



AGENDA REPORT
 SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: March 21, 2017

Agenda Item 8A
Approvals:
 City Manager [Signature]
 Dept. Head [Signature]
 Attorney SS
 Finance [Signature]

Department: Public Works / Engineering
Prepared By: Jennifer Rosales, Senior Transportation Engineer

Subject: *AWARD OF PROFESSIONAL SERVICES AGREEMENT WITH PROFESSIONAL PARKING & TRANSPORTATION SERVICES FOR THE OPERATIONS OF THE SAN CLEMENTE SUMMER TROLLEY.*

Fiscal Impact: Yes. The amount of \$78,336 is within the total budget amount approved under the Orange County Transportation Authority (OCTA) grant funds and the project budget using Air Quality Improvement Funds for the San Clemente Trolley.

Summary: Staff recommends that the City Council approve a contract award to Professional Parking & Transportation Services for the Operations Services of the San Clemente Summer Trolley.

**Background/
 Discussion:** On February 16, 2016, the City Council authorized staff to submit a grant application with the Orange County Transportation Authority (OCTA) for the San Clemente Trolley Project. On June 13, 2016, the OCTA Board approved the grant for the San Clemente Trolley. The cooperative agreement with OCTA for the San Clemente Trolley was approved by the City Council on September 6, 2016. On November 1, 2016, the City Council approved to accept the grant revenue of \$542,900 and authorize a supplemental appropriation of \$543,100 in the Air Quality Improvement Fund in order to provide the total cost of the San Clemente Trolley for Fiscal Year 2017 of \$610,000, which includes \$67,100 of local match funds.

The summer weekend trolley service is targeted to begin on May 26, 2017 and run through Labor Day Weekend on Friday/Saturday/Sunday with three trolleys operating at 15 minute headways. The San Clemente Summer Trolley service will operate 48 days a year consisting of 15 Weekend days (Friday through Sunday) plus Memorial Day, 4th of July, and Labor Day. Hours of operation are 12 noon to 10 pm Friday, 10 am to 10 pm Saturday, and 10 am to 8 pm Sunday.

On March 7, 2017, the City Council requested cost information for running a Thursday trolley service. If the City Council is interested in providing a Thursday trolley service, the costs would need to be fully funded by the City since the grant

does not cover Thursdays. The estimated cost to provide a Thursday trolley service with the same running times as Fridays from 12 noon to 10 pm is \$32,000. The estimated cost to provide a Thursday trolley service from 4 pm to 10 pm is \$20,000.

Staff advertised a Request for Proposals (RFP) from qualified transportation service contractors to provide trolley operations services for the period of two years commencing May 26, 2017, with the option, at the City's sole discretion, to award four additional years upon successful demonstration of exemplary contract performance. A proposal was received from one company: Professional Parking & Transportation Services. The proposal submitted by Professional Parking & Transportation Services was highly rated based on qualifications, approach to the work, and positive references. Professional Parking & Transportation Services has provided trolley operations services to the cities of Dana Point and San Juan Capistrano. Staff recommends the contract be awarded to Professional Parking & Transportation Services.

If the contract is awarded, staff will work closely with Professional Parking & Transportation Services to ensure a smooth implementation and operations of the San Clemente Summer Trolley. Professional Parking & Transportation Services will be required to provide evidence of successful background checks and training of all prospective drivers. In addition, Professional Parking & Transportation Services will be assigning a manager who will review employee performance on a daily basis.

Recommended**Action:**

STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the Mayor to execute the Professional Services Agreement with Professional Parking & Transportation Services in the amount of \$78,336 for summer Trolley Transit Operations Services, and
2. If the City Council moves and approves a Thursday trolley service, approve and authorize the Mayor to execute the Professional Services Agreement with Professional Parking & Transportation Services in the amount of \$78,336 plus the cost of the selected Thursday trolley service for summer Trolley Transit Operations Services.

Attachments: Professional Services Agreement

Notification: None.

**PROFESSIONAL SERVICES AGREEMENT
FOR Summer Trolley Transit Operations Service**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20__ (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and Professional Parking of 2799 East 21st St., Signal Hill, CA 90755 hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional trolley transit operations services to be performed at or in connection with the San Clemente Trolley.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

**ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR**

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until May 26, 2019, unless terminated earlier pursuant to the terms hereof. Notwithstanding the foregoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect

to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY

reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed Seventy-eight thousand, three hundred, thirty-six dollars (\$78,336), including all amounts payable

to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its 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 CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR 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 CONTRACTOR, any of the CONTRACTOR 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 in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR 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 actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. 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:

- (1) 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 coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) 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;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at 2799 East 21st St., Signal Hill, CA 90755, and to the City of San Clemente, 910 Calle Negocio, Suite 100, San Clemente, California 92673, Attention: Jennifer Rosales.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or

person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$ _____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 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.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:
Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: _____
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

Contractor's License Number _____

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"

SCOPE OF SERVICES

Article 1.1 Term: Term Amended. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of four additional years. Granting of an extension of the Term shall be in the City Manager's sole and absolute discretion.

Article 3.1 Payment Schedule: Maximum Payment Amount Amended. The CONTRACTOR shall be entitled to request an annual fee adjustment which is to be no greater than the United States Consumer Price Index (CPI) published by the Department of Industrial Relations for Southern California Region, commencing one year after the Effective Date of this Agreement.

The Contractor will provide high quality, transportation operations service of the trolleys and timely expertise where needed. The scope of services for the summer trolley operations services includes supplying properly licensed and experienced drivers to operate the trolley buses, maintenance, providing insurance, cleaning, and fueling.

Since OCTA is providing the grant funds, there are requirements contained in the agreement with the City which follow:

- Service shall meet or exceed minimum standard of 6 boardings per revenue vehicle hour, which must be achieved within the first 12 months of operation and 10 boardings per revenue vehicle hour within the first 24 months of operation and every year thereafter.
- Separate and distinct operating hours and cost must be provided in the detail and as requested by the City, OCTA, and Federal Transit Administration if applicable, e.g. revenue vehicle hours, total boardings, boardings per revenue hour, operating costs, etc.
- Allow inspection and audit of records.
- Operator shall indemnify City against liability for operation.
- Termination for convenience within 60 days written notice.
- Compliance with all applicable federal, state, and local laws and licenses.
- Meet all ADA accessibility requirements.

Operators will have to record the number of users at each stop, vehicle hours, and other necessary reporting, separated by service, necessary to meet National Transit Database reporting. The summer trolley service will be free for riders.

The City and OCTA will require complete indemnification. The Contractor agrees that the contents and requirements of the RFP shall become part of the

Contract Agreement for this work, and that it accepts the terms of said Agreement, except as specifically noted in its proposal.

The contractor will fuel the trolley vehicles using City fuel tanks located in the City Yard near the trolley route. The City has the auditing process and reporting needed to track the trolley fueling. The fuel costs will not be included in the contractor's proposed operation cost per hour per vehicle.

Contractor will develop and implement a smartphone trolley tracker app for use on iPhone and Android platforms.

The scope of work includes an experienced manager to oversee the project. In addition to ensuring the routes are staffed, properly spaced, and the fleet is maintained; the manager will proactively review employee performance on a daily basis. He will monitor the alerts from the GPS, employee driving, employee professionalism and employee interaction with the ridership.

HIRING CRITERIA

The contractor's hiring process is designed to hire the right people for the right job. The contractor will seek to attract and hire safe, reliable and professional people.

The personality and outlook of the applicants is critical to the hiring decision because a passenger must have a positive experience and be greeted each time by someone who is friendly, helpful and understands being a driver is a customer service job.

Candidates are then interviewed for insight into their personality, experience levels and answers to the hiring criteria. If the candidate is a potential employee, they are walked down to one of the shuttles and we observe the applicant's ability to enter and exit a parked shuttle. The applicant must be able to fit through the emergency exits and be able to reach the steering wheel and foot pedals without stretching.

The Candidate will be asked about their comfort level to ensure they are physically and mentally right for the job. A senior manager will conduct second interviews before a position is offered. After completing the interview process a candidate is eligible for criminal background checks and past employer references.

REFERENCE CHECK

The reference check takes place after the DMV and Criminal checks are complete and approved. Reference checks of the applicant include prior employers and personal references to determine work history and employment attitudes for each new trainee. The focus is on the applicant's attitudes toward customer service, loyalty, and integrity.

EMPLOYEE PHYSICALS

After receiving the results of the DMV and Criminal Check the applicant is scheduled for a physical and a drug test. Physicals are used to screen candidates including those that are potentially dangerous when operating a vehicle such as – insulin dependency, hearing loss,

vision impairment or hypertension. All exams are at a company approved medical provider knowledgeable of DOT driver requirements. Professional Parking is committed to only having qualified drivers behind the wheel.

DRUG TESTING

The substance abuse testing is scheduled in conjunction with the physical and must be completed by every employee before entering service. Professional Parking screens employee pre-employment drug testing that follows the DOT standards published in the FTA Code of Regulations (CFR).

Training Program

All drivers receive 16 hours of classroom training and 8 hours behind the wheel of the shuttle. The details of the training are discussed in a later section, but all employees, regardless of their experience, will get this training. Even employees who have been driving the shuttles for multiple years will need to undergo our training, so they understand the details behind what makes a successful trolley program.

The training also extends to the contractor's managers who receive monthly training on how to relate, treat and deal with employees, customers and their clients. The importance of fairness, professionalism and hospitality are addressed and reinforced. Each manager is also equipped with a "Survival Guide" on how to deal with the most frequent situations faced by a manager.

Management

The contractor's experienced trolley manager will oversee employee activities every day to make sure the drivers are performing every aspect of their job to the fullest and not just showing up for work. A manager also provides immediate response to problems in the field and an opportunity to talk to the ridership about what is or is not working with the trolley program.

Equally important to having a manager to monitor employee performance and to respond to various client needs is the ability to aid our employees. Our managers are there to serve our employee as much as they are to serve our clients. This can be help with an unscheduled restroom break, assistance dealing with a difficult customer, conflicts with another employee, answering questions about company policy or communicating an issue with the shuttle's performance.

Maintaining employee morale is the key to great customer service. If employees are properly trained, see that poor performers are being held accountable, and the management is there to support them then their desire to serve will be much higher. As a result, the ridership will experience consistent headways, friendly drivers and safe and clean shuttles to ride in.

Driver Training

All training, licensure, ride-a-long evaluations, physical results, drug testing and background checks are documented and maintained with the Safety Program.

Professional Parking's policies and procedures are fully documented in our training manuals. The manuals are quite large so a Table of Contents is provided for both the classroom and behind-the-wheel training.

The contractor's training program follows the Transportation Safety Institutes (TSI) guidelines and DOT regulations. The classroom training includes lectures; TSI provided video, DVD training videos, workbooks and role-playing.

Employees must get a 70% or better on each test as well as pass the final exam. Once they pass the classroom portion of their training, employees will get closed course and roadwork evaluations to ensure the employee is capable and qualified. In the closed course, the trainee is put through a series of maneuvers to learn defensive driving and vehicle handling.

The roadwork course is similar, where the employee is working one on one with a manager to ensure driving skills are acceptable. After completing both courses the employee is allowed to transport passengers in a company vehicle. The safety of our passengers is our number one priority and we will not allow a new hire to operate a vehicle until this phase is completed.

Company representatives regulate driver performance through a mystery rider program, client feedback and routine ride-a-longs. Any driving issue is taken seriously and discussed with each driver.

Every employee will receive no less than 8 hours of in-route training prior to being allowed to drive the San Clemente trolleys.

Safety Program

Professional Parking has developed an extensive safety program designed to ensure employee and rider safety. Our approach to safety is a comprehensive one that seeks to reduce or eliminate risk and provide the highest level of customer service.

Our Safety Program is comprised of four key foundations:

Foundation 1 Substance Abuse Policy – This core outlines all the requirements and elements of drug and alcohol testing for a location. It also provides specific procedures for staff to follow. Details are in the Drug and Alcohol Policy Manual.

Foundation 2 Vehicle Maintenance -- This core provides guidance to our managers in the area of preventative maintenance programs, employee roles and responsibilities, management, and the role of the third party mechanic.

Foundation 3 Security Awareness – Our Safety Program is in place as a guide to respond appropriately to and work through crises, and all employees will receive security training. The manual focuses on preparedness and prevention, and gives the manager tools to assist and protect our employees and passengers from injury.

Foundation 4 Accident and Safety Procedures – This core provides information on accidents, including the definition, procedures for handling/evaluating/reporting accidents and claims reporting.

The intent of our safety program is to hold employees accountable for their actions. If all employees are held accountable for their actions then they will be diligent in practicing safe behavior. Professional Parking's management team will use a variety of tools to ensure employee responsibility.

The final step in our comprehensive safety program is to reward employees when they promote safe behavior while on the job. Our Safety Excellence Program and project location awards are two specific ways employees are recognized for safe business practices.

Zero Accidents –no reportable accidents and no workers comp claims

Safety Performance Improvement – for improvement over prior year

Safety Solution Team – this award is based on team contributions, and successful safety suggestions that are implemented.

Safety Excellence Award – this award is given annually to the driver that demonstrates the best driving record and safety habits.

SMARTPHONE TROLLEY GPS TRACKER

Each trolley for the City of San Clemente will have a GPS device installed. The GPS will provide tracking and monitoring via a smart phone app that is compatible with both, iPhone and Android devices. It also works on any laptop and desktop. The provider for the GPS monitoring system is RIDE SYSTEMS and it's the same system used in Dana Point and San Juan Capistrano Trolley programs where it works successfully.

The device reports the exact location of each trolley as well as arrival prediction times to each designated stop. A color line marks the route making it obvious and user friendly. Internally the device also reports speeds and idling times that the trolley manager reviews on a daily basis to ensure that drivers are obeying rules and regulations.

KEY PERSONNEL

Mike Caldin Successfully managed the trolley program for the city of Dana Point for the past two years. Also managed the trolley program for the city of San Juan Capistrano in 2015.

Managed a team of 30 employees and 16 shuttles in Long Beach and Carson.

Managed a team of 6 shuttles and 13 employees at the UCI Medical Center.

Mario Montenegro Responsible for day-to-day operations of the trolley and shuttle programs. Hands on, proactive involvement in all of the

transportation programs. Including daily interaction with the manager, supervisors and drivers.

Ralph Caldin Responsible for all aspects of the company. This includes client satisfaction, contract compliance, employee performance, financial reporting and all other aspects of development

FEE SCHEDULE

The proposed hourly cost is based on three (3) trolleys running 15 weekend days (F, S, S) plus 3 additional holidays (Memorial Day, Independence Day, Labor Day) for a total of 48 days and a total number of hours of 1,536 annual hours. This hourly fee is inclusive of any travel to and from San Clemente. The hourly cost is based on the scope of services, number of trolleys, route and requirements of the RFP.

Hourly Rate: \$51.00 per Trolley
Annual Hours: 1,536 total estimated hours
Annual Cost: \$78,336

Professional Parking will honor its hourly rate regardless of the actual service hours requested by the City of San Clemente. The hourly rate will constitute full compensation for the services provided. Annual increases will be based on the United States Consumer Price Index (CPI) published by the Department of Industrial Relations for Southern California Region.

STATEMENT OF COMPLIANCE

This proposal is in strict compliance with the Request for Proposal and Draft Agreement and no exceptions to either are proposed. This response includes all addenda.

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

Trolley operation services on the designated trolley route and stops on all specified hours of the days of the San Clemente summer trolley services.

The summer weekend fixed route service would begin on May 26, 2017 and run through Labor Day Weekend on Friday/Saturday/Sunday with three trolleys operating at 15 minute headways. The San Clemente Summer Trolley service will operate 48 days a year consisting of 15 Weekend days (Friday through Sunday) plus Memorial Day, 4th of July, and Labor Day. Hours of operation are 12 noon to 10 pm Friday, 10 am to 10 pm Saturday, and 10 am to 8 pm Sunday. Special events during the summer for trolley service are: Memorial Day (10 am to 8 pm), Fourth of July (10 am to 10 pm), and Labor Day (10 am to 8 pm).

Events, times, and days are subject to change annually as user feedback, funding conditions, or other conditions change.

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: _____, 20____

Contracting Firm

By: _____

Title

Address
