



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 2, 2015

Agenda Item CAF
Approvals:
City Manager YM
Dept. Head ES
Attorney _____
Finance JW

Department: Beaches, Parks and Recreation
Prepared By: Pamela Passow, Recreation Manager

Subject: *FARMERS MARKET ON AVENIDA DEL MAR.*

Fiscal Impact: Yes, this agreement generates revenue. The City currently receives \$300 per month for the right to use an area of Avenida Del Mar each Sunday for a Farmers Market for a total of \$3,600 per year. There is a proposed increase of \$50 per month for the first year and an additional \$10 per month per year for subsequent years of the agreement. The additional funds total \$600 per year for the first year of the agreement and an additional \$120 each subsequent year.

Summary: The current permit for the Farmers Market on Avenida Del Mar will expire on December 31, 2015. At its May 19, 2015 meeting, the City Council approved extending the term of the current permit holder for the Farmers Market.

Background: The current permit for the Farmers Market will expire on December 31, 2015. The Farmers Market is located on the north side of the 200 Block of Avenida Del Mar each Sunday from 9:00 a.m. to 1:00 p.m. The Farmers Market is held via a Special Event Permit with an exception approved by City Council as the Farmers Market exceeds the normal number of days allowed under a Special Event permit. The permit has been issued for the past twenty years to Sandy and Rick Heil and Jan Peverill operating under the name Introductions Unlimited, Inc.

Discussion: At the May 19, 2015 meeting, the City Council approved extending the term of the Farmer's Market for three years plus two one year extensions for a total of five years. Council also directed staff to have the City Attorney draft an agreement with the terms to include rent of \$350 per month plus a \$10 per month per year escalator for each year of the agreement.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve an agreement between the City of San Clemente and Introductions Unlimited, Inc.

Attachments: Agreement between the City of San Clemente and Introductions Unlimited, Inc.

Notification: Rick and Sandy Heil
Downtown Business Association
Interested Parties

FARMERS MARKET AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is entered into this ____ day of _____, 2015 (the “Effective Date”), by and between the CITY OF SAN CLEMENTE, a municipal corporation (“City”) and INTRODUCTIONS UNLIMITED, INC., a corporation (“INTRODUCTIONS UNLIMITED”) for the period of three years plus two one year extensions for a total of five (5) years from and after the Effective Date.

RECITALS:

A. The City’s Beaches, Parks, and Recreation Department seeks opportunities to offer healthy food options for the residents of San Clemente.

B. A certified Farmers Market is defined by the California Code of Regulations as a location approved by the county agricultural commissioner of the county where agricultural products are sold by producers or certified producers directly to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users.

C. INTRODUCTIONS UNLIMITED has requested to continue to operate the Certified Farmers Market on Avenida Del Mar on Sundays.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, City and INTRODUCTIONS UNLIMITED hereby agree as follows:

1. INTRODUCTIONS UNLIMITED Program Requirements

1.1. As a material inducement to City’s entering into this Agreement with INTRODUCTIONS UNLIMITED, INTRODUCTIONS UNLIMITED agrees and covenants that, during the term of this Agreement, INTRODUCTIONS UNLIMITED shall operate its program and provide fees in compliance with the following requirements, and agrees that any failure to strictly comply with any of the following requirements is a material breach of this Agreement:

1.1.1. INTRODUCTIONS UNLIMITED is not and shall not be the subject of any investigation by any government or administrative agency whether at the City, County, State or Federal level and shall adhere to all relevant City rules, policies and allocations.

1.1.2. INTRODUCTIONS UNLIMITED shall maintain and enhance the Farmers Market for the present and future residents of San Clemente.

1.1.3. INTRODUCTIONS UNLIMITED has and shall continue to have a “no discrimination” policy.

2. INTRODUCTIONS UNLIMITED Representatives To City

- 2.1. INTRODUCTIONS UNLIMITED shall designate one official representative who shall be City's primary contact and who shall coordinate the programs, event spaces, and overall agreements with the City. The INTRODUCTIONS UNLIMITED representative shall have authority to make decisions for INTRODUCTIONS UNLIMITED, sign applications with City on behalf of INTRODUCTIONS UNLIMITED for facility use, approve billing, and be responsible for resolving conflicts if/when they arise.
- 2.2. INTRODUCTIONS UNLIMITED is responsible for notifying City in writing within thirty (30) days of any change in its designated INTRODUCTIONS UNLIMITED representative referenced in Section 2.1.
- 2.3. The Director of Beaches, Parks, and Recreation or designee will be the City liaison coordinating all City operations with INTRODUCTIONS UNLIMITED.

3. Designated Area Set Up and Access

- 3.1. INTRODUCTIONS UNLIMITED shall hold the Farmers Market each Sunday from 9:00 a.m. to 1:00 p.m., except in the event that Sunday is a major holiday or when activities, as determined by the City Manager, would conflict with the Farmers Market. In those instances, the Farmers Market will be held on the prior Saturday if agreed upon by both parties (City and INTRODUCTIONS UNLIMITED).
- 3.2. INTRODUCTIONS UNLIMITED shall limit the Farmers Market to the north side of the 200 block of Avenida Del Mar except as noted in section 4 and 5 or approved in writing by the City.

4. Downtown Business Association's Annual Classic Car Show in June:

- 4.1. INTRODUCTIONS UNLIMITED shall set up the Farmers Market along both sides of Avenida Del Mar from the intersection of North Calle Seville to the library's parking lot entrance.

5. Arts and Crafts Club Event in August:

- 5.1. INTRODUCTIONS UNLIMITED shall set up the Farmers Market on the south side of Avenida Del Mar and coordinate with the affected business owners in advance to advise them of the temporary move.

6. Easter

6.1. INTRODUCTIONS UNLIMITED shall hold the Farmers Market the Saturday prior to the Easter holiday.

7. **Chamber of Commerce's Street Fiesta in August:**

7.1. INTRODUCTIONS UNLIMITED shall hold the Farmers Market the Saturday prior to the Chamber of Commerce's Street Fiesta.

8. **General Conditions for Special Events** –comply with all requirements, rules, and ordinances, including, but not limited to:

8.1. INTRODUCTIONS UNLIMITED shall comply with the City's Noise Ordinance. Sound permits are required for all amplified sound, including but not limited to PA systems, DJ and live entertainment, such as bands that include amplification for instruments, drums, horns, etc. Applications for sound permits must be filed at least ten (10) working days prior to the proposed event and are reviewed by City's Beaches, Parks and Recreation Department.

8.2. Per Orange County Fire Authority Guidelines (OCFA Guideline F-05), an OCFA permit is required to erect or operate a tent or air-supported temporary membrane structure having an area in excess of 200 square feet, or a canopy in excess of 400 square feet, except for structures used exclusively for camping. (UFC 105.8t.1.) The regulations of the State Fire Marshal for large and small tents, awnings and other fabric enclosures shall also apply. (UFC 320.)

8.3. **Clean Up**

8.3.1. INTRODUCTIONS UNLIMITED shall be responsible for cleaning any and all City facilities after each use by INTRODUCTIONS UNLIMITED. This includes, but is not limited to, the removal of litter left behind from INTRODUCTIONS UNLIMITED members or patrons at events. City will provide adequate trash containers.

8.3.2. INTRODUCTIONS UNLIMITED shall follow all applicable City policies and codes, including ensuring that materials or wastewater from cleaning up after an event do not enter the storm drain system (i.e., street gutters or catch basins).

8.4. **Concessions**

8.4.1. INTRODUCTIONS UNLIMITED may only sell food products to the program participants and patrons during the scheduled events with City approval.

8.4.2. INTRODUCTIONS UNLIMITED shall adhere to Orange County Health Department standards for storage, preparation, and service of food items. INTRODUCTIONS UNLIMITED shall obtain the appropriate

permits from the Orange County Health Department prior to any food service.

8.4.3. INTRODUCTIONS UNLIMITED will not permit persons under age 18 to operate a barbeque and other appliances or flammable liquids or materials. City retains the discretion to approve the use and location of a barbeque.

8.4.4. In accordance with San Clemente Resolution No. 04-27, there will be no use of Styrofoam products at any location within the City limits. INTRODUCTIONS UNLIMITED shall prevent the utilization and/or distribution of expandable polystyrene food service products, commonly referred to by the trade name "Styrofoam," by any INTRODUCTIONS UNLIMITED attendee or vendor (caterer) during the term of this Agreement. Failure to abide by this resolution will result in the automatic denial of future pool rentals.

8.5. Crowd Control

8.5.1. INTRODUCTIONS UNLIMITED shall keep registered participants and all attending INTRODUCTIONS UNLIMITED events from engaging in un-sportsmanlike conduct, such as fighting or rude and abusive verbal confrontations. If INTRODUCTIONS UNLIMITED cannot control the situation, INTRODUCTIONS UNLIMITED shall contact City staff and/or the Orange County Sheriff's Department for assistance.

9. Fees

9.1. INTRODUCTIONS UNLIMITED shall pay the City three hundred and fifty dollars (\$350) per month, which shall be due and payable on the first of each month (the "due date"), commencing on January 1, 2016.

9.2. Upon the anniversary of the effective date and upon each anniversary of the effective date thereafter, the fee shall be adjusted with an increase of ten dollars (\$10) per month.

10. Indemnification and Insurance

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), INTRODUCTIONS UNLIMITED shall defend (with legal counsel reasonably acceptable to City), indemnify, and hold free and harmless City and City's agents, officers, and employees, (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of any INTRODUCTIONS UNLIMITED participants, invitees officers, agents, employees, representatives, or subcontractors of INTRODUCTIONS UNLIMITED [collectively, the "INTRODUCTIONS UNLIMITED ENTITIES"]), expense and liability of every kind, nature

and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of any or all INTRODUCTIONS UNLIMITED's ENTITIES use of the City facilities, by any of the INTRODUCTIONS UNLIMITED ENTITIES anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole and active negligence or willful misconduct of such Indemnitee.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, INTRODUCTIONS UNLIMITED shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and INTRODUCTIONS UNLIMITED shall maintain such insurance in effect during the entire term of this Agreement: Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (i) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by City's Risk Manager for all coverage's except surety.
- (ii) name and list as additional insured City and City's officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insured. Additional Insured Endorsement is subject to approval by the city's risk manager, at their sole discretion.
- (iii) specify it acts as primary insurance and that no insurance held or owned by City shall be called upon to cover a loss under said policy;
- (iv) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to City of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (v) cover the operations of INTRODUCTIONS UNLIMITED pursuant to the terms of this Agreement; and
- (vi) be written on an occurrence and not a claims made basis.

Original documents sent to:
City of San Clemente
Risk Management Office
100 Presidio, San Clemente, CA 92672

One additional copy sent to:

Beaches, Parks and Recreation Department
Beaches, Parks, and Recreation Director
100 N. Calle Seville, San Clemente, CA 92672

11. Termination:

- 11.1. City and/or Introductions Unlimited can terminate the Agreement without cause on sixty (60) days notice.

12. Term and Cooperation

- 12.1. The term of this agreement shall be THREE (3) years plus two one year extensions for a total of FIVE (5) years from the Effective Date the Mayor executes this Agreement. The provision of section 12 shall survive termination.
- 12.2. INTRODUCTIONS UNLIMITED shall adhere to all the policies and procedures of City and cooperate with the Department and City staff to ensure that the purpose of this Agreement is met. INTRODUCTIONS UNLIMITED shall not discriminate against those in its employ, volunteers or participants on account of race, religion, national origin, ethnicity, sexual orientation or gender (except where gender is a bona fide issue for the sports program.).

13. Miscellaneous

- 13.1. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.
- 13.2. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.
- 13.3. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

- 13.4. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 13.5. Singular and Plural. As used herein, the singular of any word includes the plural.
- 13.6. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
- 13.7. Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.
- 13.8. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
- 13.9. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.
- 13.10. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.
- 13.11. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.
- 13.12. Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or such other appropriate court in said county, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. Service of process on City shall be made in accordance with California law. Service of process shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the Parties seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party entitled under this Agreement, its reasonable litigation costs and

expenses, including without limitation its expert witness fees and reasonable attorney's fees.

13.13. Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager upon the recommendation of the Beaches, Parks, and Recreation Director, and approval of the City Attorney.

13.14. Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

13.15. Notices. All notices under this Agreement shall be effective upon personal delivery, via facsimile so long as the sender receives confirmation of successful transmission from the sending machine, or three (3) business days after deposit in the United States mail, registered, certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

If to City: City of San Clemente
 100 Avenida Presidio
 San Clemente, CA 92672
 Attention: City Manager

With a copy to: Best Best & Krieger
 18101 Von Karman, Suite 1000
 Irvine, CA 92612
 Attention: Scott Smith

If to Introductions Introductions Unlimited, Inc.
Unlimited: 2316 Calle Almirante
 San Clemente, CA 92673
 Attention: Rick Heil

[End – signature page follows]

IN WITNESS WHEREOF, City and INTRODUCTIONS UNLIMITED have caused this Agreement to be executed on their behalf by their respective officers or agents herein duly authorized as of the date first written above.

“CITY”

CITY OF SAN CLEMENTE,
a municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk of the City of
San Clemente, California

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

City Attorney

“INTRODUCTIONS UNLIMITED”

INTRODUCTIONS UNLIMITED OF SAN
CLEMENTE BEACHES, PARKS, AND
RECREATION FOUNDATION
a non-profit foundation

By: _____

Its: _____