PROFESSIONAL SERVICES AGREEMENT
FOR ENVIRONMENTAL ANALYSIS

THIS AGREEMENT is made and entered into this 14th day of July, 2016 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and Bon Terra Psomas, a subsidiary of Psomas, a California corporation ("Consultant") and Rosanna, Inc., a California corporation ("Applicant").

WITNESETH:

A. WHEREAS, City is the Lead Agency with land use and planning jurisdiction in the City of Costa Mesa as pertains to the California Environmental Quality Act ("CEQA"); and

B. WHEREAS, Applicant has submitted an application for development of the Starwood Tribute Hotel, 3350 Avenue of the Arts, Costa Mesa, CA ("Project"); and

C. WHEREAS, City and Applicant have agreed that the Project may have significant environmental impacts, necessitating preparation of an addendum to EIR No. 1054 and related documents and studies ("Required CEQA Document"), prepared by a qualified consultant; and

D. WHEREAS, City and Applicant concur in the selection of Consultant based upon the following:

1. Consultant it a professional environmental consulting firm with extensive experience in the preparation of EIR's and all related documents;

2. Consultant is in good standing with the City;

3. Based on its own criteria, City has determined that the Consultant is fully qualified and well-suited to be selected by City if City had solicited proposals to conduct the work contemplated for the Required CEQA Document;

4. Consultant is prepared to undertake all necessary technical and analytical work required in conjunction with the Required CEQA Document, either directly or through the use of sub-consultants; and

E. WHEREAS, City, Consultant, and Applicant desire to define relationships and areas of responsibility in the preparation and management of the Required CEQA Document.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. PARTY OBLIGATIONS

1.1. <u>City Obligations</u>. City shall:

A. Notwithstanding Applicant's hiring of Consultant, be responsible for the management of Consultant in the preparation of the Required CEQA

Document including:

1. The content of the Required CEQA Document;

2. The extent and detail of topical area discussions; and

3. The consideration of and response to comments received during the Notice of Preparation of the Required CEQA Document and circulation of the Draft Required CEQA Document;

B. Perform management activities necessary for the Required CEQA Document, including project coordination regarding day to day processing and creation of the Required CEQA Document;

C. Be responsible for conformity with applicable requirements pursuant to CEQA, California Public Resources Code Section 21000, et seq., and other pertinent laws, regulations and procedures;

D. Ensure that the Required CEQA Document reflects the independent judgment of the City, per Public Resources Code Section 21082.1, including all documentation prepared and submitted by Consultant and/or Applicant with respect to the Required CEQA Document, the Response to Comments Document, and the Final Required CEQA Document;

E. Be responsible for the selection of the alternatives to be included in the Draft Required CEQA Document, derived from internal City review, the Required CEQA Document scoping process and comments from resource and responsible agencies and the public;

F. Be responsible for noticing and scheduling of public meetings and hearing related to the Project and distribution of the Draft and Final Required CEQA Document; and

G. Be responsible for ensuring that the Required CEQA Document and the Required CEQA Document process reflect factual information and an unbiased and objective approach.

1.2. Applicant's Obligations. Applicant shall:

A. Be and is hereby designated as a contracting agent of City for administering the contract with Consultant for the preparation of the Required CEQA Document;

B. Be responsible for payment of all costs related to preparation of the Required CEQA Document as provided under Section 2.0 of this Agreement.

C. Provide technical reports and documents as required by City regarding the

preparation of the Required CEQA Document;

D. Cooperate fully with City in the land use and planning activities related to the Project and the preparation of the Required CEQA Document;

E. Document all communication, written and verbal, between the Applicant and Consultant, and provide said documentation to the City.

1.3. Consultant's Obligation. Consultant shall:

A. Prepare and provide a Scope of Work, in coordination with the City and Applicant, which shall be attached hereto as Exhibit "A."

B. Notwithstanding Applicant's hiring of Consultant, be responsible for the preparation of the Required CEQA Document including:

1. The content of the Required CEQA Document based upon the directions of City,

2. The extent and detail of topical area discussions based upon the directions of City,

3. The consideration of and responses to comments received during the Notice of Preparation of the Required CEQA Document and circulation of the Draft Required CEQA Document, based upon the directions of the City;

C. Perform activities necessary for the Required CEQA Document, including project coordination regarding day to day processing and creation of the Required CEQA Document;

D. Be responsible for conformity with applicable requirements pursuant to CEQA, California Public Resources Code Section 21000, et seq., and other pertinent laws, regulations and procedures.

E. Ensure that the Required CEQA Document reflects the judgment of City, per Public Resources Code Section 21082.1, including all documentation prepared and submitted with respect to Draft Required CEQA Document, the Response to Comments Document, and the Final Required CEQA Document;

F. Be responsible for the analysis of the alternatives to be included in the Draft Required CEQA Document, derived from internal City review, the Required CEQA Document scoping process and comments from resource and responsible agencies and the public;

G. Be responsible for ensuring that the Required CEQA Document and the Required CEQA Document process reflect factual information and an unbiased and objective approach;

H. Document all communication, written and verbal, between the Applicant and Consultant, and provide said documentation to the City.

1.4. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Clerk or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

(a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

(b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or

(c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this

Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Applicant shall pay one hundred percent (100%) of all costs of City and Consultant in the management and preparation of the Required CEQA Document and all work related thereto. Consultant's total compensation shall not exceed THIRTY-THREE THOUSAND FIVE HUNDRED SIXTY-FIVE Dollars ($33,565.00).

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The obligations of all parties pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue until such time as action by the City Council of the City of Costa Mesa on the Required CEQA Document becomes administratively final on the Project, Required CEQA Document, and EIR.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant and Applicant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, Applicant shall pay Consultant and City for reasonable costs incurred and services satisfactorily performed up to and including the date of City's written notice of termination.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant or by Applicant in the performance of this Agreement including, but not limited to, the Required CEQA Document, development and construction documents, data studies, drawings, maps and reports, and all related documents, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

(a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

(b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

(c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the

life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."

(b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.

(c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

(d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.

(e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:	IF TO CITY	IF TO APPLICANT
Psomas 3 Hutton Centre Drive Suite 200 Santa Ana, CA 92707 Tel: (714) 481-8041 Email: jennifer.marks@ psomas.com Attn: Jennifer Marks	City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626 Tel: (714) 754-5610 Email: minoo.ashabi@ costamesaca.gov Attn: Minoo Ashabi	Rosanna, Inc. 3350 Avenue of the Arts Costa Mesa, CA 92626 Tel: (714) 751-5100 Email: psanford@ avenueoftheartshotel.com Attn: Paul Sanford

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "A" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for

immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

Applicant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Applicant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Applicant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Applicant, its employees, and/or authorized subcontractors, but shall be required whenever any claim,

action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Applicant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Applicant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Applicant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Applicant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. Consultant and Applicant agree that the City shall retain ownership of the Required CEQA Document, all findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or Applicant or any of their subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant and Applicant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Consultant and Applicant shall deliver to City any Required CEQA Document, finding, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this

Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.23. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and

that by doing so the parties hereto are formally bound to the provisions of this Agreement.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

[redacted] Date: 8/16/16
Chief Executive Officer of Costa Mesa

CONSULTANT, Psomas

[redacted] Date: 8/12/16
Signature

Kathleen Brady, Vice-President
Name and Title

[redacted]
Social Security or Taxpayer ID Number

APPLICANT, Rosanna, Inc.

[redacted] Date: 8-11-16
Signature

Paul Sanford CEO
Name and Title

[redacted]
Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

[redacted] Date: 8-12-16
City Attorney

ATTEST:

[redacted]
City Clerk

APPROVED AS TO INSURANCE:

[redacted] Date: 8/12/16

Risk Management

APPROVED AS TO CONTENT:

[redacted] Date: 8/12/16

Project Manager for Minoo Ashabi

DEPARTMENT HEAD APPROVAL

[redacted] Date: 8-12-16

Gary Armstrong, Development Services Director

[redacted] Date: 8.12.16

[redacted]tephen Dunivent, Interim
Finance Director

EXHIBIT A

SCOPE OF WORK

BonTerra PSOMAS

Balancing the Natural and Built Environment

July 6, 2016

Minoo Ashabi
City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626

VIA EMAIL
Minoo.Ashabi@costamesaca.gov

Subject: Proposal to Prepare California Environmental Quality Act Documentation for the Amended Starwood Tribute Hotel Project

Dear Ms. Ashabi:

BonTerra Psomas is pleased to provide you with this proposal to prepare California Environmental Quality Act (CEQA) documentation for the Starwood Tribute Hotel Project. It is our understanding that an Addendum to the previously certified *Final Environmental Impact Report No. 1054 (SCH [State Clearinghouse] No. 2007011125) Wyndham Boutique Hotel/High-Rise Residential Project* (EIR No. 1054) is the appropriate CEQA document for the project. As you are aware, BonTerra Psomas completed a previous Addendum to EIR No. 1054 in early 2015; therefore, it is our intention to use the information contained in the previous Addendum to the extent it continues to be relevant and accurate. This approach will allow us to work as efficiently as possible while providing an accurate and legally defensible document. We have prepared a preliminary Scope of Work, Fee Estimate, and Estimated Project Schedule (Attachments A through C) for your consideration.

We appreciate the opportunity to work with the City and value our relationship with you. Please feel free to contact Jennifer Marks at 714.481.8041 if you have any questions or if you need additional information.

Sincerely,
BonTerra Psomas

[redacted]

Vice President, Environmental Planning

[redacted]

Jennifer Y. Marks
Senior Project Manager

Attachments: A – Scope of Work
B – Fee Estimate
C – Estimated Project Schedule

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ATTACHMENT A

SCOPE OF WORK
ADDENDUM TO ENVIRONMENTAL IMPACT REPORT NO. 1054
STARWOOD TRIBUTE HOTEL PROJECT

July 6, 2016

PROJECT UNDERSTANDING

On November 20, 2007, the City of Costa Mesa certified *Environmental Impact Report No. 1054 (SCH [State Clearinghouse] No. 2007011125) Wyndham Boutique Hotel/High-Rise Residential Project* (EIR No. 1054). The approved project involves the reuse of the project site as a mixed-use development with both hotel and residential uses. As analyzed in EIR No. 1054, the existing hotel was proposed to be renovated to reduce the number of rooms from 238 to 200. Additionally, a 23-story, 120-unit high-rise residential tower was proposed to be constructed adjacent to the hotel, following demolition of the hotel's parking structure. Based on existing entitlements and according to the analysis presented in EIR No. 1054, the overall mix of hotel rooms and residential units may be modified but would not exceed an overall total of 320 hotel rooms/dwelling units.

In 2015, BonTerra Psomas prepared an Addendum to EIR No. 1054 that evaluated an amended project involving retention of the existing 238-room hotel and construction of a 23-level residential high-rise tower. Since that time, the Project Applicant has requested an Amendment to Master Plan PA-06-75 to allow for retention of the existing 238-room hotel tower and construction of a new 15-story, 150-room high-rise hotel tower. This project would bring the total number of hotel rooms to 388 guest rooms and would also include 8,500 square feet (sf) of restaurant area and 13,900 sf of conference/meeting space. It is BonTerra Psomas' understanding that, based on initial review of the proposed development application, the City of Costa Mesa has preliminarily determined that the amended project could be designed to avoid any new potential environmental impacts and that an Addendum to the certified EIR No. 1054 is the appropriate environmental document. Should it be determined that new or greater impacts beyond what was identified in EIR No. 1054 would occur (through additional review of available information or based on analysis of the amended project), this Scope of Work would need to be revised.

SCOPE OF WORK

TASK 1 TECHNICAL STUDY PEER REVIEW

The Project Applicant has prepared a traffic impact study, parking study, and queuing analysis for the proposed project. As part of this Scope of Work, a Professional Engineer will review each study for technical accuracy. A peer review memorandum will be prepared that details the findings of this review process with comments separated out according to the technical study. This Scope of Work assumes 5 hours for each technical study for a total of 15 hours of technical review.

Additionally, these studies will be reviewed by the BonTerra Psomas Project Manager to ensure adequacy in addressing California Environmental Quality Act (CEQA) requirements. Any comments or suggested revisions will be included in the peer review memorandum identified above. This review is estimated to require an additional four hours.

TASK 2 PREPARATION OF THE ADDENDUM

BonTerra Psomas proposes to prepare an Addendum to EIR No. 1054 (Addendum) pursuant to Section 15164 of the State CEQA Guidelines. BonTerra Psomas will work with the City of Costa Mesa to draft a project description that includes the project's background and any discretionary approvals.

The Addendum will be based on the CEQA Environmental Checklist Form and will address each of the environmental issues included in EIR No. 1054. This analysis will largely be qualitative in nature and will be based on existing data and information contained in EIR No. 1054 and its supporting documentation. Any changes in existing conditions or applicable regulations and policies since the publication of EIR No. 1054 will be identified. Each mitigation measure from EIR No. 1054 will be reviewed and modified, as appropriate, to determine its relevance to the project. While the majority of the analysis will be qualitative, additional project-specific analysis will be required for certain topical issues based on the modifications proposed. Following is the Scope of Work for these tasks.

- **Air Quality and Greenhouse Gas Emissions.** BonTerra Psomas will conduct a quantitative analysis for air quality and greenhouse gas emissions using the California Emission Estimator Model (CalEEMod). BonTerra Psomas will analyze the proposed project's air quality impacts, addressing the issues described in Appendix G of the State CEQA Guidelines and in accordance with significance criteria established by the South Coast Air Quality Management District (SCAQMD). Potential criteria pollutant impacts to local receptors during the construction phase of the project will be assessed using the SCAQMD Localized Significance Thresholds method. It is assumed that the net change in trip generation and vehicle miles traveled would not exceed the assumptions in EIR No. 1054; therefore, a quantitative analysis of operational emissions is not assumed in this Scope of Work. The air quality analysis will include qualitative discussions of toxic air pollutant impacts from construction equipment diesel particulate emissions and from odors. The analysis will also discuss the project's consistency with the applicable air quality management plans.

- **Noise.** BonTerra Psomas will review the compare the traffic analyses prepared for EIR No. 1054 and for the proposed project and update the off-site and on-site traffic noise impacts data. It is assumed that a brief qualitative discussion will confirm that no changes in construction noise, on-site operational noise, or vibration impacts would occur.

- **Hazardous Materials.** BonTerra Psomas will contract with Environmental Data Resources, Inc. (EDR) to prepare an EDR Radius Map database search of federal, State, local, tribal, and other databases for listed hazardous materials sites on the project site or within the surrounding area. The findings of this records search will be summarized in the Addendum, as appropriate.

Additionally, BonTerra Psomas will summarize any technical reports prepared by others for the proposed project, including a traffic impact study, parking study, and queuing analysis. This Scope of Work assumes that the City or Project Applicant will provide sufficient information related to utilities and service systems in order to address the project impacts consistent with the CEQA checklist questions. Should it be determined that the proposed project would change the development footprint or include additional excavation not previously evaluated as part of EIR No. 1054, additional technical information regarding potential impacts related to geology/soils and hydrology and water quality will be required from the City and/or Project Applicant.

As noted previously in the Project Understanding, BonTerra Psomas is in a unique position as author of the original EIR No. 1054 as well as the first Addendum to EIR No. 1054. To the extent the analysis is applicable, accurate, and relevant to the amended project, BonTerra Psomas will use the previous analyses as a basis for this Addendum.

TASK 3 REVISION OF THE ADDENDUM

The draft Addendum will initially be submitted to the City for a two-week review. BonTerra Psomas will revise the document according to City comments and resubmit the document for a second two-week City review. This Scope of Work assumes two draft versions of the Addendum (first and second drafts) and one final version will be submitted. It is assumed that the City will coordinate the Project Applicant review based on established City processes. It is also assumed that revisions to the second draft Addendum would be minor and editorial in nature.

TASK 4 PUBLIC REVIEW

Although an Addendum is not subject to circulation for public review, the City has elected to circulate the document for a 10-day public review period. BonTerra Psomas will prepare a public notice for inclusion with the Addendum and will distribute up to 50 CD copies to a distribution list to be provided by the City. At the end of the 10-day public review period, BonTerra Psomas will review any comments received and prepare a Response Memorandum addressing all substantive comments related to the CEQA documentation. Up to 20 CDs containing the Addendum to EIR No. 1054 and the Response Memorandum will be submitted to the City for use by City staff, the Planning Commission, and City Council. BonTerra Psomas will also provide one printed copy of the Addendum to EIR No. 1054 and Response Memorandum to the City.

TASK 5 MITIGATION MONITORING PROGRAM AND NOTICE OF DETERMINATION

BonTerra Psomas will prepare a Mitigation Monitoring Program (MMP) based on the mitigation measures included in the Addendum. This MMP will be prepared using the City's desired format.

Following approval of the Addendum, BonTerra Psomas will prepare the Notice of Determination (NOD) to be filed with the County Clerk. At the request of the City, BonTerra Psomas will also file the NOD with the State Clearinghouse, along with evidence of payment of the County filing fee and the California Department of Fish and Wildlife (CDFW) fee associated with EIR No. 1054.

TASK 6 MEETINGS AND GENERAL PROJECT MANAGEMENT

This Scope of Work assumes attendance by the Project Manager at up to two coordination meetings and two public meetings. All meeting time will be invoiced on a time and materials basis (as with all project tasks). BonTerra Psomas will maintain regular communication with the City throughout the environmental process and is available for consultation regarding project design if necessary. All communication will be directed through the City's designated planner unless otherwise directed.

ATTACHMENT B

FEE ESTIMATE
ADDENDUM TO ENVIRONMENTAL IMPACT REPORT NO. 1054
STARWOOD TRIBUTE HOTEL PROJECT

July 6, 2016

Professional Fees

Task 1:	Technical Study Peer Review	$2,610.00
Task 2:	Preparation of the Addendum (first draft)	$18,635.00
Task 3:	Revision of the Addendum (second draft and final version)	$4,970.00
Task 4:	Public Review	$1,910.00
Task 4:	Mitigation Monitoring Program and Notice of Determination	$770.00
Task 5:	Meetings and General Project Management	$3,795.00
	Subtotal Professional Fees	*$32,690.00*

Direct Expenses

Reproduction of documents	$300.00
Deliveries	$300.00
Mileage	$100.00
EDR Report (Hazardous Materials)	$175.00
Subtotal Direct Expenses	*$875.00*
TOTAL ESTIMATED FEE	***$33,565.00***

ATTACHMENT C

ESTIMATED PROJECT SCHEDULE
ADDENDUM TO ENVIRONMENTAL IMPACT REPORT NO. 1054
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July 6, 2016

Professional Fees

Technical Study Peer Review	Jul 8 – Jul 20
Preparation of the First Draft Addendum	Jul 8 – Jul 22
City Review of First Draft Addendum	Jul 25 – Jul 29
Revision of the Second Draft Addendum	Aug 1 – Aug 2
City Review of Second Draft Addendum	Aug 3 – Aug 5
Preparation of Addendum for Public Review	Aug 8 – Aug 11
Public Review	Aug 12 – Aug 21
Prepare Response Memorandum and Mitigation Monitoring Program	Aug 22
Planning Commission and City Council Meetings	To be determined