reasonably foreseeable."

The negative declaration and its corresponding "initial study" determined that the subject action could increase the number of hotel rooms with fewer parking spaces and would allow 4-story hotels in areas previously zoned for 3-story structures. The "negative declaration" determined that the project would not cause any significant environmental effects because the associated regulatory text amendments would have no direct environmental impact and the potential indirect impacts resulting from future hotel development were presently unknown and would be subject to future discretionary approval and additional CEQA review.

The court held that CEQA only requires consideration of "reasonably foreseeable indirect physical changes in the environment which may be caused by the project" and, citing Section 15064 of the Guidelines, that "[a] change which is speculative or unlikely to occur is not reasonably foreseeable." The court explained that the lead agency investigated the potential for hotel development by conducting an inventory of available development sites and interviewing the owners of such sites to determine whether they had any plans for hotel development. Since the lead agency's investigation determined that no hotel development was presently being proposed, as demonstrated by facts in the project's administrative record, the court held that the environmental review of hypothetical, unspecified hotel projects would be a speculative exercise that is not required by CEQA.

The City's decision to prepare either a MND or an EIR is likely predicated on whether substantial evidence supports the Lead Agency's determination that hotel development, beyond BNG's proposed hotel project, is or is not "reasonably foreseeable." If the CEQA analysis, as supported by facts in its accompanying administrative record, supports the conclusion that no additional hotel development will likely occur as either a direct or indirect consequence of both the GPA and revisions to Section 9.16.040.010 of the Municipal Code, only the impacts attributable to BNG's hotel development would need to be analyzed (likely supporting the use of a MND). Conversely, if evidence exists that other actual hotel projects are planned or proposed, some, as of yet unspecified level of development would need to be analyzed as part of the upcoming CEQA process (likely requiring the preparation of an EIR).

The Consultant will defer to the Department the preliminary determination whether additional hotel development, beyond BNG's proposed project, is speculative or reasonably foreseeable.

### **Defining the Proposed Project as the “Net Physical Change”**

At least with regards to BNG's hotel project, under CEQA and the Guidelines, the term “project” means “an activity which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment” (Section 21065, CEQA). “Effects analyzed under CEQA must be related to a physical change” (Section 15358[b], Guidelines).

In describing the proposed project, it is necessary to draw a distinction between the manner in which the project would typically be described and the manner in which the project needs to be described under CEQA.

In describing the “existing environmental setting,” the CEQA documentation “must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant” (Section 15125[a], Guidelines). California courts have noted that “the baseline for CEQA analysis must be the ‘existing physical conditions in the affected area’ (Environmental Planning Information Council v. County of El Dorado [Citation]), that is, the ‘real conditions on the ground’ (Save Our Peninsula Committee v. Monterey County Board of Supervisors [Citation].”

Although the 17,216 square foot “Harbor Auto Center” has recently been demolished, that former use created environmental effects (e.g., traffic generation) which are now removed from the regional inventory. Because demolition of the site's improvements was predicated by the sale of that site to BNG by the City, as the successor agency to the Garden Grove Agency for Community Development, a “net physical change” analysis appears warranted.

Based on the assumed presence of that former land use, the environmental benefits associated with the elimination of that use can be subtracted from the potentially adverse impacts attributable to the new use. For example, based on the Institute of Transportation Engineer's (ITE) “Trip Generation Manual, 9<sup>th</sup> Edition,” traffic impacts attributable to the proposed hotel would be derived by subtracting average daily “auto center” vehicle trips from average daily “hotel-generation” trips:

$$\begin{aligned} & (124 \text{ room hotel trips}) - (17,300 \text{ square foot office building trips}) = \text{net physical change} \\ & (0.6 \text{ daily trips/room} \times 124 \text{ rooms}) - (17.3 \times [1.49 \text{ daily trips/1,000 square feet}]) \\ & (74 \text{ daily hotel trips}) - (26 \text{ daily office trips}) = 48 \text{ average daily trips (ADT)} \end{aligned}$$

While acknowledging that BNG's proposed hotel may generate approximately 74 daily trips, the resulting traffic, air quality, and noise impacts would be based on only 48 (rather than 74) new daily trips. Ignoring any differences relating to “peak-hour” verse “non-peak-hour” trips, for the purpose of CEQA analysis, traffic-related impacts attributable to BNG's hotel project are thus reduced by about 35 percent. Additionally, hotel-related trips are typically generated during weekends and off-peak periods. Because greater available street capacity exists, off-peak-hour trips have less impact on traffic and traffic delays than trips generated during peak-hour periods.

Excluding BNG's proposed hotel site, because the precise location of any development activities directly or indirectly attributable to the GPA/Title 9 revisions cannot be determined with any level of certainty, the “net physical change” analysis is only germane to BNG's proposed hotel site.

## 2.0 DISPOSITION AND DEVELOPMENT AGREEMENT

In response to the City's "Request for Proposals and Qualifications for Disposition and Development of 13650 Harbor Boulevard" (December 14, 2016) (2016 RFP), the Consultant understands that BNG recently acquired the subject property from the City, in its capacity as successor agency to the Garden Grove Agency for Community Development. As noted in the 2016 RFP: "The property is owned entirely by the City of Garden Grove. The property is comprised of two (2) separate parcels. The property is zoned C-3, which allows for a variety of commercial land uses. . .The property is currently improved with a 17,216 square foot automotive facility and a paved yard with 150 parking spaces. The lot size of both parcels is approximately 63,217 square feet."

On October 11, 2016, the City adopted a resolution approving a purchase and sale agreement (PSA) with BNG for the subject property. In accordance therewith, the "The Buyer is required to plan, design and develop a hotel development on the property, subject to the City's future approval of conceptual plans and all required land use entitlements. In the event the Buyer does not develop the property with a hotel project approved by the City within the specified time frame, the City will have an option to repurchase the property."

With regards to CEQA and the Guidelines, the PSA expressly stated:

The parties agree that neither the City nor the Buyer has committed itself to any particular course of action with respect to the proposed hotel development. Buyer specifically acknowledges that, notwithstanding anything in this agreement which is or appears to be to the contrary, any City approval under this agreement shall not waive or eliminate the requirement for review and approval by the City pursuant to the California Environmental Quality Act and CEQA's implementing guidelines, acting in City's municipal capacity and exercising its police powers. Buyer shall, without limitation, pay all costs, charges and fees associated with applying for and securing CEQA approvals, including, without limitation, City's customary CEQA compliance costs. The provisions and terms in this Section 19 shall not be construed to limit the consideration of alternatives or mitigation measures developed pursuant to CEQA, and/or further public review of the hotel development. Any and all costs of any on-site or off-site CEQA mitigation required in connection with approval of the land use entitlements shall be borne by Buyer. Buyer acknowledges that compliance with any such CEQA mitigation shall be a condition under applicable law for proceeding with development of the property. The City retains absolute and sole discretion to: (i) require modifications of the proposed hotel development as may, in its sole discretion, be necessary to comply with CEQA, (ii) select other feasible alternatives to avoid significant environmental impacts; (iii) balance the benefits of the proposed hotel development against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; and/or (iv) determine not to approve the proposed development.

Pursuant to the "schedule of performance" contained therein, on or before September 1, 2017, the "Buyer shall have obtained approval or conditional approval of all land use entitlements and related CEQA approvals." The City and BNG collectively acknowledge that, through no fault of the Consultant, the Consultant is unable to achieve that schedule. The City and BNG shall have no recourse against the Consultant with regards thereto or any extensions thereof attributable to the Consultant's performance of the work effort outlined herein.



### 3.0 SCOPES OF SERVICES

As requested by the Department two separate scopes of service are presented herein.

- Attachment A (Mitigated Negative Declaration) assumes that the proposed project qualifies for processing under either a "negative declaration" (ND) or a "mitigated negative declaration" (MND). Since the difference between the two CEQA documents relates only to the inclusion of mitigation measures, the terms "ND" and "MND" are used interchangeable herein.
- Attachment B (Environmental Impact Report) assumes that the proposed project will necessitate the preparation and processing of an EIR. Although there exists some duplication as to the work to be undertaken in the preparation and processing of a MND versus an EIR, the work effort outlined herein ensures that all work conducted under one scope will also have direct relevancy to the performance of the other scope should a change of course occur at any time during the CEQA process.

Included as Attachment C (Traffic Impact Study) herein is a scope of services provided to the Consultant by RK Engineering Group (RKE) for the preparation of a traffic impact study for BNG's proposed hotel project. That scope of services is intended to accompany the MND and would likely need to be augmented in the event that an EIR was determined by the Department to be required.

It is noted that, at this stage in the CEQA process, no predetermination has been made by the City, the Department, and/or by the Consultant as to the appropriate manner, form, or format of the proposed project's CEQA documentation. Similarly, no actions have been taken and no commitments have been made by the City and its various departments that would prematurely commit the City Council to a definitive outcome.

Except where otherwise noted, both scopes of service are based on the information provided by the Department and, unless otherwise modified, are limited to those consulting services explicitly delineated herein. If, following the Department's review of this work program, changes to the recommended scopes of service are identified or if information is subsequently developed through the performance of the specific activities outlined therein that would suggest the need for a modified level of analysis, to the extent that any such modifications were to expand this work plan and/or increase the projected line-item costs and/or labor commitments, the Consultant reserves the right to process and the City, acting through the Department, agrees not to unreasonably withhold processing and approval of any reasonable change order reflecting that modified work endeavor, independent of whether additional funding has first been secured from BNG.

Without guarantee or representation, the Consultant will use its best efforts to delivery to the Lead Agency an adequate and defensible CEQA document suitable for the receipt of those discretionary approvals required from the City. All parties, however, acknowledge that no amount of analysis ensures that CEQA-based litigation will not be filed alleging either defect with the CEQA documentation and/or deficiencies with the CEQA process. Neither the filing nor the outcome of any subsequent litigation constitute evidence that the work product and services provided by the Consultant were, in any way, defective or deficient.

Should you have questions concerning the attached work plans, contact me at (949) 837-1195.

Sincerely,



Peter Lewandowski  
Principal

Attachment A  
**Mitigated Negative Declaration**

Attachment A  
**COMBINED PROGRAMMATIC AND PROJECT-LEVEL  
MITIGATED NEGATIVE DECLARATION**  
13650 Harbor Boulevard, Garden Grove, California

In response to a development application submitted by the BN Hotel Group, LLC (BNG) for one or more discretionary entitlements from the City of Garden Grove (City or Lead Agency), this scope of services is submitted to the City's Community Development and Economic Development Department (Department) by Environmental Impact Sciences (EIS or Consultant) in response to BNG's proposed Harbor Boulevard Hotel Project (13650 Harbor Boulevard, Garden Grove). Pursuant to the provisions of the California Environmental Quality Act (CEQA) and the Guidelines for the Implementation of the California Environmental Quality Act (Guidelines), proposed herein is the preparation of a combined programmatic and project-level "negative declaration" (ND) or "mitigated negative declaration" (MND). Since the difference between the two CEQA documents relates only to the inclusion of mitigation measures, the terms "ND" and "MND" are used interchangeable herein.

For ease of reference, the individual components of this work program have been categorized under the following seven (7) major tasks:

- Major Task 1.0: Project Description
- Major Task 2.0: Scoping Activities
- Major Task 3.0: Expanded Initial Study
- Major Task 4.0: Technical Studies
- Major Task 5.0: Mitigated Negative Declaration
- Major Task 6.0: Meeting Attendance
- Major Task 7.0: CEQA Support Services

Where relevant, for the purpose of describing the separate analytical and outreach activities and/or deliverables associated therewith, each of these major headings have been further divided into individual tasks and subtasks. The sequencing and categorization of those major tasks, tasks, and subtasks herein is presented for descriptive purposes only and is not intended to directly correspond with the order of their commencement or completion.

**Major Task 1.0: Project Description**

For the purpose of this proposal, it is assumed that the proposed revisions to Section 9.16.020.050(AJ)(5)(f) in Title 9 (Land Use) of the Municipal Code constitute a "project" subject to CEQA (see *Union of Medical Marijuana Patients v. City of San Diego* [2016]).

CEQA defines a "project," in part, to constitute "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Based on that definition, although counter-intuitive, often the "project" which is examined under CEQA differs, either minimally or substantively, from both the project proponent's actual development plan and the precise nature of the development application submitted to the local permitting agency.

As stipulated, "[e]ffects analyzed under CEQA must be related to a physical change." For those factors where a quantitative description can be applied, the "net physical change" is generally derived by subtracting the "existing baseline conditions" from the "proposed project conditions." Where qualitative comparisons are only possible, professional judgment (supported by factual information) may need to be applied in assessing the magnitude of the "net physical change." Similarly, with regards to impact comparisons, reasoned adjustments may need to be made when

there are possible time-related variables associated with differences in the operational characteristics between existing and proposed uses.

This major task serves as the foundational basis upon which all later actions and activities will be derived. To ignore its importance as a stand-alone action places the proposed project at greater risk than if a definable and static "project description," mutually agreed upon by all parties, was developed at the onset of the CEQA process. At this stage, the "project description" is not a formal CEQA document but an internal document used for planning and analytical purposes only.

With regards to the "project description," in describing the proposed deliverables, the terms "preliminary" and "revised preliminary" are not derived from established CEQA parlance but serve only to describe the separate tiers of the Department's review associated therewith. To the extent that the Department authorizes concurrent review by BNG, electronic copies of each of the identified deliverables will be concurrently forward to BNG's identified representative.

- **Task 1.1: "Preliminary" Project Description.** Because the "project" subject to environmental review may substantively differ from that envisioned by the Lead Agency and/or BNG, the Consultant will, within the limits and limitations of this proposal, engage in foundational discussions and attend meetings with City representatives and with BNG's development team for the purpose of: (1) gaining greater understanding of the proposed project and each of its physical and procedural facets; (2) discussing the "existing environmental setting" (baseline) and its integration into the project's CEQA documentation; (3) resolving outstanding issues relating thereto; (4) identifying possible impediments to the project's effectuation; (5) gaining additional information and insights concerning relevant off-site activities and proximal development activities that may influence or effect the CEQA analysis; (6) identifying the presence of any infrastructure constraints and associated capital improvement requirements; (7) identifying anticipated requisite entitlements that may be needed for project effectuation; (8) discussing role assignments and work delegation; (9) describing, to the uninitiated, CEQA's purpose, function, procedures, and pitfalls; (10) obtaining copies of existing documents germane to the proposed project; and (10) addressing such other matters as may be directly or indirectly related to the proposed project.

For the purpose of formatting and comparison, requested documents include but may not be limited to the GP-FPEIR and the CEQA documentation prepared by the City for the Site C Resort Hotel, the Nickelodean Resort Hotel, the Great Wolf Lodge, and the Brookhurst Place (Triangle) hotel projects

- ◆ **Subtask 1.1.1: Objectives, Land Uses, Entitlements, and Pending Hotel Projects.** Because the project includes a GPA/Title 9 revisions, those documents and the precise language of the requested text and graphic changes thereto need to be clearly specified (by others) and neither deferred to an unspecified future date nor left to the Consultant's imagination. In addition, as documentation to be included in the project's administrative record, the Department should specify the definition of "hotel" intended and identify: (1) its "objectives" and "purpose" for undertaking the GPA/Title 9 revisions; (2) description of proposed land uses; (3) all required entitlements and discretionary approvals associated with the proposed project; and (4) identify and describe any "reasonably foreseeable" hotel projects within the City.

The assessment of construction (short-term) and operational (long-term) impacts present different challenges. Project applications seldom include a "construction management plan" (describing the nature of the construction process, including equipment usable) as part of a development application. If submitted, that document would allow the Consultant to input project-specific parameters into the computer models upon which quantitative

impact estimates are derived rather than relying upon those “default” values established by the South Coast Air Quality Management District (SCAQMD). Any BNG-submitted information shall be considered in formulating the “project description.”

- ◆ **Subtask 1.1.2: Identification of the Project Site.** The Department indicates that the project site includes “all 91.07 acres in the Heavy Commercial area.” Because the location of that 91.07 acres is not identified in the Department’s solicitation and because the City’s “Land Use Policy Map” is not available online, there presently is uncertainty as to the exact areas under consideration. While the Department identifies 16 “intersections to be studied for the traffic study,” it is not presently possible to equate those intersections to the properties potentially affected by the proposed GPA/Title 9 revisions.

It is the Consultant’s current understanding that the Department seeks to amend Section 9.16.020.050(AJ)(5)(f) of the Municipal Code relating to all “[p]ermitted uses in Commercial, Office Professional, Industrial, and Open Space” zones throughout the City. As indicated in the General Plan, reference to “Commercial, Office Professional, Industrial, and Open Space” zones appear to include, but not necessarily limited to, the “Light Commercial” (LC), “Heavy Commercial” (HC), and “Industrial” (I) districts.

From a project-level perspective, BNG’s proposed hotel site is limited to 1.45 acres. Programmatically, “hotels” and “motels” are a conditionally permitted use in the “Light Commercial” (LC), “Heavy Commercial” (HC), and “Industrial” (I) districts. With regards to those districts, the “City of Garden Grove General Plan 2030” (General Plan or GP) assigns the following acreages thereto: (1) LC – 335.42 acres; (2) HC – 91.07 acres; and (3) I- 584.00 acres (Land Use Element, Tables 2-3, p. 2-20). The City’s declaration that the project site is limited to “all 91.07 acres in the Heavy Commercial area” appears to overlook the additional 335.42 acres within the “Light Commercial” district and the additional 584.00 acres within the “Industrial” district that might also be either directly or indirectly impacted by the GPA/Title 9 revisions.

The “Light Commercial” district is represented by both “Neighborhood Commercial (C-1)” and “Community Commercial (C-2)” zones, the “Heavy Commercial” district is represented by the “General Commercial (C-3) zone, and the “Industrial” district is represented by both the “Light Industrial (M-1)” and “Industrial Park (M-P) zones (Land Use Element, Table 2-4, p. 2-29). Because hotels and motels are neither a permitted nor conditionally permitted use in the M-P zone, the M-P zone does not require further consideration herein. The remaining M-1 acreage within the “Industrial” district is not, however, separately quantified in the General Plan.

Since no “draft” text has been provided by the Department (for the Consultant’s review) relative to the proposed changes to the General Plan and to Title 9 (Land Use) of the “City of Garden Grove Municipal Code” (Municipal Code or MC), unless restricted solely to the C-3 zone, the program-level CEQA analysis may need to more broadly examine the potential environmental impacts associated with the resulting revisions to existing development standards within the C-1, C-2, C-3, and M-1 zones.

Similarly, at various times, the “project area” has been identified by the Department as consisting of less than 24.98 acres, 24.98 acres, 91.07 acres, and more than 91.07 acres. As a result, from a programmatic perspective, there remains uncertainty as to which General Plan district(s) and zoning designation(s) are or may be applicable to the proposed project. Resolution of this potential outstanding issue is a critical component of the “project description.”

- ◆ **Subtask 1.1.3: “Speculative” versus “Reasonably Foreseeable” Indirect Impacts.** CEQA defines a “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (Section 15378, Guidelines). The Guidelines further state that “[a]n indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment” (Section 15064[d][2], Guidelines). CEQA defines “effects” as inclusive of both “direct or primary effects” and “[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable” (Section 15358[a][2], Guidelines).

To the extent that the proposed project removes, reduces, or otherwise modifies existing development standards on properties other than BNG’s proposed hotel site, allowing for an increase in size, bulk, and height above those standards currently in place and/or to the extent that the GPA/Title 9 revisions alter the economics of real estate development so as to create a fiscal incentive promoting hotel development over other competing land uses (e.g., allowing for the construction of more hotel rooms than otherwise permissible and enhanced income opportunities therefrom) and/or to the extent that Department has knowledge of other planned or pending hotel development projects within the project area, the indirect impacts attributable to the proposed GPA/Title 9 revisions could serve as a stimuli for additional hotel or other development on other “benefiting” properties.

Under CEQA: (1) “An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable” (Section 15064[d][3], Guidelines); and (2) “If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact” (Section 15145, Guidelines).

An appellate court has recently held that “[u]nder the CEQA Guidelines, ‘[a] change which is speculative or unlikely to occur is not reasonably foreseeable.’ [Citation.] If concerns about physical changes in the environment resulting from an ordinance are ‘too “speculative or unlikely” to be considered “reasonably foreseeable,” ‘then the ordinance is ‘not a project subject to CEQA.’ [Citation.] When the potential physical changes that may be caused by a public agency’s activity are unduly speculative, the issue of whether that activity constitutes a project for purposes of CEQA, may ‘merge for all practical purposes’ with the issue of whether it is premature to conduct an environmental review. [Citation.]” (Union of Medical Marijuana Patients v. City of San Diego [2016]).

The determination whether, by adopting the proposed GPA/Title 9 revisions, indirect impacts upon other “benefiting properties” (e.g., affecting the nature, intensity, and potential timing of development activities thereupon) is “speculative” or “reasonably foreseeable.” That determination, at least in part, constitutes a “legal opinion” and will undoubtedly have substantive implications relative to the substance of the program-level analysis (including its cost and scheduling implications). The Consultant must, therefore, defer that determination to the Department, acting in concert with the City Attorney.

Absent resolution of the project’s precise boundaries, whether the proposed GPA/Title 9 revisions may (directly or indirectly) serve as a catalyst to development activities

extending beyond BNG's proposed hotel site, and the location, extent, and timing of any development (directly or indirectly) attributable thereto (if any), for the purpose of this proposal, the Consultant is left to assume that any such development is "speculative" and, therefore, outside the purview of CEQA. Should a different determination be made, the Consultation reserves the right to augment this scope of services, in combination with its attendant budget and performance schedule, in response to that change in this or other project-related assumptions.

- ◆ **Subtask 1.1.3: Environmental Baseline.** California courts have indicated that that "the statute requires the impact of any proposed project to be evaluated against the baseline of existing environmental conditions, which is the only way to identify the environmental effects specific to the project alone" (Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council [2010]). In Smart Rail v. Exposition Metro Line Construction Authority (2013), the California Supreme Court recently held that the lead agency "enjoys discretion to decide. . .exactly how the existing physical conditions without the project can most realistically be measured, subject to review for support by substantial evidence."

For the purpose of environmental compliance, the City has noted that BNG's proposed hotel site is assumed to be "improved with a 17,216 square foot automotive facility and a paved yard with 150 parking spaces." Excluding BNG's proposed hotel site, because the precise location of any development activities directly or indirectly attributable to the GPA/Title 9 revisions cannot be determined with any level of certainty, the "net physical change" analysis is only germane to the project-level analysis of BNG's proposed hotel site. As a result, for the purpose of this proposal, from a programmatic perspective, the Consultant will not attempt to quantify existing development (measured in square footages), assess intensity (measured in floor-area-ratio), and/or categorize (broadly grouped by land use) the parcels located within the project area and the land uses now operating thereupon based on a detailed review of Department files and field inspections.

Following those discussions and receipt of the request information, the Consultant will, within the limits and limitations of this proposal, prepare and submit a "'Preliminary' Project Description" (PPD) to the Department and BNG for first-round review.

- **Task 1.2: "Revised Preliminary" Project Description.** Upon receipt of any comments from the Department and BNG on the PPD, the Consultant will, within the limits and limitations of this proposal: (1) make such revisions thereto as may, in the Consultant's sole judgment, be required to respond to any comments received; (2) produce and submit a "Revised Preliminary' Project Description" (RPPD) to the Department and BNG for second-round review. Upon acceptance by the Department and BNG, the RPPD shall become the "Project Description" (PD) and serve as the basis for all subsequent CEQA analyses.
- **Task 1.3: "'Screening-Level' Initial Study" (Decision Point 1).** A "decision point" represents a definable event or milestone when the Department may elect to reexamine its environmental review strategy and reassess the merits of continuance along its existing course of action or alter that course of action relative to the appropriate manner of CEQA compliance.

In recognition of the huge differential in cost and time required to prepare an EIR versus a MND, the Consultant will conduct a "screening-level" environmental analysis of the critical environmental variables to ascertain the feasibility of mitigating, at least with regards to those variables, potential project-related impacts to a "less-than-significant" level. The screening-level environmental analysis is not intended to serve as a substitution for an adequate CEQA-

based assessment but will be prepared for the purpose of providing the Department and BNG with an early indication of the potential environmental significance of the proposed project.

Based on the findings of the "Screening-Level' Initial Study," the Consultant shall provide recommendations to the Department and BNG regarding the continuing course of CEQA-compliant actions. Throughout the CEQA process, the Department will independently determine whether to continue to proceed with the preparation and processing of a MND or terminate the MND and commence the preparation of an EIR.

### **Major Task 2.0: Scoping Activities**

Scoping activities shall be conducted for the purpose of both identifying those environmental impacts that may occur directly, indirectly, or cumulatively as a result of the project's implementation and soliciting the issues, concerns, and recommendations of other responsible agencies' and other stakeholders with regards to the recommended manner of mitigating or avoiding those environmental effects. The following pre-circulation scoping activities will be conducted hereunder.

- **Task 2.1: Tribal Consultation.** As mandated under Senate Bill (SB) 18 (Chapter 905, Statutes of 2004) and Assembly Bill 52 (Chapter 532, Statutes of 2014) (Section 21080.3.1, CEQA), in compliance with Sections 21080.3.1 and 21080.3.2 of CEQA, certain consultation requirements apply when adopting or amending general and specific plans. As specified under SB 18:

Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC [Native American Heritage Commission]) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3). Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within -the city or county's jurisdiction. The referral must allow a 45 day comment period (Government Code §65352). Notice must be sent regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process. Local governments must send notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code §65092).

It is the Consultant's understanding that the Department has already initiated outreach efforts, soliciting from the Native American Heritage Commission (NAHC) a list of tribal contacts and has provided notification of the proposed project to those tribal organizations identified by the NAHC. It is further the Consultant's understanding that one or more such organizations have formally requested "consultation" thereunder.

Under this task, the Consultant will participate in that consultation. As assumed herein, consultation shall be limited to: (1) attendance at one site visit involving City staff, BNG's representatives, and those tribal organizations requesting consultation; and (2) preparation of a draft letter (for the City's execution) summarizing any tentative agreements reached between the City and those organizations, and stating that consultation has been concluded.



- **Task 2.2: State Clearinghouse Noticing and Coordination.** Under CEQA, the Lead Agency must send environmental documents, including all “Notices of Preparation” (NOP) and selected draft negative declarations and draft EIRs, to the State Clearinghouse (SCH). The purpose of this notification is to allow State agencies the opportunity to review and comment on those documents and provide information for permits that may be needed from State agencies.

The State Clearinghouse must receive all of the following types of environmental documents: (1) all NOPs; (2) draft EIRs and negative declarations prepared by State agencies; (3) draft EIRs and negative declarations prepared by any public agency where a State agency is a “responsible agency,” “trustee agency,” or otherwise has jurisdiction by law with respect to a proposed project; (4) draft EIRs and negative declarations on projects identified as being of “Statewide, regional, or areawide significance” (Section 15206, Guidelines); (5) draft environmental impact statements, environmental assessments, and “findings of no significant impact” (FONSI) prepared pursuant to the National Environmental Protection Act (40 CFR, Part 1500); (6) “Notices of Determination” (NODs) for any projects where the lead agency is a State agency and for local projects where a State agency is a “responsible agency”; and (7) “Notices of Exemption” (NOEs) for projects using statutory exemptions (Sections 21159.22-24, CEQA).

From a project-level perspective, for the purpose of this proposal, it is assumed that: (1) no entitlements from any State agencies will be required for the project’s approval and effectuation; and (2) the project is not a project of “Statewide, regional, or areawide environmental significance. The Lead Agency is, therefore, not required to provide copies of environmental notice and documents to the State Clearinghouse.

From a programmatic perspective, if the Department concludes that the proposed project’s potential indirect impacts attributable to the GPA/Title 9 revisions may result in other “reasonable foreseeable” development activities within the broader project area (Subtask 1.1.3), based on potential cumulative contribution to traffic impacting the eastbound and westbound ramps of the Garden Grove (SR-22) Freeway, the California Department of Transportation, District 12 (Caltrans) may potential become a “responsible agency” if the need for ramp improvements is identified.

At project commencement, the Consultant will meet with the City Engineer to finalize the full scope of the project’s traffic impact study (Subtask 4.1.1) and, from a preliminary perspective, discuss Caltrans potential role in the CEQA process and the proposed project potential contribution to peak-hour trips affecting SR-22 Freeway ramps.

### **Major Task 3.0: Expanded Initial Study**

CEQA provides that a lead agency may issue a negative declaration and avoid preparing an EIR only if “[t]here is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment” (Section 21080[c], CEQA). An initial study must provide the factual basis, with analysis included, for making the determination that no significant impact will result from the project (Section 15063[d][3], Guidelines). In making this determination, the agency must consider the direct and indirect impacts of the project as a whole (Section 15064[d], Guidelines), as well as the project’s growth-inducing and cumulative impacts (*City of Antioch v. City Council of Pittsburg* [1986]).

As specified in Section 15063(a)(3) of the Guidelines: “An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its

findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR.” As further indicated in Sections 15063(c) of the Guidelines, among other purposes, the “initial study” shall: (1) enable the Lead Agency and/or the project proponent the ability to modify a proposed project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a MND; (2) provide documentation of the factual basis for the finding in a MND that a project will not have a significant effect on the environment; and (3) eliminate unnecessary EIRs.

The term “expanded initial study” is a term of art and not of statutory construct. As used herein, an “expanded initial study” is distinguishable from the more cursory “initial study” which typically predates the preparation of an EIR in that: (1) it provides substantial evidence in support of its preliminary conclusions; and (2) does not seek to defer the presentation of those conclusions until later in the CEQA process.

Often agencies commence the preparation of EIRs because they do not yet know the answers to those inquiries raised in the CEQA “environmental checklist.” By deriving supportable conclusions early in the CEQA process, an “expanded initial study” fulfills the legislative’s mandate that CEQA documents should “be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment” (Section 15004[b], Guidelines).

If the findings of the “‘Preliminary’ Expanded Initial Study” (Subtask 3.1.1) appear to demonstrate that the specified project-related environmental impacts either do not elevate to a level of significance or can be mitigated to a “less-than-significant” level, pending receipt of a “fair argument” to the contrary, the Department can presuppose that the project may qualify for processing through the adoption of a MND. This supposition does not constitute a final determination regarding the continuing existence of unmitigable significant environmental effects, which cannot be made until the more detailed technical analyses (Major Task 4.0) have been completed and opportunities for public participation (Major Task 6.0) have been provided but could alter the timing and sequencing of later events.

Under this major task, prepared in conjunction with the preparation of those technical studies identified in Major Task 4.0 (Technical Studies), based on the precise nature of the PD (Task 1.2), the Consultant will prepare a “‘Preliminary’ Expanded Initial Study” and an “Expanded initial Study” utilizing, as a format, either the current CEQA “environmental checklist” form contained in Appendix G of the Guidelines or such other form as may be identified by the Department. All the work performed hereunder would remain relevant notwithstanding whether a MND or EIR is ultimately prepared by the Department.

- **Task 3.1: “Expanded Initial Study.”** Building upon the information and analysis contained in the “‘Screening-Level’ Initial Study” (Task 1.3), the Consultant shall, within the limits and limitations of this proposal, prepare an “Expanded Initial Study.” With regards thereto, the terms “preliminary” and “revised preliminary” are not derived from established CEQA parlance but serve only to describe the two separate rounds of the Department’s and BNG’s review associated therewith.
- ♦ **Subtask 3.1.1: “Preliminary” Expanded Initial Study.** Following the Department’s acceptance of the PD (Task 1.2), the Consultant will prepare and provide the Department and BNG with a “‘Preliminary’ Expanded Initial Study,” presented in the form of the current “CEQA checklist” (Appendix G, Guidelines) or in such other form as may be identified by the Department.

As stipulated under CEQA, at a minimum, the document shall include: (1) a description of the project including its location; (2) an identification of the environmental setting; (3) an identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries; (4) a discussion of the ways to mitigate the "significant" effects identified, if any; (5) an examination of whether the proposed project would be consistent with existing zoning, plans, and other applicable land-use controls; and (6) the name of the person or persons who prepared or participated in the document's preparation (Section 15063[d], Guidelines).

In addition to the incorporation of the information derived through the preparation each of those project-specific technical studies identified herein (Major Task 4.0), the "Preliminary' Expanded Initial Study" will include a brief explanation why those additional environmental factors identified in the CEQA "environmental checklist" are not relevant to this project analysis.

- ◆ **Subtask 3.1.2: "Revised Preliminary" Expanded Initial Study.** Upon receipt of any comments from the Department and BNG following their review of the "Preliminary' Expanded Initial Study," the Consultant will, within the limits and limitation of this proposal, revise that document to incorporate those changes, corrections, and revisions identified by the Department and by BNG, prepare a revised document, and submit an "Revised Preliminary' Expanded Initial Study" to the Department and BNG for second-round review. Upon the Department's and BNG's acceptance, the "Revised Preliminary' Expanded Initial Study" shall become the "Expanded Initial Study" and serve as the scoping document for the solicitation of public and agency comments relating to the proposed project's potential environmental effects.

For the purpose of this proposal, it is assumed that the document provided to the Department in this second-round review will be accepted without the need for further revisions. Except in those circumstances where further revisions may be required based on an identified defect attributable solely to the Consultant, any further revisions thereto constitute "out-of-scope" services and will be invoiced, on a time-and-material and cost-plus basis, in accordance with the Consultant's "Standard Rate Schedule."

- **Task 3.2: "Screening-Level' Assessment" (Decision Point 2).** As a California court has noted, if "the initial study identifies potentially significant effects on the environment but revisions in the project plans "would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur" and there is no substantial evidence that the project as revised may have a significant effect on the environment, a mitigated negative declaration may be used'" (Keep Our Mountains Quiet v. County of Santa Clara [2015]).

Based on the information presented in or derived from the "Expanded Initial Study," the Consultant will provide the Department and BNG with a screening-level assessment, including recommendation regarding the further course of action. The Department shall independently determine whether to continue to proceed with the processing of a MND or terminate the MND and commence the preparation of an EIR.

- **Task 3.3: BNG-Nominated Actions.** Sections 15064 and 15064.4 of the Guidelines sets forth the manner in which the Lead Agency should determine the potential significance of impacts attributable to a development project. During or immediately after preparation of the "initial study" for a private project, the lead agency may consult with the project proponent to

determine if the project proponent is willing to modify the proposed project to reduce or avoid the "significant" effects identified therein (Section 15063[g], Guidelines).

Should the "Expanded Initial Study" identifies the continuing presence of "significant" environmental effects, the Lead Agency is directed to cease processing of the MND and to commence the preparation of an EIR; however, prior to the initiation of an such change, the Consultant recommends that the Department meet with BNG in order to ascertain whether BNG: (1) elects to withdraw the proposed development application and resubmit at a later date; (2) commence the preparation and processing of an EIR; and/or (3) modify the proposed project in a material fashion so as to potentially reduce any "significant" environmental effects attributable to the proposed project to a "less-than-significant" level.

Under this task, the Consultant will: (1) provide recommendations concerning potential actions which, should they be incorporated into the project's design and development, have the potential to reduce otherwise "significant" impacts to a "less-than-significant" level; and (2) meet with Department and BNG to discuss possibly beneficial actions allowing for the attainment of the project's objectives while producing a smaller environmental "footprint."

Prior to the completion of this assessment, it is not possible to ascertain the precise nature or palatability of any recommendations that may be forthcoming. The Department and BNG acknowledge that any "BNG-nominated actions" could predicate a change to the PD (Task 1.2). Any subsequent changes thereto have neither been budgeted nor accounted for herein and are, therefore, not included within this scope of services. Any and all costs associated therewith and resulting therefrom constitute a change to this scope of services and shall be billed on a time-and-materials and cost-plus basis in accordance with the Consultant's "Standard Rate Schedule."

#### **Major Task 4.0: Technical Studies**

The use of the "CEQA checklist" (Appendix G, Guidelines) is advisory and not mandatory. The Guidelines note that "[t]hese forms are only suggested and public agencies are free to devise their own format for an initial study" (Section 15063[f], Guidelines). Similarly, not all the issues raised therein are relevant to every project. With regards to BNG's proposed hotel site, the property is located in an urban setting, has been historically used for a range of intensive uses (e.g., Mazda dealership and automobile repair center), and has been denuded of non-invasive native vegetation. Based on a visual inspection, the property neither contains sensitive botanic or zoological resources nor provide any habitat value. Similarly, prior construction activities located thereupon, include recent demolition, eliminated the potential for the discovery of any cultural resources that may have been present thereupon. The project site is not designated in the General Plan for agricultural use and GP-FPEIR concluded that there were no mineral resources within the City. As a result, from a project-level perspective, with the possible exception of tribal consultation (Task 2.1), issues relating to agricultural, biological, cultural, or mineral resources are not further addressed herein.

Information presented in a MND, as well as statements presented in support of the Lead Agency's ultimate "findings," must be supported by "substantial evidence." Referencing the Guidelines, "substantial evidence" is defined as containing "enough relevant information and reasonable inference from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."

In order to provide a factual and supportable basis for the Department's environmental documentation and preliminary determination, detailed engineering and/or scientifically-based assessments of a broad array of topical issues will be required. Presented herein are separate

outlines of those activities to be performed by or under the Consultant's supervision, identified as "Consultant-managed technical analyses" (CMTAs) (Task 4.1), and those additional activities, identified as "BNG-managed technical analyses" (AMTAs) (Task 4.2), to be performed by or on behalf of BNG.

All AMTAs provided to the Consultant shall have first been reviewed by the Department and/or by the City Engineer as to the acceptability and adequacy of those studies (including the information and analyses presented therein and any conclusions or recommendations derived therefrom) by the City. The Consultant's receipt thereof from the Department shall constitute evidence of the City's acceptance.

- **Task 4.1: Consultant-Managed Technical Analyses.** In order to provide a supportable basis for the Department's preliminary "significant" or "less-than-significant" impact determination, a number of topic-specific technical analyses will be performed by or under the direction of the Consultant. Unless otherwise directed by the Department, with the possible exception of the traffic impact study (Subtask 4.1.1), it is not the Consultant's intent to include the following analyses as "stand alone" reports but to incorporate the information generated through those studies into the "Expanded Initial Study" (Task 3.1).

For the purpose of this proposal, it is assumed that any development activities attributable to the GPA/Title 9 revisions extending beyond BNG's proposed hotel site are deemed by the Department to be "speculative" and, therefore, outside the scope of CEQA. As a result, with regards to these CMTAs, no program-level analysis will be conducted. Each of the CMTAs identified herein will, therefore, exclusively focus on the project-level impacts attributable to BNG's proposed hotel project.

To the extent relevant, the CMTAs shall include a description of the existing environmental and regulatory setting (environmental setting), identify the threshold of significance criteria used to assess significance (significance criteria), provide a description of relevant environmental effects (environmental impacts), present reasonable and appropriate mitigation measures (mitigation measures), and preliminary conclusions whether each post-mitigated effect is deemed to be "significant" (level of impact after mitigation).

The Consultant has utilized its best judgment as to the identification of those topical issues to be addressed and the level of analyses required therein. In combination with the information gleaned from the AMTAs (Task 4.2), those CMTAs assumed to be required to demonstrate the presence or absence of "significant" environmental effects are separately described below.

- ◆ **Subtask 4.1.1: Traffic Impact Study.** A project-level traffic impact study will be prepared by RK Engineering Group (RKE), working under contract to the Consultant, based on the scope of services, budget, assumptions, and limitations outlined in Attachment C (RK Engineering Group Traffic Impact Study).

As described therein, the traffic study will analyze the following conditions: (1) "existing"; (2) "project buildout year without the project"; and (3) "project buildout year with the project." The level of service analysis should be performed based upon the ICU (Intersection Capacity Utilization) methodology. In addition, the traffic study will take into account other proposed projects in the area and with an ambient growth rate of one percent per year. A list of cumulative project will be obtained from the City of Garden Grove and other local jurisdictions.

The following scope of work is proposed for this study effort: (1) Review the site plan and project description from a traffic circulation and access standpoint; (2) Discuss the

project with the Applicant, the Department, and the City's Traffic Engineer at a kick-off meeting; (3) Obtain an approved scope of work for the traffic impact study from the City; (4) Field review the site to determine "existing" conditions; (6) Obtain morning (AM) and evening (PM) peak-hour counts at the six study area intersections; (7) Obtain cumulative project information from the City and other adjacent jurisdictions, if needed; (8) Review public transit, bicycle, and pedestrian in the vicinity of the proposed project; (9) Determine existing levels of service (LOS) at the six study area intersections based upon the ICU methodology; (10) Perform "Congestion Management Program" (CMP) analysis at all relevant CMP intersections; (11) Determine the project's trip generation, trip distribution, and traffic assignment to the adjoining roadway system; (12) Determine traffic impacts and LOS for "project buildout years without the project" conditions at the six study area intersections; (13) Determine traffic impacts and LOS for "project buildout year with the project" at the six study area intersections; (14) Determine the project's traffic contribution to the six study area intersections; (15) Review project access and determine the need for any special turn lanes that may be required to serve the project; (16) Formulate mitigation measures; (17) Develop project recommendations; and (18) Summarize the results of the study in a traffic impact report.

It is acknowledged that the scope of the traffic impact study remains subject to change based on subsequent discussions with the Department and the City's Traffic Engineer.

- ◆ **Subtask 4.1.2: Land Use and Planning.** As proposed, among other discretionary actions, project implementation will likely necessitate a General Plan amendment (increasing allowable FAR) and revisions to Section 9.16.020.050 (AJ)(5)(f) in Title 9 of the Municipal Code (increasing allowable height limits for "hotels"), a development agreement, issuance of one or more conditional use permits (CUP), site plan approval (Section 9.18.050.080, MC), and lot consolidation (Section 9.30.200, MC). Each of those discretionary actions will be identified and supporting information presented in support of any associated findings. In addition, information will be presented describing each of the land-use district and zoning designations applicable to the proposed project. Issues relating to land-use compatibility will be addressed

BNG shall provide the Consultant with a copy of a preliminary title report or similar document identifying and depicting the location of any utility and other easements on the project site and, if not already illustrated, an overlay or other depiction illustrating the location of those easement in relationship to the proposed improvements.

- ◆ **Subtask 4.1.3: Air Quality.** Existing air quality conditions in the project area will be characterized and historical air quality data from the nearest monitoring station will be compiled for the past five years. The closest sensitive receptors will be identified and evaluated. To provide a regional context, the most recent attainment and non-attainment status designations of the South Coast Air Basin (SCAB) will be identified and applicable California Air Resources Board (CARB) and SCAQMD regulations will be discussed.

Both regional and localized air quality impacts will be evaluated for the construction and operations phases of the proposed project and compared to the significance thresholds established by the SCAQMD.

With regards to construction emissions, the project will generate localized air pollution from construction vehicle exhausts, and fugitive dust from grading and excavation activities. Localized air quality modeling will be conducted to determine concentrations of carbon monoxide (CO), nitrogen oxides (NOx), particulate matter of less than 10 microns (PM<sub>10</sub>), and particulate matter of less than 2.5 microns (PM<sub>2.5</sub>).

With regards to operational emissions, based on information presented in the traffic impact study (Subtask 4.1.1), the Consultant will present an estimate of long-term air pollutant emissions associated with the project's operation. CO, volatile organic compounds (VOC), NOx, PM<sub>10</sub>, and PM<sub>2.5</sub> emissions will be quantified using the CalEEMod emissions inventory model. Mobile and stationary emissions for criteria pollutants will be examined in the context of SCAQMD's regional operational significance thresholds. In addition, the air quality analysis will provide an assessment of the project's consistency with SCAQMD's "Air Quality Management Plan."

- ◆ **Subtask 4.1.4: Greenhouse Gas Emissions.** The Consultant will prepare a greenhouse gas (GHG) emissions analysis consistent with the Guidelines. The GHG analysis will include a discussion of potential global climate change impacts. Modeling of GHG emissions will be based on the traffic impact study (Subtask 4.1.1). Area source and transportation emissions will be quantified using the CalEEMod emissions inventory model. If adopted prior to the release of the "Expanded Initial Study," the proposed project's compliance with the provisions of the City's "Climate Action Plan" shall be evaluated.

- ◆ **Subtask 4.1.5: Noise.** Santiago High School (12342 Trask Avenue, Garden Grove) is the nearest "sensitive receptor" to BNG's proposed hotel site.

The existing noise environmental will be quantified based on field measurements. Noise levels during construction activities will be quantified. Emphasis will be placed on the identification of impacts upon any sensitive receptors located in proximity to the project site (e.g., Santiago High School and Meadowlark Mobile Home Park). Traffic-related noise impacts will be quantified using the Federal Highway Administration's (FHWA) Traffic Noise Prediction Model (CALVENO Version), calibrated with measured noise levels and simultaneous traffic counts. CNEL levels will be modeled based on existing and project-related traffic volumes and projected horizon year traffic conditions as identified in the traffic impact study (Subtask 4.1.1).

- ◆ **Subtask 4.1.6: Public Services.** Police and fire protection services are provided within the City by the Garden Grove Police Department (GGPD) and the Garden Grove Fire Department (GGFD). The nearest fire station to the project site is located at 12132 Trask Avenue (approximately 0.27 linear miles from BNG's proposed hotel site). The CEQA documentation will include an analysis of impacts upon existing GGPD and GGFD services and facilities, assessment of emergency response times, and compliance with any applicable design standards, requirements, or recommendations. BNG shall deliver to the Consultant copies of the most recent GGPD and GGFD's "development review" comments received from those entities.

The project site is located within the Garden Grove Unified School District (GGUSD). As authorized under Sections 53080 and 65995 of the CGC, the GGUSD has established separate student generation rates for both residential and non-residential development projects within its jurisdiction and currently collects school facility impact fees for all new development projects. Based on those student generation rates and, if deemed relevant, subsequent consultation with representatives of the GGUSD, employment-related student generation projections and corresponding fees will be identified.

- ◆ **Subtask 4.1.7: Aesthetics.** As assessment of aesthetic impacts appears most germane in those districts, in those zones, and on those sites where existing development standards specify lesser size, bulk, and height restricts.

Project implementation will produce changes to the existing character of the project site. As a result, the MND will identify, categorize, and describe the existing visual characteristics of both the project site and general project area. Physical changes to the project site will be described and the project's potential short-term and long-term visual changes evaluated. Proposed improvements will be described and architectural rendering and elevations (by others) will be included. Photographic exhibits will be developed illustrating existing site conditions as observed from a number of key off-site viewpoints.

To the extent that the Department elects to include in the MND any graphic representation of the likely off-site shade and/or shadow cast by the proposed project, all such simulations and/or graphics shall be prepared by BNG and submitted to the Department. Upon acceptance by the Department, those simulations and/or graphics shall be provided to the Consultant along with any associated orientation maps (e.g., depicting the associated vantage point and the dates and times being simulated).

In granting a "site plan approval" process, the Commission is required to find: "(A) The proposed development is consistent and harmonious with the architectural elements, including, but not limited to, front elevation design, colors, size of structure, within 300 feet of structures that front on the same street. (B) The proposed development plan meets the parking, landscaping, setbacks, signage, fencing, building height and other related building standards of this title" (Section 9.18.050.080, MC).

Harbor Boulevard is identified as a "primary corridor" in the "Community Design Element" of the General Plan. That element will be reviewed and applicable or potentially applicable policies and design standards will be cited and the project's compliance therewith evaluated. It is assumed that BNG's proposed hotel project is not subject to the City's "Overlay Design Standards for the International West Resort Area."

- **Task 4.2: BNG-Managed Technical Analyses.** In addition to those CMTAs identified above (Task 4.1), it is assumed that a number of other technical studies will be prepared by BNG or by other parties operating directly under contract to BNG.

Recognizing that the determination of "significance" is purely a CEQA matter, technical reports prepared by non-CEQA consultants are neither typically prepared in a style nor format consistent with CEQA's disclosure requirements. For example, in order to determine whether a particular environmental effect is "significant," that impact must be examined in the context of quantitative, qualitative, or performance-based threshold standards. As a result, notwithstanding the technical adequacy of each of the AMTAs from an engineering perspective, the information and analysis presented therein will not likely fully substitute for a CEQA-based analysis independent of further augmentation.

Although each of the technical studies listed herein are assumed to be provided by or on behalf of BNG, the integration of those studies into the project's CEQA documentation is anticipated to require the Consultant's expenditure of time and labor-based resources. The line-item costs identified herein are limited to those efforts expended by the Consultant for document integration only and are not inclusive of any additional efforts that may be expended by the Consultant to address any aspect of those studies which, in the Consultant's independent judgment, fail to: (1) examine the most current iteration of the proposed project; (2) sufficiently address each of the corresponding issues raised in the CEQA "environmental checklist"; (3) provide sufficient information and analysis to derive supportable conclusions relative to the nature and magnitude of the project's potential environmental effects; and/or (4) present the information and topic-specific analysis in a suitable CEQA-compliant format.



For the purpose of this proposal, it is assumed that any development activities attributable to the GPA/Title 9 revisions are deemed by the Department to be “speculative” and, therefore, outside the scope of CEQA. As a result, with regards to these AMTAs, no program-level analysis will be conducted or presented. Each of the AMTAs identified herein will, therefore, exclusively focus on the project-level impacts attributable to BNG’s proposed hotel.

The Department and BNG both acknowledge that the adequacy and defensibility of all AMTAs rest solely with BNG and not with the Consultant. Should any issues arise relating thereto, BNG (acting through those consultants tasked by BNG with the preparation of those studies) shall defend those documents, the analyses and methodologies upon which any conclusions and/or recommendations were derived, and the conclusions and recommendations themselves. To the extent that those conclusions and/or recommendations include further site-specific investigations and/or project-specific design revisions or other actions, BNG voluntarily agrees to commit thereto.

It is the Consultant’s intent to physically include copies of each of the AMTAs into the project’s CEQA documentation. In furtherance thereof, BNG shall bear all costs associated with the preparation, production, reproduction, and transmittal of all AMTA documents, including all associated graphics and appendices, in the number and manner specified by the Department (Task 7.3). That number shall, in no instance, be less than the number of printed copies of the MND indicated by the Department and shall be provided in a format suitable for physical incorporation into the printed version thereof. Additionally, all AMTAs, inclusive of all associated graphics and appendices, shall also be provided to the Consultant in electronic (pdf) format.

In recognition of the criticality that all technical studies examine precisely the same project, the Consultant recommends that individual AMTAs not be finalized until the PD (Task 1.2) has been accepted by the Department. To the extent that any deviation therefrom exists, BNG shall provide the Consultant with additional supplemental topic-specific analyses to ensure internal consistency between those AMTAs and the PD.

Those AMTAs assumed to be required to demonstrate the presence or absence of “significant” environmental effects are separately described below.

- ◆ **Subtask 4.2.1: Geology / Soils.** Because the project’s CEQA documentation is identified, in part, as a “project-level” MND, unless greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding “project-level” technical investigation of this topical issue will be presented.

Preparation of this technical analysis requires receipt of an adequate geologic, geotechnical, seismic, and soils investigation by a reputable engineering geology or geotechnical engineer. Following the City’s review and acceptance, an adequate geologic, geotechnical, seismic, and soils investigation (suitable for CEQA-compliance purposes) shall be provided to the Department by BNG for review by the City Engineer and subsequent incorporation into the project’s CEQA documentation.

The findings presented in that geologic, geotechnical, seismic, and soils investigation shall be document (through appropriate boring and other subsurface investigations) existing surface and subsurface conditions (with particular emphasis on any deleterious conditions that may be identified or suspected) and demonstrating (through the formulation of appropriate conditions and other actions) the proposed project’s feasibility from a geologic, geotechnical, seismic, and soils perspective, within a reasonable factor of safety. Any potentially unstable soils conditions, including potential liquefaction

hazards, shall be identified, reasonable and appropriate remedial actions formulated, and grading plans shall be presented.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's MND. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or other modification to this AMTA are warranted.

- ◆ **Subtask 4.2.2: Hydrology / Water Quality.** Because the project's CEQA documentation is identified, in part, as a "project-level" MND, unless greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding "project-level" technical investigation of this topical issue will be presented.

Preparation of this technical analysis requires receipt of an adequate hydrology and water quality investigation by a reputable civil engineer. For the purpose of this proposal, it is assumed that, following the City Engineer's review and acceptance, an adequate study (suitable for CEQA-compliance purposes) will be provided to the Consultant for incorporation into the project's CEQA documentation.

Issues relating to surface hydrology, groundwater hydrology, and water quality shall be examined therein. This AMTA shall analyze existing and post-project drainage and hydrologic conditions; determine how the proposed project impacts the quantity of stormwaters to determine such things as increased flows, impacts on storm drain systems, and sizing of on-site retention basins; and identify any reasonable and appropriate conditions formulated to reduce project-related impact associated with changes to on-site discharge. Preliminary calculations shall be presented evaluating increased and altered drainage flows caused by landform alterations and the changes to the site coverage with impervious surfaces.

With regards to water quality, under the provisions of the federal Clean Water Act, stormwater runoff pollution discharged to the municipal separate storm sewer system (MS4) must be controlled to the maximum extent practicable (MEP). This AMTA shall identify pollutants and hydrologic conditions of concern and outline BNG's proposed conceptual water quality management plan and associated site design and source control and treatment Best Management Practices (BMPs). Surface and groundwater quality shall be addressed and National Pollutant Discharge Elimination System (NPDES) permit compliance shall be evaluated.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's MND. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or other modification to this AMTA are warranted.

- ◆ **Subtask 4.2.3: Water / Wastewater.** Because the project's CEQA documentation is identified, in part, as a "project-level" MND, unless greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding "project-level" technical investigation of this topical issue will be presented.

Existing site-specific and proposed project-related water and wastewater generation rates shall be calculated, localized and system-wide capacities determined, and any associated project-related improvements thereto shall be identified. Water delivery and sanitary sewer systems shall be evaluated relative to flow characteristics and line capacity. The availability of existing capacity at the receiving sewerage treatment facilities shall be assessed.

Should project-related sewer flows be determined to impact the sewer capacity of any City or County system or component thereof downstream from the development, BNG shall identify mitigation and/or such other actions as may be required to address any potential capacity deficiency by a method approved by the City Engineer.

The analysis shall determine whether adequate water supplies, existing delivery systems, and proposed infrastructure are adequate to service projected average and peak-day demands and fire-flow requirements.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's MND. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or modification to this AMTA are warranted.

- ◆ **Subtask 4.2.4: Hazards / Hazardous Materials.** Because the project's CEQA documentation is identified, in part, as a "project-level" MND, unless greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding "project-level" technical investigation of this topical issue will be presented.

Based on the site's prior use, the potential exists for contaminated soils and fuel storage facilities to exist on the project site. At a minimum, a Phase I environmental site assessment (ESA), conducted in accordance with the "Standards and Practices for All Appropriate Inquiries" (40 CFR 312), shall be performed in order to identify the presence or potential presence of any such hazards. The conclusions presented in the Phase I ESA shall be presented along with any recommendations for supplemental investigations and remediation efforts. Based on the information presented in that investigation, the location of any known on-site contaminants shall be identified and recommendations formulated for their removal or remediation.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's MND. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or other modification to this AMTA are warranted.

### **Major Task 5.0: Mitigated Negative Declaration**

As defined in Section 21064.5 of CEQA, a "mitigated negative declaration" means "a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole

record before the public agency that the project, as revised, may have a significant effect on the environment.”

Prior to approving or conditionally approving the proposed project, the Lead Agency’s decision-making body shall consider the proposed MND, together with any comments received during the public review process. The decision-making body shall adopt the proposed MND only if it finds, on the basis of the whole record before it, that there is no substantial evidence that the project will have a significant effect on the environment and that the MND reflects the Lead Agency’s independent judgment and analysis (Section 15074[b], Guidelines).

Included under this major task is the preparation of associated environmental notices, including consideration of any written comments that may be submitted to the Lead Agency in response to those notices, and a “mitigation reporting and monitoring program” (MRMP). This proposal does not include any costs associated with notice dissemination, newspaper publication, posting, or the payment of any filing or associated fees as may be imposed by the County Clerk or by the California Department of Fish and Wildlife (CDFW).

- **Task 5.1: Environmental Notices.** Included under this task is the preparation of a “Notice of Intent to Adopt a Mitigated Negative Declaration” (NOI) and a “No Effect Determination Request” (NED). Following adoption of the MND, a “Notice of Determination” (NOD) shall be prepared. The Consultant will work cooperatively with the Department to ensure compliance with all applicable CEQA-obligated notice requirements.

- ◆ **Subtask 5.1.1: “Notice of Intent to Adopt a Mitigated Negative Declaration.”** Under CEQA, the Lead Agency is required to provide a public review period of its intent to adopt a MND of not less than 21 days. When the proposed MND is submitted to the State Clearinghouse (SCH) for review by State agencies, the public review period will not be less than 30 days, unless a shorter period is approved by the SCH. As required, the City must give notice of its intent to adopt a MND by at least one of the following procedures: (1) publication of a legal notice in a newspaper of general circulation; (2) posting of notices on and off the project site; and/or (3) direct mailing to the owners and occupants of property contiguous to the project site.

In compliance with those obligations, the Consultant shall prepare a “Preliminary’ Notice of Intent to Adopt a Mitigated Negative Declaration” (PNOI) and transmit that document to the Department for execution. Upon its execution, the PNOI will become the “Notice of Intent to adopt a Mitigated Negative Declaration” (NOI) and will be used to announce the Lead Agency’s intent to adopt a MND (Sections 15072 and 15703, Guidelines). The Consultant shall provide a copy of the executed NOI to the SCH.

- ◆ **Subtask 5.1.2: “No Effect Determination.”** Using Form DFW 866, concurrent with the dissemination of the NOI, the Consultant will prepare, for transmittal by the Department to the CDFW, a “No Effect Determination” (NED) request.

A project shall not be operative, vested, or final, and local government permits for the project shall not be valid, until the requisite filing fees are paid (Section 711.4[c]((3), California Fish and Game Code [CFGF]); however, all projects found by the CDFW to have no effect on fish and wildlife resources shall incur no CDFW-imposed fee (Section 753.5[c], CFGF). Effective January 1, 2017, CDFW filing fees shall be \$1,046.50 for an EIR and \$2,216.25 for an MND, plus an additional \$50 County Clerk filing fee. The Consultant shall not be responsible for the payment of any associated fees.

- ◆ **Subtask 5.1.3: “Notice of Determination.”** As required under CEQA, in order to shorten the statute of limitations on subsequent legal challenges to the Lead Agency’s CEQA process, the Lead Agency is required to file a “Notice of Determination” (NOD) with the County Clerk within five working days after deciding to carry out or approve the project. If the project requires a discretionary approval from any State agency, the Lead Agency is also required, within five working days of approval, to file a copy of the NOD with the SCH.

Should the City elect to approve or conditionally approve the proposed project, the Consultant shall prepare and transmit to the Department a “Preliminary’ Notice of Determination” (PNOD). Upon its execution, the PNOD will become the “Notice of Determination” (NOD) and will be used to announce the Lead Agency’s adoption of the MND (Section 15075, Guidelines).

The NOD shall include: (1) an identification of the project, including its common name and location; (2) a brief description of the project; (3) the date on which the agency approved or conditionally approved the project; (4) the Lead Agency’s determination that the project will not have a “significant” effect on the environment; (5) a statement that a MND has been prepared pursuant to the provisions of CEQA; and (6) the address where a copy of the MND may be examined.

For the purpose of this proposal, it is assumed that the proposed project is neither a project of possible “Statewide, regional, or areawide environmental significance” (Section 15206, Guidelines) nor will require any permits or approvals from State agencies; therefore, the Lead Agency is not required to provide a copy of the NOD to the SCH. The preparation and delivery of environmental notices and/or the submission of documents to the SCH has, therefore, neither been assumed nor budgeted herein.

- **Task 5.2: “Mitigation Reporting and Monitoring Program.”** Pursuant to Assembly Bill 3180 (Statutes of 1988), based on the presence of any mitigation measures identified in the “Expanded Initial Study” (Task 3.1), the Consultant shall prepare and transmit to the Department and to BNG a “Preliminary’ Mitigation Reporting and Monitoring Program” (PMRMP) specifying: (1) the party or agency responsibility for each mitigation measure’s implementation; (2) the timing for implementation, keyed to a specific event, milestone, or permit obligation; and (3) the frequency, contact, and format for compliance reporting.

Upon acceptance, the PMRMP shall become the “Mitigation Reporting and Monitoring Program” (MRMP) and shall provide a listing of those mitigation measures upon which the proposed project shall be conditioned (Section 21081.6[a][1], CEQA; Section 15073[d] and 15091[d], Guidelines). The budget allocated to this task assumes only two rounds of review prior to the Department’s acceptance.

- **Task 5.3: “Response to Comments.”** Written responses to comments received by the Lead Agency are not required and are not typically prepared for projects eligible for processing through the use of a MND. Under CEQA, however, the Lead Agency is required to “consider” any comments received during the noticed comment period prior to taking any formal action thereupon (Section 15074[b], Guidelines).

For the purpose of this proposal, the Consultant has allotted a minimum number of labor hours for the sole purpose of reviewing those comments which are received by the Department and which have been transmitted to the Consultant for review. Based on that review, the Consultant shall provide the Department and BNG recommendations whether the nature of the comments: (1) warrants a written response; (2) predicates the need for any

substantial changes to the "Expanded Initial Study"; (3) potentially requires the recirculation of the MND; or (4) suggest the need to terminate processing of the MND and commence the preparation of an EIR.

If the need for a written response or recirculation appears warranted, the Consultant shall provide the Department and BNG with an estimate of the number of labor hours and other associated costs required to formally respond thereto, including: (1) the identification of any additional technical analyses that may be needed in order to present an adequate technical response; and (2) the party or parties appropriately bearing responsibility for the preparation of those "preliminary" responses.

The Lead Agency may be required to recirculate the MND if the document must be substantially revised after public notice of its availability has been provided but prior to its adoption (Section 15073.5, Guidelines). A "substantial revisions" shall mean: (1) a new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to a "less-than-significant" level; or (2) the Lead Agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to a "less-than-significant" level and additional measures and/or revisions may be required. Recirculation is not required under the following circumstances: (1) mitigation measures are replaced with equal or more effective measures; (2) new project revisions are added in response to comments on the project's effects identified in the proposed MND which are not new avoidable significant effects; (3) measures or conditions of approval are added after circulation of the MND which are not required by CEQA, which do not create new significant environmental effects, and which are not necessary to mitigate an avoidable "significant" effect; and (4) new information is added which merely clarifies, amplifies, or makes insignificant modifications thereto (Section 15073.5, Guidelines).

If prepared, to the extent that the Department and/or BNG identify any changes or other revisions that might be appropriate or beneficial (e.g., provide further clarification) to the text or graphics presented in the published MND, those changes or revisions will be included in separate "errata" and "change and revisions" sections thereof. All incurred costs will be billed, on a time-and-material and cost-plus basis, in accordance with the rates and terms specified in the Consultant's Standard Rate Schedule.

### **Major Task 6.0: Meeting Attendance**

Presented under this major task are those additional outreach and coordination efforts associated with the proposed project, including meetings with Department staff and other public meetings.

- **Task 6.1: Department / BNG Meetings.** At project commencement, the Consultant's Project Director (Lewandowski) will attend a "kick-off" meeting involving key project participants. The purpose of this meeting is to establish an open avenue of communication between all parties, obtain additional information concerning the proposed project, obtain copies of applicable documents, and finalize any outstanding issues concerning scope and schedule. In addition, the Consultant's Project Director (Lewandowski) will attend up to two (2) additional meetings with Department staff and/or BNG's representatives corresponding with key elements/milestones of this work program. Throughout the term of this project assignment, the Consultant shall be available to participate in conference calls to address outstanding issues and/or to keep the Department and BNG fully informed about project status and deliverables.
- **Task 6.2: Public Meetings / Hearings.** The Consultant's Project Director (Lewandowski) will attend up to three (3) public meetings, including community workshops, scoping meetings,

and noticed public hearings before the Planning Commission (Commission) and City Council (Council).

The Department acknowledges that travel time incurred in attending public meetings, the placement of any item on the Commission's and Council's agenda, the nature of any agenda items proceeding those associated with the proposed project, the level of public participation at public meetings, and the extent of deliberations by the Commission and the Council are all outside the Consultant's control. As a result, it is not possible to precisely budget the performance of this task; therefore, for budgetary purposes, a specified number of labor hours and a preliminary line-item budget has been established for travel and attendance. Should the number of meetings and/or number of labor hours exceed those assumed limits, any and all additional efforts beyond the hours and costs budgeted herein will be invoiced, on a time-and-materials and cost-plus basis, in accordance with the rates and terms in the Consultant's "Standard Rate Schedule."

Not budgeted herein are any labor or other direct costs that may be incurred to prepare presentation materials, including, but not limited to, the preparation or participation in the preparation of agendas, staff reports, graphics, and/or other materials for use and/or dissemination at any public meetings.

### **Major Task 7.0: CEQA Support Services**

This major task includes those activities required to support the Department's preparation and processing of the MND.

- **Task 7.1: Project Management.** The success of any multi-faceted endeavor is dependent upon the leadership, guidance, support, and tutelage of the project manager. The Consultant's Project Director (Lewandowski) will oversee all aspects of this work plan; provide managerial oversight over any subcontractors and the project schedule, all deliverables, and the timely performance by all members of the Consultant's team; and, subject to the limits and limitations of this proposal, provide quality control over all work products.
- **Task 7.2: "Preliminary" Mailing List.** In consultation with Department staff, the Consultant shall prepare a "preliminary" mailing list of appropriate local, State, and federal agencies known to the Consultant that, pursuant to CEQA requirements, should be contacted as part of the Lead Agency's public noticing obligations. Not included herein is the preparation of any radius maps and/or review of any Orange County Assessor rolls for the purpose of identify and listing those property owners and tenants located within and in proximity to the project site. This task is limited to the preparation of a preliminary mailing list and does not included any mailings or associated activities.
- **Task 7.3: Reprographic Support Services.** CEQA documents are typically large and unwieldy, incorporating information from a variety of sources. Included herein are those labor hours associated with the preparation and assemblage of documents for publication, delivery of "camera-ready" documents for printing, and the proofing of finish work products prior to delivery to the Department for the Department's dissemination. The following documents will, upon their acceptance by the Department and BNG, be transmitted to the City:
  - (1) "Preliminary Project Description" (Task 1.1): 3 printed/one electronic;
  - (2) "Preliminary' Expanded Initial Study" (Subtask 3.1.1): 3 printed/one electronic;
  - (2) "Expanded Initial Study" (Subtask 3.1.2): 15 printed/30 electronic;
  - (3) "Mitigation Monitoring Reporting Program" (Task 5.2): 5 printed/one electronic.

Except where otherwise noted, only one electronic copy (containing both Word and pdf files) of any additional documents referenced herein or subsequently added hereto by the Department will be provided to the Lead Agency and to BNG. Should the Department and/or BNG request any greater number of documents beyond the number expressly indicated herein, any and all additional efforts beyond those budgeted herein will be invoiced, on a time-and-materials and cost-plus basis, in accordance with the rates and terms in the Consultant's "Standard Rate Schedule."

- **Task 7.4: Direct Costs.** This task includes all other incidental expenses related to the implementation of this work program including, but not limited to, travel, photo processing, postage, and deliveries.

### 3.0 PERFORMANCE SCHEDULE

The Consultant is committed to the expeditious completion of the CEQA process and will allocate all necessary resources as may be required to complete the project's CEQA documentation within the shortest possible time frame. The completion of this work effort is, however, dependent upon the Consultant's receipt of specific information from the Department and BNG and is dependent upon the timely review and acceptance, by the Department and BNG, of those work products identified herein. The time period required for the delivery of that information and the performance of those reviews is beyond the Consultant's control and, unless expeditiously performed, would be expected to add to the timeframe required to complete the major tasks, task, and subtasks presented in this scope of services.

Much of the CEQA process is controlled by statutorily-defined time periods. An optimistic time line from commencement to adoption of the MND by the Council is four (4) months. Most MNDs, however, require at least six (6) months to complete.

### 4.0 NOT-TO-EXCEED COST PROPOSAL

Table 1 (Mitigated Negative Declaration - Not-to-Exceed Cost Proposal) is an itemized not-to-exceed cost proposal for those major tasks, tasks, and subtasks outlined herein. All authorized project-related costs will be invoiced in accordance with the rates and terms specified in the Consultant's "Standard Rate Schedule" (Table 2). The Consultant reserves the right to internally adjust and reallocate individual line-item costs subject only to the contract's limits.

Should the City elect to delete or modify any of the individual components comprising this work program, to the extent that the deleted or modified work element is a precursor to other activities or is deemed by the Consultant to be critical to the completion of the stated work effort, the Consultant reserves the right to submit a revised cost proposal and process associated change orders to reflect any such changes.

Unless explicitly identified herein or in any supplements hereto, all additional efforts, burdened costs, and other expenditures that may be incurred as a result of written or oral requests by the Department and/or BNG are beyond the scope of this work program and constitute "out of scope" activities. The City and BNG shall not withhold or delay the processing or the payment of any change order requests for work authorized by or directed by the City and/or by BNG for any additional consulting services not explicitly identified herein.

Operating in good faith, in response to any such requests and independent of whether a precise accounting of supplemental costs has been specified and mutually negotiated, the Consultant agrees to undertake such additional or expanded actions under the premise that the Department will timely prepare such documentation as may be required to fairly compensate the Consultant for such services and shall support such requests before the Council. Should a dispute arise as to



appropriateness, amount, and/or nature of any payment and/or change order request that may be submitted to the Department by the Consultant, the Consultant reserves the right to stop work pending dispute resolution of any such dispute. Any resulting cessation of work shall not be deemed a contract violation or justification for payment of any non-disputed invoices or contract termination.

## 5.0 ASSUMPTIONS AND LIMITATIONS

With regards to BNG's proposed hotel project, BNG shall provide the Department and the Department shall provide the Consultant with a BNG-prepared "project description," including both text and graphics, sufficient to allow for a reasonable analysis of the potential impacts of the proposed project. The "project description" shall, among other items:

- Delineate the precise project boundaries, including any areas outside BNG's ownership or control (including existing ownership interests) subject to any physical changes associated, either directly or indirectly, with the proposed project;
- Detailed information concerning the content of the proposed General Plan amendment and zone change, including any corresponding text or graphic revisions associated with both the "General Plan and Municipal Code";
- A listing of the discretionary actions required by or from the City and from any other governmental entity with jurisdiction over the project or the project site;
- Architectural plans, including 4-sided building elevations, sufficiently detailed to allow for project-level analysis;
- Scaled depiction of internal circulation, identifying the number, size, and location of on-site parking spaces, proposed access controls and devices, and design vehicle minimum turning radii on dimensioned site plans; and
- Such additional information as may be reasonably required to adequately describe the proposed project and the discretionary actions required for the project's effectuation.

All parties acknowledge that post-commencement changes to the "project description," including any aspect thereof and the assumptions upon which the CEQA analysis is based, would predicate the need for unbudgeted consideration of those changes in order to ensure that the environmental analysis accurately reflects the revised project. The Consultant's response to subsequent project changes predicated revisions to the documents and/or the technical analyses identified herein has not been accounted for herein and is not included within this scope of services and its attendant budget. By conveying proposed project revisions to the Consultant, both the Department and BNG acknowledge the Consultant's right, whether then immediately exercised or deferred, to process a change order in response thereto.

For the purpose of this proposal, the Consultant has made certain assumptions concerning the required content of the project's CEQA documentation, the studies that will be prepared under any resulting professional services agreement, the studies that will be provided by others for the Consultant's use, and the efforts comprising the Consultant's recommended scope of services. It is assumed that the Consultant's scope of work does not include:

- Planning-related or environmental activities not explicitly described herein;
- Independent geologic, geotechnical, seismic, and soils investigations;
- Surface or subsurface investigations;
- Soil or water sampling or other laboratory analyses;
- Environmental site assessments, record searches, or other investigations conducted to assess the presence or absence of toxic or hazardous materials and petroleum products upon or within one-quarter mile of the project site;
- Health risk screening analyses and/or health risk assessments (HRA);
- Hydrologic and hydraulic analyses;

- Water supply assessments;
- Civil or other engineering studies documenting the adequacy of water, sanitary sewer, and storm drain supplies, services, and systems;
- Dry utilities analyses;
- Architectural plans, renderings, computer simulations, or physical or analytical models; and
- Formulation or technical review of any project-specific Best Management Practices (BMPs), urban storm water management plans (SUSMP), storm water pollution prevention plans (SWPPPs), or any quantitative or qualitative assessment of any water quality constituents.

Unless tasked and adequately budgeted to complete an independent third-party review, the Consultant makes no representation concerning the quality and/or accuracy of any work products provided by the Department and/or by BNG for incorporation into the project's CEQA documentation. Should any issues arise with regards thereto, the Consultant shall not be responsible for any inaccuracies contained therein and shall not be required to defend those documents or to respond to any comments that may be raised with regards thereto.

It is assumed that a number of technical studies will be prepared by BNG or by others and will be provided to the Consultant following review and acceptance by the Department. Those studies are assumed to include, but may not be limited to: (1) a geologic, geotechnical, seismic, and soils investigation; (2) surface hydrology and water quality assessment; (3) a Phase I ESA; and (4) sewer area study. Each technical study is assumed to include the following elements: (A) description of the environmental and regulatory setting; (B) thresholds of significance criteria used to assess the significance of the project's direct, indirect, and cumulative effects; (C) description and analysis of associated construction-related and operational impacts relating thereto; (D) declaration whether each identified impact is "significant" based on the identified thresholds; (E) listing of appropriate mitigation measures and/or conditions of project approval; and (F) a clear and definitive statement whether each post-mitigated effect is "significant." All text shall be provided in both printed (unbound, single-sided, hard-copy) and electronic (Word) format and all accompanying graphics shall be provided to the Consultant as pdf or jpg files.

The information, analyses, and preliminary findings presented by the Consultant shall be based on available studies and other readily available data and, except where otherwise noted, will neither involve the independent generation of new technical data nor the generation of data or the performance of technical analyses not readily accessible from available published reports.

As required under CEQA, the project's environmental documentation must reflect the independent judgment of the Lead Agency. As such, in fulfillment of the Lead Agency's CEQA obligations, the Department must allocate sufficient personnel and other resources to adequately and timely review all administrative draft documents provided by the Consultant, including, as appropriate, review by the City Engineer and the City Attorney. The Department's review and acceptance is required in order to ensure that those documents and the statements presented therein are, in fact, the Lead Agency's documents and adequately and accurately reflect the level of analysis deemed appropriate by and the positions and preliminary conclusions of the Department with regards to each of the issues examined therein. The Department's acceptance and dissemination of those documents shall serve to demonstrate the Lead Agency's acceptance and adequacy of each associated work product.

The terms "EIS" and "Consultant," as those terms are used herein, are intended to be inclusive of all employees, independent contractors, subcontractors, and other parties (independent of their affiliation) operating under the Consultant's supervision. The City and BNG acknowledge that the Consultant is neither a law firm nor is its principal an attorney. As such, any statements presented herein or in any subsequent work product resulting from his proposal shall not be construed by the City, by BNG, or by any other party as a legally-based interpretation of existing local, State, or

federal statutes, rules, or regulations. With regards to CEQA compliance, the Lead Agency is encourages to actively involve the City Attorney and BNG is encouraged to seek early and effective involvement by independent and competent legal counsel.

Table 1  
**MITIGATED NEGATIVE DECLARATION  
 NOT-TO-EXCEED COST PROPOSAL**

<b>Major Task / Task / Subtask</b>	<b>Estimated Hours</b>	<b>Budgeted (\$)</b>
<b>Major Task 1.0: Project Description<sup>(e)</sup></b>		
Task 1.1: "Preliminary" Project Description	-	-
Subtask 1.1.1: Objectives, Land Uses, Entitlements, and Pending Hotel Projects	16	\$ 2,400.00
Subtask 1.1.2: Identification of the Project Site	6	900.00
Subtask 1.1.3: "Speculative" versus "Reasonably Foreseeable" Indirect Impacts	-	Not Bid
Subtask 1.1.4: Environmental Baseline	8	1,200.00
Task 1.2: "Revised Preliminary" Project Description	8	1,200.00
Task 1.3: "Screening-Level: Initial Study (Decision Point 1)	6	900.00
Major Task 1.0 Subtotal	44	\$ 6,600.00
<b>Major Task 2.0: Scoping Activities</b>		
Task 2.1: Tribal Consultation	16	\$ 2,400.00
Task 2.2: State Clearinghouse Noticing and Coordination <sup>(b)</sup>	4	600.00
Major Task 2.0 Subtotal	20	\$ 3,000.00
<b>Major Task 3.0: Expanded Initial Study<sup>(a)</sup></b>		
Task 3.1: "Expanded Initial Study" <sup>(c)</sup>	-	-
Subtask 3.1.1: "Preliminary" Expanded Initial Study	36	\$ 5,400.00
Subtask 3.1.2: "Revised Preliminary" Expanded Initial Study	12	1,800.00
Task 3.2: "Screening-Level" Assessment (Decision Point 2)	4	600.00
Task 3.3: BNG-Nominated Actions	6	900.00
Major Task 3.0 Subtotal	58	\$ 8,700.00
<b>Major Task 4.0: Technical Studies<sup>(a)</sup></b>		
Task 4.1: Consultant-Managed Technical Analyses	-	-
Subtask 4.1.1: Traffic Impact Study	-	\$ 13,750.00
Subtask 4.1.2: Land Use / Planning	12	1,800.00
Subtask 4.1.3: Air Quality	32	4,800.00
Subtask 4.1.4: Greenhouse Gas Emissions	16	2,400.00
Subtask 4.1.5: Noise	36	5,400.00
Subtask 4.1.6: Public Services	20	3,000.00
Subtask 4.1.7: Energy Resources	-	<b>Optional</b>
Subtask 4.1.8: Aesthetics	8	1,200.00
Task 4.1 Subtotal	124	\$ 32,350.00
Task 4.2: BNG-Managed Technical Analyses	-	-
Subtask 4.2.1: Geology/Soils	20	\$ 3,000.00
Subtask 4.2.2: Hydrology/Water Quality	16	2,400.00
Subtask 4.2.3: Water/Wastewater	12	1,400.00
Subtask 4.2.4: Hazards/Hazardous Materials	8	1,800.00
Task 4.2 Subtotal	56	\$ 8,400.00
<b>Major Task 5.0: Mitigated Negative Declaration<sup>(a)</sup></b>		
Task 5.1: Environmental Notices	-	-
Subtask 5.1.1: "Notice of Intent to Adopt a Mitigated Negative Declaration"	2	\$ 300.00
Subtask 5.1.2: "No Effect Determination" Request	2	300.00
Subtask 5.1.3: "Notice of Determination"	2	300.00
Task 5.2: "Mitigation Reporting and Monitoring Program"	4	600.00
Task 5.3: "Response to Comments"	4	600.00
Major Task 5.0 Subtotal	14	\$ 2,100.00
<b>Major Task 6.0: Meeting Attendance</b>		
Task 6.1: Department / BNG Meetings <sup>(d)</sup>	16	\$ 2,400.00
Task 6.2: Public Meetings / Hearings <sup>(d)</sup>	18	2,270.00
Major Task 6.0 Subtotal	34	\$ 4,670.00
<b>Major Task 7.0: CEQA Support Services<sup>(b)</sup></b>		
Task 7.1: Project Management	40	\$ 6,000.00
Task 7.2: "Preliminary" Mailing List	4	600.00
Task 7.3: Reprographic Support Services	-	1,200.00
Task 7.4: Direct Costs	-	500.00
Major Task 7.0 Subtotal	44	\$ 8,300.00

Table 1 (Continued)  
**MITIGATED NEGATIVE DECLARATION  
 NOT-TO-EXCEED COST PROPOSAL**

Major Task / Task / Subtask	Estimated Hours	Budgeted (\$)
Major Tasks 1.0-7.0 Subtotal	394	\$ 74,120.00
Contingency (10%)	-	7,412.00
<b>Total<sup>(e)</sup></b>	<b>394</b>	<b>\$ 81,532.00</b>

Notes:

(a) Based on the assumption that, from an indirect impact perspective, project-induced development opportunities on all other "benefitting properties" (i.e., inclusive of all properties other than BNG's proposed hotel site) are: (1) deemed to be "speculative" and not "reasonably foreseeable"; and (2) no not require analysis herein.

(b) Based on the assumption that no permits or approvals are required from any State agencies and that no State agency constitutes a "responsible agency" under CEQA. As a result, notification, consultation, and document dissemination to the State Clearinghouse is assumed to be limited.

(c) The "project description" derived through the performance of Major Task 1.0 (Project Description) will serve, in its entirety, as the "project description" for the MND.

(d) It is not possible to precisely budget the performance of this task. For budgetary purposes, a specified number of labor hours has been established for travel and attendance. Should the number of labor hours assigned thereto exceed those assumed limits, any and all additional efforts in excess of the hours budgeted herein will be invoiced, on a time-and-materials and cost-plus basis, in accordance with the rates and terms in the Consultant's "Standard Rate Schedule."

(e) The Consultant reserves the right to internally adjust all line-item costs and to reassign all associated labor hours and allocated costs as the Consultant may deem appropriate, subject only to the upper limits of the contract.

Source: Environmental Impact Sciences

Table 2  
**ENVIRONMENTAL IMPACT SCIENCES  
 STANDARD RATE SCHEDULE**  
 (January 2017)

<u>Position</u>	<u>Rates</u>
<b>Professional</b>	
Principal .....	\$185.00
Senior Engineer .....	175.00
Senior Planner/Scientist.....	150.00
Associate Engineer .....	125.00
Associate Planner/Scientist .....	100.00
Planner/Scientist .....	85.00
Assistant Planner/Scientist .....	75.00
<b>Support</b>	
Word Processor .....	65.00
Technician.....	50.00
Support Services .....	35.00

All direct costs will be billed at cost-plus-twenty (20) percent. Automobile mileage will be billed at \$0.575 per mile and travel time will be billed at the designated rate. All invoices are payable within thirty-five (35) days of receipt and, unless an alternative billing plan is specified, will be submitted monthly for all work in progress.

Attachment B  
**Environmental Impact Report**

Attachment B  
**SCOPE OF SERVICES**  
**COMBINED PROGRAMMATIC AND PROJECT-LEVEL**  
**ENVIRONMENTAL IMPACT REPORT**

13650 Harbor Boulevard, Garden Grove, California

In response to a development application submitted by the BN Hotel Group, LLC (BNG) for one or more discretionary entitlements from the City of Garden Grove (City or Lead Agency), this scope of services is submitted to the City's Community Development and Economic Development Department (Department) by Environmental Impact Sciences (EIS or Consultant) in response to BNG's proposed Harbor Boulevard Hotel Project (13650 Harbor Boulevard, Garden Grove).

Pursuant to the provisions of the California Environmental Quality Act (CEQA) and the Guidelines for the Implementation of the California Environmental Quality Act (Guidelines), proposed herein is the preparation and processing of a combined programmatic and project-level "environmental impact report" (EIR). For ease of reference, the individual components of this work program have been categorized under the following eight (8) major tasks:

- Major Task 1.0: Project Description
- Major Task 2.0: Initial Study and Pre-Circulation Scoping Activities
- Major Task 3.0: Technical Studies
- Major Task 4.0: Draft Environmental Impact Report
- Major Task 5.0: Final Environmental Impact Report
- Major Task 6.0: Environmental Notices
- Major Task 7.0: Departmental and Public Meetings
- Major Task 8.0: CEQA Support Services

Where relevant, for the purpose of describing the separate analytical and outreach activities and/or deliverables associated therewith, each of these "major tasks" have been further divided into individual "tasks" and "subtasks." The sequencing and categorization of those major tasks, tasks, and subtasks identified herein is presented for descriptive purposes only and is not intended to directly correspond with either the order of their commencement or their completion.

**Major Task 1.0: Project Description**

For the purpose of this proposal, it is assumed that the proposed revisions to Section 9.16.020.050(AJ)(5)(f) in Title 9 (Land Use) of the Municipal Code constitute a "project" subject to CEQA (see *Union of Medical Marijuana Patients v. City of San Diego* [2016]).

CEQA defines a "project," in part, to constitute "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Based on that definition, although counter-intuitive, often the "project" which is examined under CEQA differs, either minimally or substantively, from both the project proponent's actual development plan and the precise nature of the development application submitted to the local permitting agency.

This major task serves as the foundational basis upon which all later actions and activities will be derived. To ignore its importance as a stand-alone action places the proposed project at greater risk than if a definable and static "project description," mutually agreed upon by all parties, was developed at the onset of the CEQA process. At this stage, the "project description" is not a formal CEQA document but an internal document used for planning and descriptive purposes only.

With regards to the "project description," in describing the deliverables to be prepared and provided by the Consultant, the terms "preliminary" and "revised preliminary" are not derived from established CEQA parlance but serve only to describe the separate components of Department's internal review. To the extent that the Department authorizes concurrent review by BNG, electronic copies of each of the identified deliverables will be concurrently forward to BNG's identified representative.

- **Task 1.1: "Preliminary" Project Description.** Because the "project" subject to environmental review may substantively differ from that envisioned by the Lead Agency and/or BNG, the Consultant will, within the limits and limitations of this proposal, engage in foundational discussions and attend meetings with City representatives and with BNG's development team for the purpose of: (1) gaining greater understanding of the proposed project and each of its physical and procedural facets; (2) discussing the "existing environmental setting" (baseline), the quantification thereof, and the manner of possible integration into the project's CEQA documentation; (3) identifying the boundaries and limits of the project site based on such factors as General Plan and zoning designations; (4) obtaining the Department's guidance and direction whether development activities beyond BNG's proposed hotel site are "speculative" or "reasonably foreseeable"; (5) resolving outstanding issues relating thereto; (6) identifying possible impediments to the project's effectuation; (7) gaining additional information and insights concerning relevant off-site activities and proximal development activities that may influence or effect the CEQA analysis; (8) identifying the presence of any infrastructure constraints and associated capital improvement requirements; (9) identifying anticipated requisite entitlements that may be needed for project effectuation; (10) discussing role assignments and work delegation; (11) describing, to the uninitiated, CEQA's purpose, function, procedures, and pitfalls; (12) obtaining copies of existing documents germane to the proposed project; and (13) addressing such other matters as may be directly or indirectly related to the proposed project.

For the purpose of formatting and comparison, requested documents include, but may not be limited to, the GP-FPEIR and the CEQA documentation prepared by the City for the Site C Resort Hotel, the Nickelodean Resort Hotel, the Great Wolf Lodge, and the Brookhurst Place (Triangle) hotel projects

- ♦ **Subtask 1.1.1: Objectives, Land Uses, Entitlements, and Pending Hotel Projects.** Because the project includes a GPA/Title 9 revisions, those documents and the precise language of the requested text and graphic changes thereto need to be clearly specified (by others) and neither deferred to an unspecified future date nor left to the Consultant's imagination. In addition, as documentation to be included in the project's administrative record, the Department should specify the definition of "hotel" intended and identify: (1) its "objectives" and "purpose" for undertaking the GPA/Title 9 revisions; (2) description of proposed land uses; (3) all required entitlements and discretionary approvals associated with the proposed project; and (4) identify and describe any "reasonably foreseeable" hotel projects within the City.

The assessment of construction (short-term) and operational (long-term) impacts present different challenges. Project applications seldom include a "construction management plan" (describing the nature of the construction process, including equipment usable) as part of a development application. If submitted, that document would allow the Consultant to input project-specific parameters into the computer models upon which quantitative impact estimates are derived rather than relying upon those "default" values established by the South Coast Air Quality Management District (SCAQMD). Any BNG-submitted information shall be considered in formulating the "project description."



- ◆ **Subtask 1.1.2: Identification of the Project Site.** The Department indicates that the project site includes “all 91.07 acres in the Heavy Commercial area.” Because the location of that 91.07 acres is not identified in the Department’s solicitation and because the City’s “Land Use Policy Map” is not available online, there presently is uncertainty as to the exact areas under consideration. While the Department identifies 16 “intersections to be studied for the traffic study,” it is not presently possible to equate those intersections to the properties potentially affected by the proposed GPA/Title 9 revisions. As indicated in the traffic impact study (Subtask 3.1.1), a lesser level of traffic impact analysis is presently assumed herein.

It is the Consultant’s current understanding that the Department seeks to amend Section 9.16.020.050(AJ)(5)(f) of the Municipal Code relating to all “[p]ermitted uses in Commercial, Office Professional, Industrial, and Open Space” zones throughout the City. As indicated in the General Plan, reference to “Commercial, Office Professional, Industrial, and Open Space” zones appear to include, but not necessarily limited to, the “Light Commercial” (LC), “Heavy Commercial” (HC), and “Industrial” (I) districts.

From a project-level perspective, BNG’s proposed hotel site is limited to 1.45 acres. Programmatically, “hotels” are a conditionally permitted use in the LC, HC, and I districts. With regards to those districts, the General Plan assigns the following acreages thereto: (1) LC – 335.42 acres; (2) HC – 91.07 acres; and (3) I – 584.00 acres (Land Use Element, Tables 2-3, p. 2-20). The City’s declaration that the project site is limited to only the “91.07 acres in the Heavy Commercial area” appears to overlook the additional 335.42 acres within the “Light Commercial” district and the additional 584.00 acres within the “Industrial” district that might also be directly or indirectly impacted by the proposed Title 9 revisions.

The “Light Commercial” district is represented by both “Neighborhood Commercial (C-1)” and “Community Commercial (C-2)” zones, the “Heavy Commercial” district is represented by the “General Commercial (C-3)” zone, and the “Industrial” district is represented by both the “Light Industrial (M-1)” and “Industrial Park (M-P)” zones (Land Use Element, Table 2-4, p. 2-29). Because “hotels” are neither a permitted nor conditionally permitted use in the M-P zone, the M-P zone does not require further consideration herein. Conversely, because the subset of M-1 acreage within the “Industrial” district is not separately quantified, there presently is not tabulation of the total acreage within the City presently zoned for “Light Industrial” uses.

Since no “draft” text has been provided by the Department relative to the proposed changes to the General Plan and Municipal Code, unless restricted solely to the C-3 zone, the program-level CEQA analysis may need to more broadly examine the potential environmental impacts associated with the resulting revisions to existing development standards within the C-1, C-2, C-3, and M-1 zones.

Similarly, at various times, the area of analysis has been identified by the Department as consisting of 24.98 and 91.07 acres. The Department has also indicated that a smaller acreage might be considered. As a result, from a programmatic perspective, there remains uncertainty as to which General Plan district and zoning designation are or may be applicable to the proposed project. Resolution of this potential outstanding issue is a critical component of the “project description.”

- ◆ **Subtask 1.1.3: “Speculative” versus “Reasonably Foreseeable” Indirect Impacts.** CEQA defines a “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (Section 15378, Guidelines). The Guidelines further state that “[a]n indirect physical change in the environment is a physical change in

the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment" (Section 15064[d][2], Guidelines). CEQA defines "effects" as inclusive of both "direct or primary effects" and "[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable" (Section 15358[a][2], Guidelines).

To the extent that the proposed project removes, reduces, or otherwise modifies existing development standards on properties other than BNG's proposed hotel site, allowing for an increase in size, bulk, and height above those standards currently in place and/or to the extent that the GPA/Title 9 revisions alter the economics of real estate development so as to create a fiscal incentive promoting hotel development over other competing land uses (e.g., allowing for the construction of more hotel rooms than otherwise permissible and enhanced income opportunities therefrom) and/or to the extent that Department has knowledge of other planned or pending hotel development projects within the project area, the indirect impacts attributable to the proposed GPA/Title 9 revisions could serve as a stimuli for additional hotel or other development on other "benefiting" properties.

Under CEQA: (1) "An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable" (Section 15064[d][3], Guidelines); and (2) "If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact" (Section 15145, Guidelines).

An appellate court has recently held that "[u]nder the CEQA Guidelines, '[a] change which is speculative or unlikely to occur is not reasonably foreseeable.' [Citation.] If concerns about physical changes in the environment resulting from an ordinance are 'too speculative or unlikely' to be considered 'reasonably foreseeable,' 'then the ordinance is 'not a project subject to CEQA.' [Citation.] When the potential physical changes that may be caused by a public agency's activity are unduly speculative, the issue of whether that activity constitutes a project for purposes of CEQA, may 'merge for all practical purposes' with the issue of whether it is premature to conduct an environmental review. [Citation.]" (Union of Medical Marijuana Patients v. City of San Diego [2016]).

The determination whether, by adopting the proposed GPA/Title 9 revisions, indirect impacts upon other "benefitting properties" (e.g., affecting the nature, intensity, and potential timing of development activities thereupon) is "speculative" or "reasonably foreseeable." That determination, at least in part, constitutes a "legal opinion" and will undoubtedly have substantive implications relative to the substance of the program-level analysis (including its cost and scheduling implications). The Consultant must, therefore, defer that determination to the Department, acting in concert with the City Attorney.

Absent resolution of the project's precise boundaries, whether the proposed GPA/Title 9 revisions may (directly or indirectly) serve as a catalyst to development activities extending beyond BNG's proposed hotel site, and the location, extent, and timing of any development (directly or indirectly) attributable thereto (if any), for the purpose of this proposal, the Consultant is left to assume that any such development is "speculative" and, therefore, outside the purview of CEQA. Should a different determination be made, the Consultation reserves the right to augment this scope of services, in combination with its attendant budget and performance schedule, in response to that change in project-related assumptions.

- ◆ **Subtask 1.1.4: Environmental Baseline.** California courts have indicated that that “the statute requires the impact of any proposed project to be evaluated against the baseline of existing environmental conditions, which is the only way to identify the environmental effects specific to the project alone” (*Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council* [2010]). In *Smart Rail v. Exposition Metro Line Construction Authority* (2013), the California Supreme Court recently held that the lead agency “enjoys discretion to decide. . .exactly how the existing physical conditions without the project can most realistically be measured, subject to review for support by substantial evidence.”

The Guidelines define “environment” to mean “the physical conditions which exist within the area which will be affected by a proposed project” and specify that the environment “includes both natural and man-made conditions” (Section 15360, Guidelines). Pursuant to Section 15125(a) therein:

An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

With regards to the “environmental baseline,” the effects of a proposed plan for land development must be compared to the existing physical conditions in the area rather than to development permitted under an agency’s existing general plan (*Environmental Planning & Information Council v. County of El Dorado* [1982]). Similarly, the effects of rezoning must be compared to the existing physical environment rather than to development allowed under a prior land-use plan (*City of Carmel-by-the-Sea v. Board of Supervisors* [1986]). More recently, as indicated by the California Supreme Court, “we hold that while an agency preparing an EIR does have discretion to omit an analysis of the project’s significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* [2013]).

Unless the Lead Agency demonstrates that such analysis would be “misleading or without informational value,” where an EIR compares a project to an adopted land-use plan, it must examine impacts to both existing physical conditions and potential future conditions discussed in that plan (*Woodward Park Homeowners Assn. v. City of Fresno* [2007]). When the project itself is the amendment or revision of an existing land-use plan or policy, the EIR must still compare those impacts to the “existing physical conditions in the affected area” (*Environmental Planning and Information Council v. County of El Dorado* [1982]). With regards to the EIR’s mandatory “no project alternative: “When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the ‘no project’ alternative will be the continuation of the existing plan, policy or operation into the future” (Section 15126.6[e][3][A], Guidelines).

As a result, absent “substantial evidence” to the contrary, as a component of the “project description,” the existing development (measured in square footages), intensity (measured in floor-area-ratio), and categorization (broadly grouped by land use) now evident on each of the parcels located within the project area may need to be determined

based on a detailed review of Department files accompanied by field inspection. In recognition of the age of many of the uses within the City and because accurate information may not be available, the resulting tabulation will, at best, constitute only an approximation of existing conditions. Similarly, some land uses may not directly lend themselves to categorization or may appropriately fall into multiple land-use categories.

Based on the size of each property, the corresponding FAR will then need to be determined. The corresponding "environmental baseline" can then be determined and that baseline subtracted from each property's development potential once a FAR of 1.0 is assigned thereto. The resulting square footage constitutes, in part, the level of development to be examined in the EIR.

From a project-level perspective, the City has noted that BNG's proposed hotel site is assumed to be "improved with a 17,216 square foot automotive facility and a paved yard with 150 parking spaces." That assumption will be used to describe the proposed hotel site's existing environmental setting. Conversely, from a program-level perspective, absent resolution as to the project's precise boundaries, whether the proposed GPA/Title 9 revisions may (directly or indirectly) serve as a catalyst to development activities extending beyond BNG's proposed hotel site, and the location, extent, and timing of any development (directly or indirectly) attributable thereto (if any), for the purpose of this proposal, the Consultant is left to assume that any such development is "speculative" and, therefore, outside the purview of CEQA. Should a different determination be made, the Consultation reserves the right to augment this scope of services, in combination with its attendant budget and performance schedule, in response to that change in project-related assumptions.

Following those discussions and receipt of the request information, the Consultant will, within the limits and limitations of this proposal, prepare and submit a "'Preliminary' Project Description" (PPD) to the Department and BNG for first-round review.

- **Task 1.2: "Revised Preliminary" Project Description.** Under CEQA, the "project description" constitutes one of the requisite components of a valid EIR (Section 15124, Guidelines).

Upon receipt of any comments from the Department and BNG on the PPD, the Consultant will, within the limits and limitations of this proposal: (1) make such revisions thereto as may, in the Consultant's sole judgment, be required to respond to any comments received; (2) produce and submit a "Revised Preliminary' Project Description" (RPPD) to the Department and BNG for second-round review. Upon acceptance by the Department and BNG, the RPPD shall become the "Project Description" (PD) and serve as the basis for all subsequent CEQA analyses.

The criticality of the PD cannot be over-emphasized. All subsequent work performed by the Consultant under this work assignment emanated therefrom. While both the Department and BNG have the ability to alter the PD at any time (e.g., for the purpose of mitigating or avoiding potential environmental impacts), any such change can have direct cost and scheduling implications. For the purpose of this proposal, it is assumed that the PD will remain "static" (i.e., will neither be revised nor otherwise altered) throughout the remainder of the CEQA process.

Typically, even relatively minor changes to the PD require that all analyses derived therefrom be reexamined and potentially revised. Any such changes or modifications have neither been budgeted nor accounted for herein and are, therefore, not included within this scope of services. The Department and BNG collectively acknowledge that any and all costs associated therewith and resulting therefrom shall constitute a change to this scope of services and, without limitation, will be billed on a time-and-materials and cost-plus basis in accordance with the Consultant's

“Standard Rate Schedule,” independent of whether concurrence therewith has been first received by the Department and/or agreed to by BNG.

## **Major Task 2.0: Initial Study and Pre-Circulation Scoping Activities**

Scoping activities shall be conducted for the purpose of both identifying those potentially significant environmental impacts that may occur directly, indirectly, or cumulatively as a result of the proposed project's implementation and soliciting the issues, concerns, and recommendations of other “responsible agencies” and other stakeholders with regards to the recommended manner of mitigating or avoiding those environmental effects.

- **Task 2.1: “Initial Study.”** In *Aptos Council v. County of Santa Cruz* (March 30, 2017), a California court recently held: “An agency must generally ‘conduct an initial study to determine if the project may have a significant effect on the environment’ unless it ‘can determine that an EIR will clearly be required for the project.’ [Citation.] ‘The initial study as a standardized document “is largely a creature of the Guidelines.” and “CEQA refers to [an initial study] only glancingly [Citation.]” It is now well established, however, that an initial study is the preliminary environmental analysis [Citation] and its purposes include “[p]rovid[ing] the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration,” “[e]nabl[ing] an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration,” and “[p]rovid[ing] documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment.” [Citation.]”

As noted in Section 21080(b)(16)(2) of CEQA, for non-exempt projects, the lead agency is authorized to prepare a MND if the “initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.” As a result, prior to its dissemination (and the Lead Agency’s conclusion to prepare an EIR or process a MND), the project proponent retains the ability to “revise” the proposed project for the purpose of avoiding or mitigating potential environmental effects.

Under this task, the Consultant will prepare an “Initial Study” which will either support the processing of a MND or serve as a scoping document for an EIR. Sections 15064 and 15064.4 of the Guidelines sets forth the manner in which the Lead Agency should determine the potential significance of impacts attributable to a development project.

- ♦ **Subtask 2.1.1: “Preliminary” Initial Study.** Following the Department’s acceptance of the PD (Task 1.2), under this subtask, the Consultant will prepare and provide the Department and BNG with a “‘Preliminary’ Initial Study,” presented in the form of the current CEQA “environmental checklist” or in such other form as may be identified by the Department.

As stipulated under CEQA, at a minimum, the document shall include: (1) a description of the project, including its location; (2) an identification of the environmental setting; (3) an identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries; (4) a discussion of the ways to mitigate the significant effects which are identified, if any; (5) an examination of whether the proposed project would be consistent with existing plans, zoning, and other applicable land-use

controls; and (6) the name of the person or persons who prepared or participated in the document's preparation (Section 15063[d], Guidelines).

- ◆ **Subtask 2.1.2: "Revised Preliminary" Initial Study.** Upon receipt of any comments from the Department and BNG on the "'Preliminary' Initial Study," the Consultant will: (1) make such revisions to the "'Preliminary' Initial Study" as may, in the Consultant's sole judgment, be required to respond to any comments received; (2) produce and submit a "'Revised Preliminary' Initial Study" to the Department and BNG for second-round review. Upon the Department's and BNG's acceptance, the "'Revised Preliminary' Initial Study" shall become the "Initial Study, which, in combination with the "Notice of Preparation" (NOP) (Task 6.1), will serve as the scoping document for the solicitation of public and agency comments relating to the proposed project's potential environmental effects.

- **Task 2.2: "Screening-Level" Assessment (Decision Point).** A "decision point" represents a definable event or milestone when the Department may elect to reexamine its environmental review strategy and reassess the merits of continuance along its existing course of action or alter that course of action relative to the appropriate manner of CEQA compliance.

In recognition of the huge differential in cost and time required to prepare an EIR versus a MND, based on the findings of the "Initial Study," the Consultant will conduct a "screening-level" environmental analysis of the critical environmental variables to ascertain the feasibility of mitigating, at least with regards to those variables, potential project-related impacts to a "less-than-significant" level. The screening-level environmental analysis is not intended to serve as a substitution for an adequate CEQA-based assessment but will be prepared for the purpose of providing the Department and BNG with an early indication of the potential environmental significance of the proposed project.

Based on this screening-level assessment, the Consultant will provide recommendations to the Department and BNG regarding the continuing course of CEQA-compliant actions. Based on the information presented therein, the Department will independently determine whether to continue to proceed with the preparation and processing of a combined programmatic and project-level EIR or, in lieu thereof, commence the preparation of a MND.

- **Task 2.3: Tribal Consultation (Not Bid).** As mandated under Senate Bill (SB) 18 (Chapter 905, Statutes of 2004) and Assembly Bill 52 (Chapter 532, Statutes of 2014) (Section 21080.3.1, CEQA), in compliance with Sections 21080.3.1 and 21080.3.2 of CEQA, certain consultation requirements apply when adopting or amending general and specific plans. As specified under SB 18:

Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC [Native American Heritage Commission]) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3). Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within -the city or county's jurisdiction. The referral must allow a 45 day comment period (Government Code §65352). Notice must be sent regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process. Local governments must send notice of a public hearing,

at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code §65092).

It is the Consultant's understanding that the Department has already initiated outreach efforts, soliciting from the Native American Heritage Commission (NAHC) a list of tribal contacts and has provided notification of the proposed project to those tribal organizations identified by the NAHC. It is further the Consultant's understanding that one or more such organizations have formally requested "consultation" thereunder.

Under this task, the Consultant will participate in that consultation. As assumed herein, consultation shall be limited to: (1) attendance at one site visit involving City staff, BNG's representatives, and those tribal organizations requesting consultation; and (2) preparation of a draft letter (for the City's execution) summarizing any tentative agreements reached between the City and those organizations, and stating that consultation has been concluded.

- **Task 2.4: State Clearinghouse Noticing and Coordination.** Under CEQA, the Lead Agency must send environmental documents, including all NOPs and selected draft negative declarations and draft EIRs, to the State Clearinghouse (SCH). The purpose of this notification is to allow State agencies the opportunity to review and comment on those documents and provide information for permits that may be needed from State agencies.

Under CEQA, the State Clearinghouse must receive all of the following types of environmental documents: (1) all NOPs; (2) draft EIRs and negative declarations prepared by State agencies; (3) draft EIRs and negative declarations prepared by any public agency where a State agency is a "responsible agency," "trustee agency," or otherwise has jurisdiction by law with respect to a proposed project; (4) draft EIRs and negative declarations on projects identified as being of "Statewide, regional, or areawide significance" (Section 15206, Guidelines); (5) draft environmental impact statements, environmental assessments, and "findings of no significant impact" (FONSI) prepared pursuant to the National Environmental Protection Act (40 CFR, Part 1500); (6) "Notices of Determination" (NODs) for projects where the lead agency is a State agency and for local projects where a State agency is a "responsible agency"; and (7) "Notices of Exemption" (NOEs) for projects using statutory exemptions (Sections 21159.22-24, CEQA).

From a project-level perspective, for the purpose of this proposal, it is assumed that: (1) no entitlements from any State agencies will be required for the project's approval and effectuation; and (2) the project is not a project of "Statewide, regional, or areawide environmental significance. With the exception of the "Notice of Preparation" (NOP), the Lead Agency is, therefore, not required to provide copies of environmental notice and documents to the State Clearinghouse.

From a programmatic perspective, if the Department concludes that the proposed project's potential indirect impacts attributable to the GPA/Title 9 revisions may result in other "reasonable foreseeable" development activities within the broader project area (Subtask 1.1.3), based on potential cumulative contribution to traffic impacting the eastbound and westbound ramps of the Garden Grove (SR-22) Freeway, the California Department of Transportation, District 12 (Caltrans) may potential become a "responsible agency" if a need for ramp improvements is identified.

At project commencement, the Consultant will meet with the City Engineer to finalize the full scope of the project's traffic impact study and, from a preliminary perspective, discuss Caltrans potential role in the CEQA process and the proposed project potential contribution to peak-hour trips affecting SR-22 Freeway ramps.

### **Major Task 3.0: Technical Studies**

The use of the "CEQA checklist" (Appendix G, Guidelines) is advisory and not mandatory. The Guidelines note that "[t]hese forms are only suggested and public agencies are free to devise their own format for an initial study" (Section 15063[f], Guidelines). Similarly, not all the issues raised therein are relevant to every project. With regards to BNG's proposed hotel site, the property is located in an urban setting, has been historically used for a range of intensive uses (e.g., Mazda dealership and automobile repair center), and has been denuded of non-invasive native vegetation. Based on a visual inspection, the property neither contains sensitive botanic or zoological resources nor provide any habitat value. Similarly, prior construction activities located thereupon, include recent demolition, eliminated the potential for the discovery of any cultural resources that may have been present thereupon. The project site is not designated in the General Plan for agricultural use and GP-FPEIR concluded that there were no mineral resources within the City. As a result, from a project-level perspective, with the possible exception of tribal consultation (Task 2.3), issues relating to agricultural, biological, cultural, or mineral resources are not further addressed herein.

Information presented in an EIR, as well as statements presented in support of the Lead Agency's ultimate "findings," must be supported by "substantial evidence." Referencing the Guidelines, "substantial evidence" is defined as containing "enough relevant information and reasonable inference from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."

In order to provide a factual and supportable basis for the Department's environmental documentation and preliminary determination, detailed engineering and/or scientifically-based assessments of a broad array of topical issues will be required. Presented herein are separate outlines of those activities to be performed by or under the supervision of the Consultant, identified herein as "Consultant-managed technical analyses" (CMTAs) (Task 3.1), and those additional activities, identified herein as "BNG-managed" technical analyses" (AMTAs) (Task 3.2), to be performed by or on behalf of BNG.

All AMTAs provided to the Consultant shall have first been reviewed by the Department and/or by the City Engineer as to the acceptability and adequacy of those studies (including the information and analyses presented therein and any conclusions or recommendations derived therefrom) by the City. The Consultant's receipt thereof from the Department shall constitute evidence of the City's acceptance.

- **Task 3.1: Consultant-Managed Technical Analyses.** In order to provide a supportable basis for the Department's preliminary impact determination, a number of topic-specific technical analyses will be performed by the Consultant. Unless otherwise directed by the Department, it is not the Consultant's intend to include the following analyses as "stand alone" studies therein but to incorporate the information generated into the text EIR.

For the purpose of this proposal, it is assumed that any development activities attributable to the GPA/Title 9 revisions are deemed by the Department to be "speculative" and, therefore, outside the scope of CEQA. As a result, with regards to these CMTAs, no program-level analysis will be conducted. Each of the CMTAs identified herein will, therefore, exclusively focus on the project-level impacts attributable to BNG's proposed hotel project.

Each of the CMTAs shall include a description of the existing environmental and regulatory setting (setting), identify the threshold of significance criteria used to assess significance (significance criteria), provide a description of relevant construction and operational effects (environmental impacts), present reasonable and appropriate mitigation measures (mitigation measures), and conclude whether each post-mitigated effect is deemed to be "significant" (level of impact after mitigation).



The Consultant has utilized its best judgment as to the identification of those topical issues to be addressed and the level of analyses required therein. Each of those CMTAs are separately described below.

- ◆ **Subtask 3.1.1: Traffic Impact Study.** A project-level traffic impact study will be prepared by RK Engineering Group (RKE), working under contract to the Consultant, based on the scope of services, budget, assumptions, and limitations outlined in Attachment C (RK Engineering Group - Traffic Impact Study).

As described therein, the traffic study will analyze the following conditions: (1) "existing"; (2) "project buildout year without the project"; and (3) "project buildout year with the project." The level of service analysis should be performed based upon the ICU (Intersection Capacity Utilization) methodology. In addition, the traffic study will take into account other proposed projects in the area and with an ambient growth rate of one percent per year. A list of cumulative project will be obtained from the City of Garden Grove and other local jurisdictions.

The following scope of work is proposed for this study effort: (1) Review the site plan and project description from a traffic circulation and access standpoint; (2) Discuss the project with the Applicant, the Department, and the City's Traffic Engineer at a kick-off meeting; (3) Obtain an approved scope of work for the traffic impact study from the City; (4) Field review the site to determine "existing" conditions; (6) Obtain morning (AM) and evening (PM) peak-hour counts at the six study area intersections; (7) Obtain cumulative project information from the City and other adjacent jurisdictions, if needed; (8) Review public transit, bicycle, and pedestrian in the vicinity of the proposed project; (9) Determine existing levels of service (LOS) at the six study area intersections based upon the ICU methodology; (10) Perform "Congestion Management Program" (CMP) analysis at all relevant CMP intersections; (11) Determine the project's trip generation, trip distribution, and traffic assignment to the adjoining roadway system; (12) Determine traffic impacts and LOS for "project buildout years without the project" conditions at the six study area intersections; (13) Determine traffic impacts and LOS for "project buildout year with the project" at the six study area intersections; (14) Determine the project's traffic contribution to the six study area intersections; (15) Review project access and determine the need for any special turn lanes that may be required to serve the project; (16) Formulate mitigation measures; (17) Develop project recommendations; and (18) Summarize the results of the study in a traffic impact report.

It is acknowledged that the scope of the traffic impact study remains subject to change based on subsequent discussions with the Department and the City's Traffic Engineer.

- ◆ **Subtask 3.1.2: Land Use / Planning.** "The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. . .Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan" (Section 15125[d]-[e], Guidelines).

As proposed, among other discretionary actions, project implementation will likely necessitate a General Plan amendment (increasing allowable FAR) and revisions to Section 9.16.020.050 (AJ)(5)(f) in Title 9 of the Municipal Code (increasing allowable height limits for "hotels"), a development agreement, issuance of one or more conditional use permits (CUP), site plan approval (Section 9.18.050.080, MC), and lot consolidation (Section

9.30.200, MC). Each of those discretionary actions will be identified and supporting information presented in support of any associated findings. In addition, information will be presented describing each of the land-use district and zoning designations applicable to the proposed project. Issues relating to land-use compatibility will be addressed.

BNG shall provide the Consultant with a copy of a preliminary title report or similar document identifying and depicting the location of any utility and other easements on the project site and, if not already illustrated, an overlay or other depiction illustrating the location of those easement in relationship to the proposed improvements.

- ◆ **Subtask 3.1.3: Air Quality.** Existing air quality conditions in the general project area will be characterized and historical air quality data from the nearest monitoring station will be compiled for the past five years. The closest sensitive receptors will be identified and evaluated. To provide a regional context, the most recent attainment and non-attainment status designations of the South Coast Air Basin (SCAB) will be identified and applicable California Air Resources Board (CARB) and SCAQMD regulations will also be discussed.

Both regional and localized air quality impacts will be evaluated for the construction and operations phases of the proposed project and compared to the significance thresholds established by the SCAQMD.

With regards to construction emissions, the project will generate localized air pollution from construction vehicle exhausts and fugitive dust from grading and excavation activities. Air quality impacts attributable to the demolition of the existing "automotive facilities" will not be quantified. Localized air quality modeling will be conducted to determine concentrations of carbon monoxide (CO), nitrogen oxides (NOx), particulate matter of less than 10 microns (PM<sub>10</sub>), and particulate matter of less than 2.5 microns (PM<sub>2.5</sub>).

With regards to operational emissions, based on information presented in the traffic impact study ([Subtask 3.1.1](#)), the Consultant shall present an estimate of long-term air pollutant emissions associated with the operation of the proposed project. CO, volatile organic compounds (VOC), NOx, PM<sub>10</sub>, and PM<sub>2.5</sub> emissions will be quantified using the CalEEMod emissions inventory model. Mobile and stationary emissions for criteria pollutants will be examined in the context of SCAQMD's regional operational significance thresholds. In addition, the air quality analysis will provide an analysis of the project's consistency with SCAQMD's "Air Quality Management Plan."

Excluding freeway ramps, the project site is located approximately 800 linear feet from the southern edge of the eastbound lanes along the Garden Grove (SR-22) Freeway. Caltrans reports that average daily traffic volumes along the SR-22 Freeway total 238,000 vehicles, including 11,424 diesel-fueled trucks. As indicated in the SCAQMD's "Guidance Document for Assessing Air Quality Issues in General Plans and Local Planning" (May 6, 2005), "hotels" are not identified as a "sensitive land use. As a result, no health risk assessment (HRA) is proposed as part of this work assignment.

- ◆ **Subtask 3.1.4: Greenhouse Gas Emissions.** The Natural Resources Agency has adopted amendments to the Guidelines addressing greenhouse gas (GHG) emissions. The Consultant shall prepare a GHG analysis consistent with those amendments. The GHG analysis will include a discussion of potential global climate change impacts. Modeling of GHG emissions will be based on the traffic impact study ([Subtask 3.1.1](#)). Area source and transportation emissions will be quantified using the CalEEMod computer model.

- ◆ **Subtask 3.1.5: Noise.** Santiago High School (12342 Trask Avenue, Garden Grove) is the nearest “sensitive receptor” to BNG’s proposed hotel site.

The existing noise environmental will be quantified based on field measurements. Noise levels during construction activities will be quantified. Emphasis will be placed on the identification of impacts upon any sensitive receptors located in proximity to the project site. Traffic-related noise impacts will be quantified using the Federal Highway Administration’s (FHWA) Traffic Noise Prediction Model (CALVENO Version), calibrated with measured noise levels and simultaneous traffic counts. CNEL levels will be modeled based on existing and project-related traffic volumes and projected horizon year traffic conditions, as identified in the traffic impact study (Subtask 3.1.1).

- ◆ **Subtask 3.1.6: Public Services.** The Garden Grove Police Department (11301 Acacia Parkway, Garden Grove) (GGPD) provides police services throughout the City. The Garden Grove Fire Department (GGFD) provides fire protection services throughout the City. GGFD Station No. 3 (12132 Trask Avenue, Garden Grove) is located less than 0.25 miles from the project site. The CEQA documentation will include an analysis of impacts upon existing GGPD and GGFD services and facilities, including an assessment of emergency response times and compliance with any applicable design standards, requirements, or recommendations. The Department shall deliver to the Consultant copies of the most recent GGPD’s and GGFD’s “development review” comments received from those entities.

With the exception of that C-3 zoned property located on Garden Grove Boulevard, west of Fairview Street, all HC and C-3 designated properties within the City are located within the boundaries of the Garden Grove Unified School District (GGUSD). As authorized under Sections 53080 and 65995 of the CGC, the GGUSD has established separate student generation rates for both residential and non-residential development projects within its jurisdiction and currently collects school facility impact fees for all new development projects, including commercial and industrial development (currently \$0.54/square foot). Based on those student generation rates and, if deemed relevant, subsequent consultation with representatives of the GGUSD shall be conducted and employment-related student generation projections and corresponding fees will be identified.

- ◆ **Subtask 3.1.7: Energy Resources.** As stipulated in Appendix F (Energy Conservation) of the Guidelines, “[t]he goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include: (1) decreasing overall per capita energy consumption, (2) decreasing reliance on natural gas and oil, and (3) increasing reliance on renewable energy resources. In order to assure that energy implications are considered in project decisions, CEQA requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy. Energy consumption, supplies, delivery systems, and conservation efforts (including the “California Green Building Standards Code” and the “Green Building Action Plan”) will be discussed.
- ◆ **Subtask 3.1.8: Aesthetics.** As assessment of aesthetic impacts appears most germane in those districts, in those zones, and on those sites where existing development standards specify lesser size, bulk, and height restricts.

Project implementation will produce changes to the existing character of the project site. As a result, the EIR will identify, categorize, and describe the existing visual characteristics of both the project site and general project area. Physical changes to the project site will be described and the project’s potential short-term and long-term visual changes evaluated. Proposed improvements will be described and architectural rendering and elevations (by

others) will be included. Photographic exhibits will be developed illustrating existing site conditions as observed from a number of key off-site viewpoints.

To the extent that the Department elects to include in the EIR any graphic representation of the likely off-site shade and/or shadow cast by the proposed project, all such simulations and/or graphics shall be prepared by BNG and submitted to the Department. Upon acceptance by the Department, those simulations and/or graphics shall be provided to the Consultant along with any associated orientation maps (e.g., depicting the associated vantage point and the dates and times being simulated).

In granting a "site plan approval" process, the Commission is required to find: "(A) The proposed development is consistent and harmonious with the architectural elements, including, but not limited to, front elevation design, colors, size of structure, within 300 feet of structures that front on the same street. (B) The proposed development plan meets the parking, landscaping, setbacks, signage, fencing, building height and other related building standards of this title" (Section 9.18.050.080, MC).

Harbor Boulevard is identified as a "primary corridor" in the "Community Design Element" of the General Plan. That element will be reviewed and applicable or potentially applicable policies and design standards will be cited and the project's compliance therewith evaluated. It is assumed that BNG's proposed hotel project is not subject to the City's "Overlay Design Standards for the International West Resort Area."

- **Task 3.2: BNG-Managed Technical Analyses.** In addition to those CMTAs identified above (Task 3.1), it is assumed that a number of other technical studies will be prepared by BNG or by other parties operating directly under contract to BNG.

Recognizing that the determination of "significance" is purely a CEQA matter, technical reports prepared by non-CEQA consultants are neither typically prepared in a style nor format consistent with CEQA's disclosure requirements. For example, in order to determine whether a particular environmental effect is "significant," that impact must be examined in the context of quantitative, qualitative, or performance-based threshold standards. As a result, notwithstanding the technical adequacy of each of the AMTAs from an engineering perspective, the information and analysis presented therein will not likely fully substitute for a CEQA-based analysis independent of further augmentation.

In addition to those CMTAs identified above (Task 3.1), it is assumed that a number of other technical studies will be prepared by BNG or by other parties operating under contract to BNG. The AMTAs shall address only BNG's proposed hotel project and are assumed not to include a programmatic assessment of other "benefitting properties."

Although each of the technical studies listed herein are assumed to be provided by or on behalf of BNG, the integration of those studies into the project's CEQA documentation will require the Consultant's expenditure of time and labor-based resources. The line-item costs identified herein are limited to those efforts expended by the Consultant for document integration only and are not inclusive of any additional efforts that may be expended by the Consultant to address any aspect of those studies which, in the Consultant's independent judgment, fails to: (1) examine the most current iteration of the proposed project; (2) sufficiently address each of the corresponding issues raised in the CEQA "environmental checklist"; (3) provide sufficient information and analysis to derive supportable conclusions relative to the nature and magnitude of the project's potential environmental effects; and/or (4) present the information and topic-specific analysis in a suitable CEQA-compliant format.

For the purpose of this proposal, it is assumed that any development activities attributable to the GPA/Title 9 revisions are deemed by the Department to be “speculative” and, therefore, outside the scope of CEQA. As a result, with regards to these AMTAs, no program-level analysis will be conducted or presented. Each of the AMTAs identified herein will, therefore, exclusively focus on the project-level impacts attributable to BNG’s proposed hotel.

The Department acknowledges that the adequacy and defensibility of all AMTAs rest solely with BNG and not with the Consultant. Should any issues arise thereto, BNG shall defend those documents, the analyses and methodologies upon which any conclusions and/or recommendations were derived, and the conclusions and/or recommendations presented thereof. To the extent that those conclusions and/or recommendations include further site-specific investigations and/or project-specific design revisions or other actions, BNG voluntarily agrees to commit thereto.

It is the Consultant’s intent to physically include copies of each of the AMTAs into the project’s CEQA documentation. In furtherance thereof, BNG shall bear all costs associated with the preparation, production, reproduction, and transmittal of all AMTA documents, including all associated graphics and appendices, in the number and manner specified by the Department (Task 8.2). That number shall, in no instance, be less than the number of printed copies of the EIR indicated by the Department and shall be provided in a format suitable for physical incorporation into the printed version of the EIR. Additionally, all AMTA documents, inclusive of all associated graphics and appendices, shall be provided to the Department and the Consultant in electronic (pdf) format.

In recognition of the criticality that all technical studies examine precisely the same project, the Consultant recommends that individual AMTAs not be finalized until the PD (Task 1.2) has been accepted by the Department. To the extent that any deviation therefrom exists, BNG shall provide the Consultant with additional supplemental topic-specific analyses to ensure internal consistency between those AMTAs and the PD.

Those AMTAs assumed to be required to demonstrate the presence or absence of “significant” environmental effects are separately described below.

- ◆ **Subtask 3.2.1: Geology / Soils.** Because the project’s CEQA documentation is identified, in part, as a “project-level” EIR, unless greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding “project-level” technical investigation of this topical issue will be presented.

Preparation of this technical analysis requires receipt of an adequate geologic, geotechnical, seismic, and soils investigation by a reputable engineering geology or geotechnical engineer. For the purpose of this proposal, it is assumed that, following the City’s review and acceptance, an adequate geologic, geotechnical, seismic, and soils investigation (suitable for CEQA-compliance purposes) shall be provided to the Department by BNG for incorporation into the project’s CEQA documentation.

The findings presented in that geologic, geotechnical, seismic, and soils investigation shall document (through appropriate boring and other subsurface investigations) existing surface and subsurface conditions (with particular emphasis on any deleterious conditions that may be identified or suspected) and demonstrating (through the formulation of appropriate conditions and other actions) the proposed project’s feasibility from a geologic, geotechnical, seismic, and soils perspective, within a reasonable factor of safety. Any potentially unstable soils conditions, if any, shall be identified, reasonable and appropriate remedial actions formulated, and grading plans shall be presented.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's EIR. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or other modification to this AMTA are warranted.

- ◆ **Subtask 3.2.2: Hydrology / Water Quality.** Because the project's CEQA documentation is identified, in part, as a "project-level" EIR, unless a greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding "project-level" technical investigation of this topical issue will be presented.

Preparation of this technical analysis requires receipt of an adequate hydrology and water quality investigation by a reputable civil engineer. For the purpose of this proposal, it is assumed that, following the City Engineer's review and acceptance, an adequate study (suitable for CEQA-compliance purposes) will be provided to the Consultant for incorporation into the project's CEQA documentation.

Issues relating to surface hydrology, groundwater hydrology, and water quality shall be examined therein. This AMTA shall analyze existing and post-project drainage and hydrologic conditions; determine how the proposed project impacts the quantity of stormwaters to determine such things as increased flows, impacts on storm drain systems, and sizing of on-site retention basins; and identify any reasonable and appropriate conditions formulated to reduce project-related impact associated with changes to on-site discharge. Preliminary calculations shall be presented evaluating increased and altered drainage flows caused by landform alterations and the changes to the site coverage with impervious surfaces.

With regards to water quality, under the provisions of the federal Clean Water Act, stormwater runoff pollution discharged to the municipal separate storm sewer system (MS4) must be controlled to the maximum extent practicable (MEP). This AMTA shall identify pollutants and hydrologic conditions of concern and outline BNG's proposed conceptual water quality management plan and associated site design and source control and treatment Best Management Practices (BMPs). Surface and groundwater quality shall be addressed and National Pollutant Discharge Elimination System (NPDES) permit compliance shall be evaluated.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's EIR. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or other modification to this AMTA are warranted.

- ◆ **Subtask 3.2.3: Water / Wastewater.** Because the project's CEQA documentation is identified, in part, as a "project-level" EIR, unless a greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding "project-level" technical investigation of this topical issue will be presented.

Existing site-specific and proposed project-related water and wastewater generation rates shall be calculated, localized and system-wide capacities determined, and any associated project-related improvements thereto shall be identified. Water delivery and sanitary sewer

systems shall be evaluated relative to flow characteristics and line capacity. The availability of existing capacity at the receiving sewerage treatment facilities shall be assessed.

Should project-related sewer flows be determined to impact the sewer capacity of any City or County system or component thereof downstream from the development, BNG shall identify mitigation and/or such other actions as may be required to address any potential capacity deficiency by a method approved by the City Engineer.

The analysis shall determine whether adequate water supplies, existing delivery systems, and proposed infrastructure are adequate to service projected average and peak-day demands and fire-flow requirements.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's EIR. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or other modification to this AMTA are warranted.

- ◆ **Subtask 3.2.4: Hazards / Hazardous Materials.** Because the project's CEQA documentation is identified, in part, as a "project-level" EIR, unless a greater or lesser level of analysis is specified by the Department or by the City Engineer, a corresponding "project-level" technical investigation of this topical issue will be presented.

At a minimum, a Phase I environmental site assessment (ESA), conducted in accordance with the "Standards and Practices for All Appropriate Inquiries" (40 CFR 312), shall be performed in order to identify the presence or potential presence of any such hazards. The conclusions presented in the Phase I ESA shall be presented along with any recommendations for supplemental investigations and remediation efforts. Based on the information presented in that investigation, the location of any known on-site contaminants shall be identified and recommendations formulated for their removal or remediation.

Once submitted, the Consultant will conduct an independent third-party review of this BNG-managed technical analysis for the purpose of assessing, from a CEQA perspective, the report's suitability for direct inclusion or "incorporation by reference" (Section 15150, Guidelines) into the project's MND. To the extent warranted, any comments resulting therefrom will be provided to the Department. The Department will separately determine whether any changes or other modification to this AMTA are warranted.

#### **Major Task 4.0: Draft Environmental Impact Report**

This major task encompasses all efforts required to prepare the "Draft Environmental Impact Report" (DEIR), including each of the mandatory elements identified in CEQA and the Guidelines. With regards to the DEIR, in describing the proposed project's deliverables, the terms "preliminary" and "revised preliminary" are not derived from established CEQA parlance but serve only to describe the separate rounds of the Department's internal review.

- **Task 4.1: "Preliminary" Draft Environmental Impact Report.** The following subtasks closely correspond to what the Consultant currently envisions to be the presentation format for the "Preliminary" Draft Environmental Impact Report" (Preliminary DEIR).
  - ◆ **Subtask 4.1.1: Introduction.** An introductory section shall be provided containing and including the following elements: (1) a statement of reason of preparing the EIR; (2) a listing

of those statutory and regulatory authorities associated with its preparation; (3) a listing of other relevant documents “incorporated by reference” therein, including a discussion of each documents relevancy to the proposed project; and (4) a listing of project approvals, including identification of those “responsible agencies” that may be required to utilize the EIR as the environmental basis for later discretionary actions to be undertaken by those agencies. The introduction shall further describe scoping activities undertaken by the Department and shall include copies of all correspondence received by the Department in response to the Lead Agency’s dissemination of the “Notice of Preparation” (NOP) (Task 6.1).

- ◆ **Subtask 4.1.2: Executive Summary.** The summary shall include: (1) a summary of the PD (Task 1.2); (2) a matrix outlining all identified impacts and mitigation measures recommended to reduce or avoid the proposed project’s environmental effects; (3) the Department’s preliminary conclusions regarding the level of significance of each impact after application of those mitigation measures; (4) areas of controversy known to the Lead Agency, including issues raised by the public and commenting agencies; and (5) issues to be resolved, such as the choice among alternatives and whether or how to mitigate the project’s “significant” effects (Section 15123, Guidelines).
- ◆ **Subtask 4.1.3: Project Description.** The proposed project shall be described in that manner outlined in Task 1.2 (“Revised Preliminary” Project Description) herein.
- ◆ **Subtask 4.1.4: Related Projects and Cumulative Impacts.** When evaluating the potential environmental effects of a proposed activity, the Lead Agency is also required to examine potential cumulative impacts “when they are significant” (Section 15130, Guidelines). As stipulated, the discussion of cumulative impacts “should be guided by the standards of practicality and reasonableness.” When assessing cumulative effects, CEQA affords agencies the opportunity to conduct the analyses in accordance with either of the following methodologies: (1) a list of past, present, and reasonably anticipated future projects producing related or cumulative impacts; or (2) a summary of projections contained in an adopted planning document designed to evaluate regional or areawide conditions.

It is anticipated that a list of relevant related projects will be developed as part of the traffic impact study (Subtask 3.1.1). For internal consistency, the Consultant recommends that the cumulative impact analysis be based on an inventory of planned, pending, and proposed development projects known to and to be supplied by the Lead Agency that can reasonably be expected to be developed during that time frame consistent with the proposed project.

- ◆ **Subtask 4.1.5: Impact Analysis.** This subtask includes and is limited to the incorporation of those CMTAs (Task 3.1) and AMTAs (Task 3.2) identified herein.

As required under Section 15126.2 of the Guidelines: “[a]n EIR shall identify and focus on the significant environmental effects of the project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published. . . Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.”

With regards to BNG’s proposed hotel project, construction-term and operational impacts will be separately examined. Construction-related impacts will not, however, be included as part of any program-level analysis.



The analyses of each of the impact categories examined herein shall be divided into the following six sections, many of which may themselves include separate subsections focusing upon distinct aspects of the specific issue being presented or evaluated: (1) existing regional and local setting (Section 15125, Guidelines); (2) regulatory setting; (3) thresholds of significance (Section 15064.7, Guidelines); (4) impact analysis (Section 15126, Guidelines); (5) recommended mitigation measures (Section 15126.4, Guidelines); and (6) significance of impact with mitigation (Section 15126.2, Guidelines).

Because each of the "benefiting properties" constitute "infill" sites, based on the level of prior disturbance thereupon, certain topical issues are deemed by the Consultant not to be relevant to the project's environmental analysis. Those topical issues include, but may not be limited to: (1) agricultural resources; (2) cultural resources, including paleontological, archaeological, and historic resources; (3) biological resources, including the presence of wetlands and "waters of the United States."; and (4) mineral resources.

- ◆ **Subtask 4.1.6: Alternatives Analysis.** The EIR will include a discussion of a "reasonable range" of alternatives to the proposed action. For the purpose of this proposal, it is assumed that the EIR will evaluate the following alternatives: (1) a "no project" alternative where no physical changes to the subject property is assumed to occur; and (2) a development scenario based on the retention of existing General Plan and Municipal Code provisions. In addition, CEQA requires that EIRs disclose other alternatives initially identified by the Lead Agency but subsequently rejected, including the reasons for their rejection.

The Preliminary DEIR shall explain the Department's rationale for evaluating only those alternatives presented therein. For each alternative examined, the Consultant shall provide a brief topic-specific quantitative or qualitative analysis comparing the proposed project's effects against those of each alternative. If deemed appropriate, following discussions between the Department and the Consultant, the Department may direct BNG to provide additional or supplement exist AMTAs for the purpose of addressing one or more of those topical issues identified under Task 3.2 (BNG-Managed Technical Analyses) herein.

- ◆ **Subtask 4.1.7: Growth Inducement.** The assessment of growth-inducing impacts will consider whether the proposed project: (1) produces a potential for in-migration to fill employment opportunities associated with the project's construction and operation; (2) results in an increased localized demand for goods and services; (3) results in the removal of economic, physical, or political constraints; and/or (4) facilitates peripheral development through the expansion of services and/or utilities (Section 15126.2[d], Guidelines).
- ◆ **Subtask 4.1.8. Significant Irreversible Environmental Changes.** Potential "significant irreversible environmental changes" will be identified and discussed, including the project's use of nonrenewable resources (Sections 15126.2[c] and 15127, Guidelines).
- ◆ **Subtask 4.1.9: List of Preparers and Consultation.** This task includes compliance with applicable CEQA disclosure requirements.
- ◆ **Subtask 4.1.10: References.** As applicable, all documents cited in the EIR will be listed in a bibliography (Section 15148, Guidelines).
- ◆ **Subtask 4.1.11: "Mitigation Reporting and Monitoring Program."** Pursuant to Assembly Bill 3180 (Statutes of 1988), based on any identified mitigation measures, the Consultant shall, within the limits and limitations of this proposal, prepare and transmit to the Department a "'Preliminary' Mitigation Reporting and Monitoring Program" (Preliminary MRMP) specifying: (1) the party or agency responsibility for each mitigation measure's

implementation; (2) the timing for implementation, keyed to a specific event, milestone, or corresponding permit obligation; and (3) the frequency, contact, and format for associated compliance reporting.

Upon acceptance by the Department, the Preliminary MRMP shall become the "Mitigation Reporting and Monitoring Program" (MRMP) and shall provide a listing of those mitigation measures, if any, upon which the proposed project shall be conditioned (Section 21081.6[a][1], CEQA; Sections 15073[d] and 15091[d], Guidelines). The budget allocated to this subtask assumes only one round of review prior to the Department's acceptance.

- ◆ **Subtask 4.1.12: Technical Appendices.** It is assumed that the EIR's technical appendix will include: (1) the NOP and "Initial Study," including any written comments received by the Department in response thereto; (2) technical appendixes, including computer model runs, associated with those CMTAs identified herein ([Task 3.1](#)); (3) copies of AMTAs, including documentation of the Department's acceptance thereof ([Task 3.2](#)); and (4) such other documents as may be directed by the Department or whose inclusion is deemed beneficial by the Consultant.
- **Task 4.2: "Revised Preliminary" Draft Environmental Impact Report.** Based on the information and analysis presented in the Preliminary DEIR, the Department acknowledges that BNG may not fully support the Consultant's preliminary findings and recommendations, inclusive of both any preliminary determinations concerning the continuing presence of "significance" environmental effects and any mitigation measures formulated in response thereto. To avoid the prospects of any conflicting directions resulting therefrom, to the extent that the Department elects to provide BNG with the opportunity to submit pre-circulation comments addressing either the Preliminary DEIR or any other aspect of this work program, any such comments shall be submitted solely to the Department and shall not be delivered directly to the Consultant. The Department will independently consider any such comments and direct the Consultant in such manner as may be determined by the Department in response thereto.

Upon receipt of all comments from the Department on the Preliminary DEIR, the Consultant shall: (1) undertake all necessary actions and allocate all appropriate resources, within the limits and limitations of this proposal, required to respond to those comments and make those revisions identified by the Department; and (2) submit a "Revised Preliminary' Draft Environmental Impact Report" (Revised Preliminary DEIR) to the Department for second-round review.

- **Task 4.3: "Draft Environmental Impact Report."** Upon receipt of any comments from the Department following the Department's review of the Revised Preliminary DEIR, the Consultant shall, within the limits and limitations of this proposal, revise that document to incorporate those changes, corrections, or revisions identified by the Department, prepare a revised document, and submit the "Draft Environmental Impact Report" (DEIR) to the Department for final review.

For the purpose of this proposal, it is assumed that the document provided to the Department in this second-round review will be accepted without the need for further revisions. Except in those circumstances where further revisions may be required based on an identified defect attributable solely to the Consultant, any further revisions thereto constitute "out-of-scope" services and will be invoiced, on a time-and-material and cost-plus basis, in accordance with the Consultant's "Standard Rate Schedule."

### **Major Task 5.0: Final Environmental Impact Report**

This major task encompasses all efforts required to prepare the "Final Environmental Impact Report" (FEIR), including: (1) the preparation of written response to any comments received by the Department

following the dissemination of the DEIR relating to environmental issues; (2) "Findings of Fact" (FOF or Findings) and; (3) if required, a "Statement of Overriding Considerations" (SOQ or Overriding Considerations).

- **Task 5.1: "Response to Comments."** The number, extent, and substance of any comments that may be received from the public and from governmental agencies following the dissemination of the DEIR and "Notice of Completion" (NOC) cannot be known at this time and will likely be influenced by a wide-range of factors, many of which are outside the Consultant's control (e.g., neighborhood support or opposition). As such, for the purpose of this proposal, the Consultant has allotted a minimum number of labor hours for the sole purpose of reviewing (but not responding to) those comments received by the Department and which have been transmitted by the Department to the Consultant.

Based on that review, the Consultant shall provide the Department with: (1) the Consultant's preliminary recommendations whether the nature of the comments and anticipated responses warrant any substantial revisions to or predicate the recirculation of the DEIR; and (2) an estimate of the number of labor hours and other associated costs required to formally respond thereto, including (a) the identification of any additional technical analyses that may be needed in order to present an adequate technical response and (b) the party or parties appropriately bearing the responsibility for the preparation of "preliminary" responses thereto. All additional incurred costs will be billed, on a time-and-material and cost-plus basis, in accordance with the rates and terms specified in the Consultant's "Standard Rate Schedule."

To the extent that the Department and/or the Consultant independently identify any changes or other revisions that might be appropriate or beneficial (e.g., provide further clarification) to the text or graphics presented in the DEIR, those changes or revisions will be included in separate "errata" and "revisions" sections of the "Response to Comments" (RTC).

With regards to the RTC, in describing the proposed project's deliverables, the terms "preliminary" and "revised preliminary" are not derived from established CEQA parlance but serve only to describe the two separate rounds of the Department's internal review.

- ♦ **Subtask 5.1.1: "Screening-Level" Response to Comments.** Prior to the close of the comment period following the Department's dissemination of the DEIR, it is not possible to predict the number or substantive nature of written comments received from other governmental entities, the general public, and other stakeholders. Upon receipt of those comments, the Consultant will conduct an initial review for the purpose of determining whether those comments: (1) raise technical issues which were not addressed in the DEIR and which could necessitate the recirculation of the DEIR (Section 15088.5, Guidelines); (2) require or potentially require additional detailed analysis, including possible augmentation of a CMTA or AMTA; (3) can be readily addressed through reference to existing content in the DEIR; and (4) do not raise CEQA-related issues and thus require no response.

This subtask is limited solely to a review and categorization of comments received and does not include the preparation of responses thereto. Based on that review, the Consultant shall provide the Department with recommendations concerning the preparation of responses thereto and, as warranted, provide the Department with a separate budget to complete that undertaking.

- ♦ **Subtask 5.1.2: "Preliminary" Response to Comments (Not Bid).** Upon receipt of the Department's authorization, the Consultant shall, within the limits and limitations of this proposal, prepare a "'Preliminary' Response to Comments" (Preliminary RTC) addressing any relevant written comments received by the Department during the noticed comment

period following dissemination of the DEIR expressing environmental concerns and/or raising environmental issues. The Preliminary RTC will include: (1) a written response to all relevant written comments, as well as a copy of each communiqué (inclusive of both letters and emails) in their original form; (2) an introduction describing the document's contents, statutory authority, and relationship to the DEIR; and (3) copies of any additional technical studies that the Department and/or BNG may elect to enter into the project's administrative record.

- ◆ **Subtask 5.1.3: "Revised Preliminary" Response to Comments (Not Bid).** Upon receipt of any comments from the Department following the Department's review of the Preliminary RTC, the Consultant shall, within the limits and limitations of this proposal, revise that document to incorporate those changes, corrections, or revisions identified by the Department and submit a "Revised Preliminary Response to Comments" to the Department for final review. Upon the Department's acceptance, the "Revised Preliminary" Response to Comments shall become the "Response to Comments" (RTP) and, in combination with the DEIR (Task 4.3) constitute the "Final Environmental Impact Report" (FEIR) (Section 15089[a] and 15132, Guidelines) for the proposed project.
- **Task 5.2: "Findings of Fact and Statement of Overriding Consideration."** Should the City approve or conditionally approve the proposed project, the Lead Agency is required to prepare specific "Findings of Fact" (FOF or Findings) (Sections 21081 and 21081.5, CEQA; Section 15091, Guidelines) and, in the event that any "significant" impacts remain, a "Statement of Overriding Considerations" (SOC or Overriding Considerations) (Section 15093, Guidelines).

With regards to the FOF/SOQ, in describing the proposed project's deliverables, the terms "preliminary" and "revised preliminary" are not derived from established CEQA parlance but serve only to describe the two separate rounds Department's internal review.

- ◆ **Subtask 5.2.1: "Preliminary" Findings and Overriding Considerations.** In compliance with CEQA requirements, as a combined document, the Consultant shall, within the limits and limitations of this proposal, prepare and submit a "Preliminary" Findings of Fact/Statement of Overriding Considerations" (Preliminary FOF/SOC) for the Department's review. Because of the critical role that this CEQA document plays with regards to the CEQA process, at a minimum, the Consultant recommends that the Department provide a copy of the Preliminary FOF/SOC to the City Attorney for review.
- ◆ **Subtask 5.2.2: "Revised Preliminary" Findings and Overriding Considerations.** Upon receipt of any comments from the Department following the Department's review of the Preliminary FOF/SOC, the Consultant shall, within the limits and limitations of this proposal, revise that document to incorporate those changes, corrections, or revisions identified by the Department and submit a "Revised Preliminary" Findings and Overriding Consideration" to the Department for the Department's final review. Upon the Department's acceptance, the "Revised Preliminary" Findings and Overriding Consideration" shall become the "Findings of Fact and Statement of Overriding Considerations" (FOF/SOQ) and serve to document the City's rationale, under CEQA, for any subsequent actions by the City's decision-making body.

For the purpose of this proposal, it is assumed that the document provided to the Department in this second-round review will be accepted without the need for further revisions. Except in those circumstances where further revisions may be required based on an identified defect attributable solely to the Consultant, any further revisions thereto constitute "out-of-scope" services and will be invoiced, on a time-and-material and cost-plus basis, in accordance with the Consultant's "Standard Rate Schedule."

## **Major Task 6.0: Environmental Notices**

Included under this major task is the preparation of the "Notice of Preparation" (NOP), "No Effect Determination Request" (NED), "Notice of Completion" (NOC), "Notice of Determination" (NOD), and "10-day notice" provided to those governmental entities commenting on the DEIR. Except where otherwise noted (e.g., Task 6.4), this proposal does not include any costs associated with mailing and other forms of dissemination, newspaper publication, posting, or the payment of any filing or other fees as may be imposed by the County Clerk and/or by the California Department of Fish and Wildlife (CDFW).

- **Task 6.1: "Notice of Preparation."** Following the Department's acceptance of the "Initial Study (Task 2.1), a "'Preliminary' Notice of Preparation" (Preliminary NOP) will be prepared and forwarded to the Department for the City's execution. Upon its execution, the Preliminary NOP shall become the "Notice of Preparation" and will be used by the Department to announce the Lead Agency's commencement of an EIR for the proposed project.
- **Task 6.2: "No Effect Determination" Request.** Using Form DFW 866, concurrent with the dissemination of the NOP, the Consultant shall prepare, for transmittal by the Department to the CDFW, a "'Preliminary' No Effect Determination Request" (Preliminary NED). Upon its execution, the Preliminary NED shall become the "No Effect Determination Request" (NED) and will be used by the Department to request the CDFW's concurrence with the Lead Agency's determination that the proposed project will not adversely impact fish and wildlife resources.

A project shall not be operative, vested, or final, and local government permits for that project shall not be valid, until the requisite filing fees are paid to the CDFW (Section 711.4[c]((3), California Fish and Game Code [CFGC]); however, all projects found by the CDFW to have no effect on fish and wildlife resources shall incur no CDFW-imposed fee (Section 753.5[c], CFGC). Effective January 1, 2017, CDFW filing fees shall be \$1,046.50 for an EIR and \$2,216.25 for an MND, plus an additional \$50 County Clerk filing fee.

- **Task 6.3: "Notice of Completion."** Concurrent with the dissemination of the DEIR, the Lead Agency is obligated to prepare and disseminate a "Notice of Completion" (NOC), including posting in the office of the County Clerk. Based on the format presented in the Guidelines (Appendix C, Guidelines), the Consultant shall prepare a "'Preliminary' Notice of Completion" (Preliminary NOC) and transmit that document to the Department for the City's execution. Upon its execution, the Preliminary NOC shall become the "Notice of Completion" and shall be used by the Department to announce the City's release of the DEIR.

The Department may also elect to prepare and publish a separate "Notice of Availability" (NOA) announcing the availability of the DEIR. Since a NOA is not specifically required under CEQA, as a document separate from the NOC, its preparation has not been included herein.

- **Task 6.4: "Ten-Day Notice."** As required under Section 21092.5(a) of CEQA, the Lead Agency is required to provide those public agencies responding to the NOC and submitting comments on the DEIR with a minimum 10-day period to review the Lead Agency's responses to those comments prior to taking any action on the FEIR. Under this subtask, the Consultant shall disseminate copies of the RTC (Task 5.1) or portions thereof to those public agencies that are required to receive such notice.

For the purpose of this proposal, it is assumed that no more than four (4) public agencies will elect to comment on the DEIR. It is further assumed that each commenting agency will be provided only the Lead Agency's response to each agency's specific comments rather than the totality of the RTC.

- **Task 6.5: "Notice of Determination."** As required under CEQA, in order to shorten the statute of limitations on subsequent legal challenges to the Lead Agency's CEQA process, the Lead Agency is allowed to file a "Notice of Determination" (NOD) with the County Clerk within five working days after deciding to carry out or approve a non-exempt project. Should the City elect to approve or conditionally approve the proposed project, the Consultant shall prepare a "'Preliminary' Notice of Determination" (Preliminary NOD) and transmit that document to the Department for execution. Upon its execution, the Preliminary NOD shall become the "Notice of Determination" and will be used by the Department to announce the Lead Agency's certification of the FEIR. If the project requires a discretionary approval from any State agency, the Lead Agency is also required to file the NOD with the State Clearinghouse.

### **Major Task 7.0: Meeting Attendance**

Presented under this major task are those additional outreach and coordination efforts associated with the proposed project, including meetings with Department staff and other public meetings.

- **Task 7.1: Department / BMG Meetings.** At project commencement, the Consultant's Project Director (Lewandowski) will attend a "kick-off" meeting involving key project participants. The purpose of this meeting is to establish an open avenue of communication between all parties, obtain additional information concerning the proposed project, obtain copies of applicable documents, and finalize any outstanding issues concerning the project's scope and schedule. In addition, the Consultant's Project Director (Lewandowski) will attend up to three (3) additional meetings with Department staff and others corresponding with key elements/milestones of this work program. Throughout the term of this project assignment, the Consultant shall be available to participate in conference calls to address outstanding issues and/or to keep Department staff fully informed about project status and deliverables.
- **Task 7.2: Public Meetings / Hearings.** The Consultant's Project Director (Lewandowski) will attend up to three (3) public meetings, including a community workshops and noticed public hearings before the Planning Commission (Commission) and the City Council (Council). The Consultant shall be available to make technical presentations and assist Department staff in the preparation of staff reports and other presentation materials for those meetings.

The Department acknowledges that travel time incurred in attending public meetings, the placement of any item on the Commission's and Council's agenda, the nature of any agenda items proceeding the project, the level of public participation at public meetings, and the extend of deliberations by the Commission and the Council are all outside the Consultant's control. As a result, it is not possible to precisely budget the performance of this task; therefore, for budgetary purposes, a specified number of labor hours and a preliminary line-item budget has been established for travel and attendance. Should the number of meetings and/or the number of labor hours assigned thereto exceed those assumed limits, any and all additional efforts in excess of the hours and costs budgeted herein will be invoiced, on a time-and-materials and cost-plus basis, in accordance with the rates and terms in the Consultant's "Standard Rate Schedule."

Not budgeted herein are any labor or other direct costs that may be incurred to prepare presentation materials, including, but not limited to, the preparation or participation in the preparation of agendas, staff reports, graphics, and/or other materials for use and/or dissemination at any public meetings.

### **Major Task 8.0: CEQA Support Services**

This major task includes those activities required to support the Department's preparation and processing of the DEIR (Major Task 4.0), the RTC (Major Task 5.0), and associated environmental

notices (Major Task 6.0). For the purpose of this proposal, other than the NOP (Task 6.1), it is assumed that no other environmental notices and/or environmental documents will be prepared for or transmitted to the State Clearinghouse.

- **Task 8.1: Project Management.** The success of any multi-faceted endeavor is dependent upon the leadership, guidance, support, and tutelage of the project manager. The Consultant's Project Director (Lewandowski) will oversee all aspects of this work plan; provide managerial oversight over any subcontractors and the project schedule, all deliverables, and the timely performance by all members of the Consultant's team; and, subject to the limits and limitations of this proposal, provide quality control over all work products.
- **Task 8.2: "Preliminary" Mailing List.** In consultation with Department staff, the Consultant shall prepare a preliminary mailing list of appropriate local, State, and federal agencies and tribal organizations known to the Consultant that, pursuant to CEQA requirements, should be contacted as part of the Lead Agency's public noticing obligations. Not included herein is the preparation of any radius maps and/or review of any Orange County Assessor's rolls for the purpose of identify and listing those property owners and tenants located upon and in proximity to the project site. This task is limited to the preparation of a preliminary mailing list and does not included any actual mailings or other associated outreach activities.
- **Task 8.3: Reprographic Support Services.** CEQA documents are typically large and unwieldy, incorporating information from a variety of sources. Included herein are those labor hours associated with the preparation and assemblage of documents for publication, delivery of "camera-ready" documents for printing, and the proofing of finish work products prior to delivery to the Department for the Department's dissemination. The following documents will be transmitted to the Department by the Consultant:
  - (1) "'Preliminary' Project Description" (Task 1.1): 3 printed/1 electronic;
  - (2) "'Revised Preliminary' Project Description" (Task 1.2): 5 printed/1 electronic;
  - (3) "Project Description" (Task 1.2): 5 printed/1 electronic
  - (4) "'Preliminary' Initial Study" (Subtask 2.1.1): 5 printed/1 electronic;
  - (5) "'Revised Preliminary' Initial Study" (Subtask 2.1.2): 5 printed/1 electronic;
  - (6) "Initial Study" (Subtask 2.1.1): 5 printed/1 electronic;
  - (7) "'Preliminary' DEIR" (Task 4.1): 5 printed/1 electronic;
  - (8) "'Revised Preliminary' DEIR" (Task 4.2): 5 printed/1 electronic;
  - (9) "Draft Environmental Impact Report" (Task 4.3): 15 printed/30 electronic;
  - (10) "'Preliminary' MRMP" (Subtask 4.1.11): 5 printed/1 electronic;
  - (11) "'Revised Preliminary' MRMP" (Subtask 4.1.11): 5 printed/1 electronic;
  - (12) "Mitigation Monitoring Reporting Program" (Subtask 4.1.11): 5 printed/1 electronic;
  - (13) "'Preliminary' Response to Comments" (Subtask 5.1.1): 5 printed/1 electronic;
  - (14) "'Revised Preliminary' Response to Comments" (Subtask 5.1.2): 5 printed/1 electronic;
  - (15) "Response to Comments" (Subtask 5.1.2): 15 printed/30 electronic;
  - (16) "'Preliminary' FOF/SOQ" (Subtask 5.2.1): 5 printed/1 electronic;
  - (17) "'Revised Preliminary' FOF/SOQ" (Subtask 5.2.2): 15 printed/1 electronic; and
  - (18) "Findings/Statement of Overriding Considerations" (Subtask 5.2.2): 5 printed/1 electronic.

Except where otherwise noted, only one electronic copy (containing both Word and pdf files) of any additional documents referenced herein or subsequently added hereto by the Department will be provided to the Lead Agency and to NG. Should the Department and/or BNG request any greater number of documents beyond the number expressly indicated herein, any and all additional efforts beyond those budgeted herein will be invoiced, on a time-and-materials and cost-plus basis, in accordance with the rates and terms in the Consultant's "Standard Rate Schedule."

- **Task 8.4: Mailings and Deliveries.** The Consultant shall only be responsible for the mailing (via certified mail or other manner providing documentation of delivery) of the following CEQA documents: (1) "Notice of Preparation" (Task 6.1); and (2) "Ten-Day Notice." All other document dissemination activities identified under CEQA and/or described herein shall be undertaken by the Department.

Not included herein is the mailing, delivery, or dissemination of other environmental notices and other environmental documents: (1) to those parties identified on any City-generated "radius map" identifying property owners and tenants upon and within a specific radius around the project site; (2) by means of any general mailings including, but not limited to, announcement regarding scheduled public meetings; (3) by the physical posting of any notices; and (4) through the preparation and the publication of any newspaper or similar announcements.

Performance of this task does not obligate the Consultant to prepare, produce, or reproduce a greater number of environmental notices and environmental documents that specified in Task 8.2 (Reprographic Support Services).

- **Task 8.4: Direct Costs.** This task includes all other incidental expenses related to the implementation of this work program including, but not limited to, document preparation and publication, graphics/reprographics, travel, photo processing, postage, and deliveries.

### 3.0 PERFORMANCE SCHEDULE

The Consultant is committed to the expeditious completion of the CEQA process and will allocate all necessary resources as may be required to complete the project's CEQA documentation within the shortest possible time frame. The completion of this work effort is, however, dependent upon the Consultant's receipt of specific information from the Department and BNG and is dependent upon the Department's timely review and acceptance of those work products identified herein. The time period required for the delivery of that information and the performance of those reviews is beyond the Consultant's control and, unless expeditiously performed, would be expected to add to the timeframe required to complete the major tasks, task, and subtasks presented in this scope of services.

Much of the CEQA process is controlled by statutorily-defined time periods, agency-established outreach efforts, and public hearings before the Commission and the Council. The Consultant shall endeavor to complete the EIR in nine (9) months of receipt of the requested materials.

### 4.0 NOT-TO-EXCEED COST PROPOSAL

Table 1 (Environmental Impact Report – Not-to-Exceed Cost) is an itemized not-to-exceed cost proposal for those major tasks, tasks, and subtasks outlined herein. All authorized costs will be invoiced in accordance with the rates and terms specified in the Consultant's "Standard Rate Schedule" (Table 2). The Consultant reserves the right to internally adjust individual line-items and to internally alter the itemized line-item cost projections presented herein, subject only to the limitation that such adjustments not exceed the project's total not-to-exceed cost.

Should the City elect to delete or modify any of the individual components comprising this work program, to the extent that the deleted or modified work element is a precursor to other activities or is deemed by the Consultant to be critical to the completion of the stated work products, the Consultant reserves the right to submit a revised cost proposal and process associated change orders to reflect any such changes.

Unless explicitly identified herein or in any supplements hereto, all additional efforts, burdened costs, and other expenditures that may be incurred as a result of written or oral requested by the Department



or by BNG are beyond the scope of this work program shall constitute "out of scope" activities that will be billed in accordance with the rates and terms specified in the Consultant's "Standard Rate Schedule."

Operating in good faith, in response to any such requests and independent of whether a precise accounting of supplemental costs has been specified and mutually negotiated, the Consultant agrees to undertake such additional or expanded actions under the premise that the Department will timely prepare such documentation as may be required to fairly compensate the Consultant for such services and shall support such requests before the Council. Should a dispute arise as to appropriateness, amount, and/or nature of any payment and/or change order request that may be submitted to the Department by the Consultant, the Consultant reserves the right to stop work pending dispute resolution of any such dispute. Any resulting cessation of work shall not be deemed a contract violation or justification for payment of any non-disputed invoices or contract termination.

## **5.0 ASSUMPTIONS AND LIMITATIONS**

With regards to BNG's proposed hotel project, BNG shall provide the Department and the Department shall provide the Consultant with a BNG-prepared "project description," including both text and graphics, sufficient to allow for a reasonable analysis of the potential impacts of the proposed project. The "project description" shall, among other items:

- Delineate the precise project boundaries, including any areas outside BNG's ownership or control (including existing ownership interests) subject to any physical changes associated, either directly or indirectly, with the proposed project;
- Detailed information concerning the content of the proposed General Plan amendment and zone change, including any corresponding text or graphic revisions associated with both the "General Plan and Municipal Code";
- A listing of the discretionary actions required by or from the City and from any other governmental entity with jurisdiction over the project or the project site;
- Architectural plans, including 4-sided building elevations, sufficiently detailed to allow for project-level analysis;
- Scaled depiction of internal circulation, identifying the number, size, and location of on-site parking spaces, proposed access controls and devices, and design vehicle minimum turning radii on dimensioned site plans; and
- Such additional information as may be reasonably required to adequately describe the proposed project and the discretionary actions required for the project's effectuation.

All parties acknowledge that post-commencement changes to the "project description," including any aspect thereof and the assumptions upon which the CEQA analysis is based, would predicate the need for unbudgeted consideration of those changes in order to ensure that the environmental analysis accurately reflects the revised project. The Consultant's response to subsequent project changes predicated revisions to the documents and/or the technical analyses identified herein has not been accounted for herein and is not included within this scope of services and its attendant budget. By conveying proposed project revisions to the Consultant, both the Department and BNG acknowledge the Consultant's right, whether then immediately exercised or deferred, to process a change order in response thereto.

For the purpose of this proposal, the Consultant has made certain assumptions concerning the required content of the project's CEQA documentation, the studies that will be prepared under any resulting professional services agreement, the studies that will be provided by others for the Consultant's use, and the efforts comprising the Consultant's recommended scope of services. It is assumed that the Consultant's scope of work does not include:

- Planning-related or environmental activities not explicitly described herein;
- Independent geologic, geotechnical, seismic, and soils investigations;
- Surface or subsurface investigations;
- Soil or water sampling or other laboratory analyses;
- Environmental site assessments, record searches, or other investigations conducted to assess the presence or absence of toxic or hazardous materials and petroleum products upon or within one-quarter mile of the project site;
- Health risk screening analyses and/or health risk assessments (HRA);
- Hydrologic and hydraulic analyses;
- Water supply assessments;
- Civil or other engineering studies documenting the adequacy of water, sanitary sewer, and storm drain supplies, services, and systems;
- Dry utilities analyses;
- Architectural plans, renderings, computer simulations, or physical or analytical models; and
- Formulation or technical review of any project-specific Best Management Practices (BMPs), urban storm water management plans (SUSMP), storm water pollution prevention plans (SWPPPs), or any quantitative or qualitative assessment of any water quality constituents.

Unless tasked and adequately budgeted to complete an independent third-party review, the Consultant makes no representation concerning the quality and/or accuracy of any work products provided to the Consultant by the Department and/or by the Applicant for incorporation into the project's CEQA documentation. Should any issues arise with regards thereto, the Consultant shall not be responsible for any inaccuracies contained therein and shall not be required to defend those documents or to respond to any comments that may be raised with regards thereto.

It is assumed that a number of project-level technical studies will be prepared by the Applicant or by others and will be provided to the Consultant following review and acceptance by the Department. Those studies are assumed to include, but may not be limited to: (1) geologic, geotechnical, seismic, and soils investigation; (2) surface hydrology and water quality assessment; (3) Phase I/II environmental site assessment; and (4) sewer area study. Each technical study is assumed to include the following elements: (A) description of the environmental and regulatory setting; (B) thresholds of significance criteria used to assess the significance of the project's direct, indirect, and cumulative effects; (C) description and analysis of associated construction, operational, and cumulative impacts relating thereto; (D) statement of the whether each identified impact is "significant" based on the identified thresholds; (E) listing of appropriate mitigation measures and/or conditions of project approval; and (F) a clear and definitive statement whether any post-mitigated environmental effect remain "significant." All text shall be provided in both printed (unbound, single-sided, hard-copy) and electronic (Word) format and all accompanying graphics shall be provided to the Consultant as "pdf" or "jpg" files.

The information, analyses, and preliminary findings presented by the Consultant shall be based on available studies and other readily available data and, except where otherwise noted, will neither involve the independent generation of new technical data nor the generation of data or the performance of technical analyses not readily accessible from available published reports.

As required under CEQA, the project's environmental documentation must reflect the independent judgment of the Lead Agency. As such, in fulfillment of the Lead Agency's CEQA obligations, the Department must allocate sufficient personnel and other resources to adequately and timely review all draft documents provided by the Consultant, including, as appropriate, review by the City Attorney. The Department's review and acceptance is required in order to ensure that those documents and the statements presented therein are, in fact, the Lead Agency's documents and adequately and accurately reflect the level of analysis deemed appropriate by and the positions and preliminary conclusions of the Department with regards to each of the issues examined therein.

The Department's acceptance and dissemination of those documents shall serve to demonstrate the Lead Agency's acceptance and adequacy of each associated work product.

The terms "EIS" and "Consultant," as those terms are used herein, are intended to be inclusive of all employees, independent contractors, subcontractors, and other parties (independent of their affiliation) operating under the Consultant's supervision. The City and BNG acknowledge that the Consultant is neither a law firm nor is its principal an attorney. As such, any statements presented herein by the Consultant or in any subsequent work product resulting from his proposal shall not be construed by the City, by BNG, or by any other party as a legally-based interpretation of existing local, State, or federal statutes, rules, or regulations. With regards to CEQA compliance, the Lead Agency is encourages to actively involve the City Attorney and BNG is encouraged to seek early and effective involvement by independent and competent legal counsel.

Table 1  
**ENVIRONMENTAL IMPACT REPORT  
 NOT-TO-EXCEED COST**

Major Task/Task/Subtask	Estimated Hours	Budgeted (\$)
<b>Major Task 1.0: Project Description<sup>(b)</sup></b>		
Task 1.1: "Preliminary" Project Description	-	-
Subtask 1.1.1: Objectives, Land Uses, Entitlements, and Pending Hotel Projects	16	\$ 2,400.00
Subtask 1.1.2: Identification of the Project Site	6	900.00
Subtask 1.1.3: "Speculative" versus "Reasonably Foreseeable" Indirect Impacts	-	Not Bid
Subtask 1.1.4: Environmental Baseline	8	1,200.00
Task 1.2: "Revised Preliminary" Project Description	8	1,200.00
Task 1.3: "Screening-Level" Initial Study (Decision Point 1)	6	900.00
Major Task 1.0 Subtotal	44	\$ 6,600.00
<b>Major Task 2.0: Initial Study and Pre-Circulation Scoping Activities</b>		
Task 2.1: "Initial Study"	-	-
Subtask 2.1.1: "Preliminary" Initial Study	40	\$ 6,000.00
Subtask 2.1.2: "Revised Preliminary" Initial Study	8	1,200.00
Subtask 2.2: Screening-Level Assessment (Decision Point)	4	600.00
Task 2.3: Tribal Consultation	16	2,400.00
Task 2.4: State Clearinghouse Noticing and Coordination <sup>(b)</sup>	6	900.00
Major Task 2.0 Subtotal	74	\$ 11,100.00
<b>Major Task 3.0: Technical Studies<sup>(a)</sup></b>		
Task 3.1: "Consultant-Managed" Technical Analyses	-	-
Subtask 3.1.1: Traffic Impact Study	-	\$ 13,750.00
Subtask 3.1.2: Land Use / Planning	36	5,400.00
Subtask 3.1.3: Air Quality	32	4,800.00
Subtask 3.1.4: Greenhouse Gas Emissions	24	3,600.00
Subtask 3.1.5: Noise	48	7,200.00
Subtask 3.1.6: Public Services	24	3,600.00
Subtask 3.1.7: Energy Resources	12	1,800.00
Subtask 3.1.8: Aesthetics	32	4,800.00
Task 3.1 Subtotal	208	\$ 44,950.00
Task 3.2: "BNG-Managed" Technical Analyses	-	-
Subtask 3.2.1: Geology and Soils	24	3,600.00
Subtask 3.2.2: Hydrology / Water Quality	24	3,600.00
Subtask 3.2.3: Water / Wastewater	16	2,400.00
Subtask 3.2.4: Hazards / Hazardous Materials	16	2,400.00
Task 3.2 Subtotal	80	\$ 12,000.00
<b>Major Task 4.0: Draft Environmental Impact Report<sup>(a)</sup></b>		
Task 4.1: "Preliminary" Draft Environmental Impact Report	-	-
Subtask 4.1.1: Introduction	16	\$ 2,400.00
Subtask 4.1.2: Executive Summary	12	1,800.00
Subtask 4.1.3: Project Description <sup>(c)</sup>	8	1,200.00
Subtask 4.1.4: Related Projects and Cumulative Impacts	12	1,800.00
Subtask 4.1.5: Impact Analysis	-	-
Subtask 4.1.6: Alternatives Analysis	36	5,400.00
Subtask 4.1.7: Growth Inducement	8	1,200.00
Subtask 4.1.8: Significant Irreversible Environmental Changes	6	900.00
Subtask 4.1.9: List of Preparers and Consultation	2	300.00
Subtask 4.1.10: References	2	300.00
Subtask 4.1.11: "Mitigation Reporting and Monitoring Program"	4	600.00
Subtask 4.1.12: Technical Appendices	6	900.00
Task 4.2: "Revised Preliminary: Draft Environmental Impact Report"	24	3,600.00
Task 4.3: "Draft Environmental Impact Report"	16	2,400.00
Major Task 4.0 Subtotal	152	\$ 22,800.00

Table 1 (Continued)  
**ENVIRONMENTAL IMPACT REPORT**  
**NOT-TO-EXCEED COST**

Major Task / Task / Subtask	Estimated Hours	Budgeted (\$)
<b>Major Task 5.0: Final Environmental Impact Report</b>		
Task 5.1: "Response to Comments" <sup>(d)</sup>	-	-
Subtask 5.1.3: "Screening-Level" Response to Comments	16	\$ 2,400.00
Subtask 5.1.2: "Preliminary" Response to Comments	-	Not Bid
Subtask 5.1.3: "Revised Preliminary" Response to Comments	-	Not Bid
Task 5.2: "Findings of Fact and Statement of Overriding Considerations"	-	-
Subtask 5.2.1: "Preliminary" Findings and Overriding Considerations	40	6,000.00
Subtask 5.3.2: "Revised Preliminary" Findings and Overriding Considerations	8	1,200.00
Major Task 5.0 Subtotal	64	\$ 9,600.00
<b>Major Task 6.0: Environmental Notices</b>		
Task 6.1: "Notice of Preparation"	2	\$ 300.00
Task 6.2: "No Effect Determination" Request	2	300.00
Task 6.3: "Notice of Completion"	2	300.00
Task 6.4: "Ten-Day Notice"	8	1,200.00
Task 6.5: "Notice of Determination"	2	300.00
Major Task 6.0 Subtotal	16	\$ 2,400.00
<b>Major Task 7.0 Meeting Attendance</b>		
Task 7.1: Department / BNG Meetings <sup>(d)</sup>	24	\$ 3,600.00
Task 7.2: Public Meetings / Hearings <sup>(d)</sup>	24	3,600.00
Major Task 7.0 Subtotal	48	\$ 7,200.00
<b>Major Task 8.0: CEQA Support Services<sup>(b)</sup></b>		
Task 8.1: Project Management	60	9,000.00
Task 8.2: "Preliminary" Mailing List	4	600.00
Task 8.3: Reprographic Support Services	-	3,600.00
Task 8.4: Mailings and Deliveries	-	600.00
Task 8.5: Direct Costs	-	4,800.00
Major Task 8.0 Subtotal	64	18,600.00
All Major Tasks Subtotal	750	135,250.00
Contingency (10%)	-	13,525.00
Total <sup>(e)</sup>	-	\$ 148,775.00

Notes:

- (a) Based on the assumption that, from an indirect impact perspective, project-induced development opportunities on all other "benefitting properties" (i.e., inclusive of all properties other than BNG's proposed hotel site) are: (1) deemed to be "speculative" and not "reasonably foreseeable"; and (2) do not require analysis herein.
- (b) Based on the assumption that no permits or approvals are required from any State agencies and that no State agency constitutes a "responsible agency" under CEQA. As a result, notification, consultation, and document dissemination to the State Clearinghouse is assumed to be limited.
- (c) The "project description" derived through the performance of Major Task 1.0 (Project Description) will serve, in its entirety, as the "project description" for the EIR.
- (d) Based on uncertainty as to the number and substantive nature of any comments that may be submitted to the Lead Agency following the dissemination of the DEIR and "Notice of Completion," it is not presently possible to reasonably predict the level of endeavor that may be required to complete this task and its associated subtasks. As a result, the budget assigned herein is limited to: (1) a review of any comments so received; (2) the preparation of recommendations concerning a reasonable course of action that the Department may elect to undertake in response thereto; and (3) preparation of a task-based budget allowing the Consultant to commence the preparation of the "Response to Comments" (RTC) document. Unless the number and substance of comments received by the City are so minimal as to allow the preparation of written responses thereto within the limits and limitation of this proposal, it is not presently the Consultant's intent to commence the preparation of formal written responses to those comments so received.
- (e) It is not possible to precisely budget the performance of this task. For budgetary purposes, a specified number of labor hours has been established for travel and attendance. Should the number of labor hours assigned thereto exceed those assumed limits, any and all additional efforts in excess of the hours budgeted herein will be invoiced, on a time-and-materials and cost-plus basis, in accordance with the rates and terms in the Consultant's "Standard Rate Schedule."
- (f) The Consultant reserves the right to internally adjust all line-item costs and to reassign all associated labor hours and allocated costs as the Consultant may deem appropriate, subject only to the upper limits of the contract.

Source: Environmental Impact Sciences

Table 2  
**ENVIRONMENTAL IMPACT SCIENCES**  
**STANDARD RATE SCHEDULE**  
 (January 2017)

<u>Position</u>	<u>Rates</u>
<b>Professional</b>	
Principal .....	\$185.00
Senior Engineer .....	175.00
Senior Planner/Scientist.....	150.00
Associate Engineer .....	125.00
Associate Planner/Scientist .....	100.00
Planner/Scientist .....	85.00
Assistant Planner/Scientist .....	75.00
<b>Support</b>	
Word Processor .....	65.00
Technician.....	50.00
Support Services.....	35.00

All direct costs will be billed at cost-plus-twenty (20) percent. Automobile mileage will be billed at \$0.575 per mile and travel time will be billed at the designated rate. All invoices are payable within thirty (30) days of receipt and, unless an alternative billing plan is first specified, will be submitted monthly for all completed or in progress.

Attachment C  
**RK Engineering Group**  
**Traffic Impact Study**

October 23, 2017

Mr. Peter Lewandowski  
ENVIRONMENTAL IMPACT SCIENCES  
26051 Via Concha  
Mission Viejo, CA 92691-5614

**Subject: 13650 Harbor Boulevard Hotel Traffic Impact Study, City of Garden Grove**

Dear Mr. Lewandowski:

**Introduction**

RK ENGINEERING GROUP, INC. (RK) is pleased to submit this proposed Agreement to provide a traffic impact study for the proposed 13650 Harbor Boulevard Hotel Project. The proposed project is located on the east side of Harbor Boulevard in the City of Garden Grove. The project will consist of 124 keys of hotel use and will replace approximately 17,216 of existing specialty retail use.

Based on my conversation with Mr. Lewandowski, the project will require a zone change and general plan amendment. As a result, the City of Garden Grove may require an EIR for the project. However, the applicant is planning to prepare an MND for the project. Per Mr. Lewandowski's recommendation, RK is preparing this proposal to fulfill the requirements of an MND and not an EIR. It should be noted that the City of Garden Grove may require an expanded scope for the traffic analysis. If that is the case, RK will provide an amendment and detailed scope of work to the applicant.

RK's familiarity with the location and relationship with the City of Garden Grove Transportation Engineering Department Staff will be beneficial in completing this analysis efficiently. RK shall continue to work closely with the City of Garden Grove staff in order to obtain project data and an approved scope of work for the traffic study prior to initiating the work effort.



It is anticipated that the traffic study will be required to analyze up to six (6) intersections. Prior to initiating the traffic impact study, a formal scoping agreement will be approved by the City of Garden Grove Traffic Engineer. The study area intersections will be analyzed for both AM/PM peak hour conditions.

The traffic study will analyze the following conditions:

- Existing
- Project Buildout Year Without Project
- Project Buildout Year With Project

The level of service analysis should be performed based upon the ICU (Intersection Capacity Utilization) methodology. In addition, the traffic study will take into account other proposed projects in the area and with an ambient growth rate of one percent (1%) per year. A list of cumulative project will be obtained by the City of Garden Grove and other local jurisdictions.

### **Scope of Work**

The following Scope of Work is proposed by RK for this study effort:

1. Review the Site Plan and project description from a traffic circulation and access standpoint.
2. Discuss the project with the applicant and City of Garden Grove project team in a kick-off meeting.
3. Obtain an approved scope of work for the traffic impact study from the City of Garden Grove.
5. Field review the site to determine Existing conditions.
6. Obtain AM/PM peak hour counts at the six (6) study area intersections during peak summer months.
7. Obtain cumulative project information from the City of Garden Grove and other adjacent jurisdictions if needed.
8. Review public transit, bicycle and pedestrian in the vicinity of the proposed project.
9. Determine existing levels of service at the six (6) study area intersections based upon the ICU methodology.

10. Perform CMP (Congestion Management Program) analysis at all CMP intersections.
11. Determine the project's trip generation, trip distribution and traffic assignment to the adjoining roadway system.
12. Determine Project Buildout Year traffic impacts and level of service without the project at the six (6) study area intersections. This will include a 1% per year growth rate and any known cumulative projects in the study area.
13. Determine Project Buildout Year traffic impacts and level of service with the project at the six (6) study area intersections. This will include a 1% per year growth rate and any known cumulative projects in the study area.
14. Determine project's traffic contribution to the six (6) study area intersections.
15. Review project access and determine the need for any special turn lanes that may be required to serve the project.
16. Develop mitigation measures (i.e. traffic signals, additional traffic lanes, etc.) that may be required to accommodate the project.
17. Develop project recommendations.
18. Summarize the results of the study in a traffic impact report.

### **Professional Fees**

The fee for the work outlined in this proposal is based upon personnel charges plus direct expenses as indicated in the attached Exhibit A. The fixed fee to accomplish the above Scope of Work is \$13,750. **A retainer of \$3,500 is required to initiate the traffic study. This fee is based upon analysis of the Original Site Plan received by RK from the Client at the time RK initiates the work. Should the original Site Plan received by RK be modified (per the Client or their respective associates) after the work is initiated by RK, then RK will require a change Order and budget modification to accommodate changes before completing the work. Any additional intersections required by the City above the six (6) estimated in this scope of work will cost \$1,000 each. Attendance at public hearings is based on Billing Rates attached in Exhibit A.**

Three copies (two bound and one original for the client's use) of the project report would be prepared. Monthly billings for RK will be based upon the attached Exhibit A - BILLING

**Qualifications**

RK is located in Newport Beach, California and specializes in transportation planning and traffic/acoustical engineering for governmental agencies and the business community. The firm principals and associates have over 70 years of combined engineering and planning experience throughout Southern California at the regional, local and individual project levels. The experience of the firm's personnel in transportation planning and traffic/acoustical engineering provides the special skills necessary for determining practical and meaningful traffic solutions.

**Limitation of Liability**

The Client agrees to limit the Design Professional's liability to the Client and to all construction Contractors and Subcontractors on the project, due to the Design Professional's negligent acts, errors, or omissions, such that the total aggregate liability of the Design Professional to all those named shall not exceed \$50,000 or the Design Professional's total fee for services rendered on this project, whichever is greater.

This letter can serve as a Memorandum of Agreement and our authorization to proceed. Please sign one copy and return it to us for our files. We are looking forward to serving you on this project. **This proposal is valid for sixty days, if signed by the client.**

RK is looking forward to the possibility of teaming with Aecom on this project. If you have any questions regarding this proposal, please call me at (949) 474-0809.

Respectfully submitted,  
RK ENGINEERING GROUP, INC.



Rogier Goedecke  
President

Attachment

CONTRACT APPROVAL:

Approved by: \_\_\_\_\_

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

Firm: \_\_\_\_\_

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

RATES FOR RK ENGINEERING GROUP, INC. Invoices that are more than 90 days past due are subject to interest at the maximum permitted by law.

### **Limitation of Liability**

The Client agrees to limit the Design Professional's liability to the Client and to all construction Contractors and Subcontractors on the project, due to the Design Professional's negligent acts, errors, or omissions, such that the total aggregate liability of the Design Professional to all those named shall not exceed \$50,000 or the Design Professional's total fee for services rendered on this project, whichever is greater.

### **Ownership of Documents**

All reports, plans, specifications, field data, notes and other documents, including all documents on electronic media, prepared by RK, as instruments of service shall remain the property of RK. The Client may use these documents to secure approval of his/her projects; however, they may not be modified or changed in any way. The items in this proposal/contract are to be considered **CONFIDENTIAL** and may not be shared with any other entity without the written permission of RK Engineering Group, Inc.

### **Dispute Resolution**

In an effort to resolve any conflicts that arise during the Project or following the completion of the Project, the Client and RK agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

In the event that a lawsuit is brought for the enforcement of any of the terms of this agreement, the prevailing party should be entitled to attorney fees and costs in addition to any damages. This agreement can be terminated by either party based upon a written request to terminate the work. The client will pay RK for all work that is completed prior to the termination of the work.

### **Time Schedule**

It is estimated that the traffic impact study will take approximately 30 working days to complete from the date of authorization, and date of receipt of data essential for the study. Additionally, any delays resulting from circumstances beyond our control, such as weather, shall extend the time schedule.