



## AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: February 19, 2019

Agenda Item Celt

**Approvals:**

City Manager JM

Dept. Head ES

Attorney [Signature]

Finance [Signature]

**Department:** Finance Administration Services  
**Prepared By:** Michael Johnston, Management Analyst

**Subject:** *AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR LEGISLATIVE ADVOCACY SERVICES*

**Fiscal Impact:** Yes, adequate funds are provided in the FY 2018-19 budget. Funds for subsequent fiscal years will be subject to approval through the annual budgeting process.

**Summary:** The City has been engaging the legislative services of the firm Aprea & Micheli, Sacramento, CA. In light of a number of issues that the City will be facing in the coming year, City staff are recommending a renewal to the contract with Aprea & Micheli to continue to provide legislative advocacy services.

**Discussion:** Over the last three years, the City has been working with Aprea & Micheli, to provide legislative assistance and support. Aprea & Micheli has been instrumental in representing the City of San Clemente with our various State representatives as we navigated through the various stages of certain legislative bills and other key legislative items. As the City looks ahead, we are anticipating a number of other issues that the City will be dealing with and will benefit from Aprea & Micheli legislative advocacy services.

Aprea & Micheli have over thirty years of legislative advocacy experience. Their firm is based in Sacramento, CA and their established relationships, knowledge and experience with the State of California's governmental affairs provides them with a significant advantage when providing strategic perspectives to the City.

**Recommended**

**Action:** STAFF RECOMMENDS THAT THE CITY COUNCIL:

1. Approve, and authorize the City Manager to execute, Amendment No. 2 to Contract C16-15, by and between the City of San Clemente and Aprea & Micheli, for the provision of legislative advocacy services. This Amendment extends the term of the contract from March 15, 2019 to March 15, 2020, and establishes the annual contract amount at \$180,000, with the option for the City Manager to renew the contract for an additional year. Funds are budgeted in Other Legal Services, Account #001-203-43640-000-00000. Funding for future terms will be subject to approval through the annual budget process.

**Attachments:**

1. Second Amendment to Professional Services Agreement for Legislative Advocacy Services
2. Professional Services Agreement for Legislative Advocacy Services Dated March 15, 2016

**Notification:** None

**SECOND AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT FOR  
Aprea and Micheli**

This Second Amendment to the Professional Services Agreement for Legislative Advocacy services, (the "First Amendment") is made and entered into on this 19th day of February, 2019, by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City"), and Aprea and Micheli, hereinafter referred to as the "CONTRACTOR".

R E C I T A L S:

- A. City and Contractor entered into a Professional Services Agreement for legislative advocacy services (the "Agreement") on March 15, 2016.
- B. City and Contractor entered into that certain First Amendment to Professional Services Agreement for Professional Services ("First Amendment") on February 20, 2018. The Original Agreement, as modified by the First Amendment, is hereinafter referred to as the "Agreement".
- C. City and Consultant desire to amend the Agreement in the manner provided herein.

C O V E N A N T S:

Section 1: Section 1.1 of the Agreement is hereby amended to read in its entirety as follows:

"The term of this Agreement shall commence on the Effective Date and shall continue and remain in effect, until March 15, 2020, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City shall have the unilateral option, at its sole discretion to renew this agreement for no more than 3 additional one-year terms"

Section 2: The last sentence of Section 3.1 of the Agreement is hereby replaced with the below language:

"The total annual compensation for the Scope of Services set forth in Exhibit "A" shall not exceed an annual total of \$180,000 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).

Section 3: Except as expressly amended by this Second Amendment, the remaining portions of the Agreement shall remain in full force and effect.

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

CITY OF SAN CLEMENTE

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2019

ATTEST:

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:  
BEST, BEST & KRIEGER, LLP

BY: \_\_\_\_\_  
Scott C. Smith, City Attorney

APPROVED AS TO AVAILABILITY  
OF FUNDING:

BY: \_\_\_\_\_  
Finance Authorization

("Contractor")

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2019

C16-13

PROFESSIONAL SERVICES AGREEMENT  
FOR Legislative Advocacy Services

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 15<sup>th</sup> day of March, 2016 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY" and Aprea & Micheli of 1415 L Street, Suite 620 Sacramento CA 95814 hereinafter referred to as the "CONTRACTOR"

RECITALS

A CITY requires professional [consulting] services to be performed at or in connection with [Legislative Advocacy Services]

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 I  
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 March 15 2017 unless terminated earlier pursuant to the terms hereof. Notwithstanding the foregoing, the City shall have the unilateral option, at its sole discretion to renew this Agreement for no more than 1 additional one-year term

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.



1.1 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 Sixty Thousand Dollars (\$60,000.00), 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.

3.4 Reimbursement for Expenses CONTRACTOR shall be reimbursed for authorized expenses up to One Hundred Twenty Five Dollars (\$125.00) per month. CONTRACTOR shall submit itemized invoices for said expenses each month for approval by CITY prior to payment.

## 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.

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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 1415 L Street, Suite 620, Sacramento, CA 95814, and to the City of San Clemente 100 Avenida Presidio, San Clemente, California 92672, Attention Erik Sund.

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 HEREIN BELOW 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 [Signature]

Its City manager

Dated June 21, 2016

ATTEST

[Signature]  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM

By [Signature]  
City Attorney

APPROVED AS TO AVAILABILITY  
OF FUNDING

By [Signature]  
Finance Authorization

[Signature]  
("CONTRACTOR")

Contractor's License Number \_\_\_\_\_

By AREA & MICHELI, INC.

[Signature]

Its PRINCIPAL

Dated MAY 2, 2016

EXHIBIT "A"

SCOPE OF SERVICES

[To be inserted by CITY]

[Scope of Services should include complete description of scope of work, identification of Project team, and payment schedule; by task See Sections 1.2, 1.4, and 3.1 of Agreement]

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 Employers Assurance Co

Policy Number EIG 148635104

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**

Workmans' Comp

Dated May 2, 2016

APIZA & MICHELI, INC  
Contracting Firm

By Manuel A. Apiza

PRINCIPAL  
Title

1415 'L STREET, SUITE 620  
Address

SACRAMENTO, CA 95814

# Attachment I

## Scope of Services

## Memorandum

TO Erik Sund

FR Marc Aprea

DT 2/1/16

RE Proposal by the lobbying firm of Aprea & Micheli to the City of San Clemente

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### Introduction

Thank you for the opportunity to represent the City of San Clemente since April of 2015. We also want to thank you for the opportunity to present to the City of San Clemente a new proposal to represent the City on an on-going basis. We believe Aprea & Micheli is well positioned to provide the City of San Clemente representation before the State of California on a broad spectrum of issues. We consistently look at our client's interests from a strategic perspective and relentlessly pursue our clients' objectives.

### Aprea & Micheli

First, for your consideration you will please find below background on our firm.

Together my partner Chris Micheli and I built Aprea & Micheli into one of the top lobbying firms in California. We each had established our own very successful lobbying practice beginning in the 1990s. In 2007 we joined together to create the current firm in order to offer personalized political, legislative, and administrative advice and advocacy for a diverse group of clients. In November 2009 *Capitol Weekly*, the newspaper of California government and politics, ranked Aprea & Micheli as one of the "best small lobbying firms" in Sacramento (among over 400 lobbying firms).

Our firm represents a wide variety of clients including Fortune 100 companies, national and statewide trade associations, public agencies, and nonprofits. We have had the privilege of representing many of our firm's clients (e.g., AEG, California Ambulance Association, Hewlett Packard, McKesson Corporation, Mercury General Corporation, PricewaterhouseCoopers, SCI, and Republic Services) for more than a decade. These organizations chose Aprea & Micheli and remain long-term clients because we consistently deliver results that maximize our clients' business objectives throughout California. We carry out our mission by thoroughly understanding our clients' needs, being well grounded in the state's political environment, developing sound strategic plans, and by diligently pursuing our clients' objectives. We do so in an ethical manner that preserves the credibility of our clients and our firm.

The most important strength of our team is its demonstrated ability to work with clients to create and successfully implement innovative, near-term and long-term strategic plans covering all

facets of an effective state governmental affairs program. We are particularly skilled in developing plans that, while tailored to the client's specific needs in Sacramento, are based on extensive knowledge of potential opportunities, as well as historical policy initiatives. We also pride ourselves in our extensive communications with our clients regarding political, legislative and executive branch developments.

#### Scope of Service

You have asked us to present a proposal to represent the City of San Clemente before the State of California to include, but not be limited to, the following matters:

- Continue to represent the City on matters related to Saddleback MemorialCare San Clemente,
- AB 1217 (Daly) Orange County Fire Authority,
- Department of Parks & Recreation lease with the Federal government relating to land on Camp Pendleton, and
- Caltrans relating construction on Interstate 5

#### Term

Beginning, March 1, 2016, a one year contract, with the potential for two one-year extensions.

#### Proposed Fee

\$60,000/year at \$5,000 per month

#### Who would handle?

Marc Aprea will be the primary lobbyist working on this project. Where necessary or desirable, Chris Micheli will also engage in this project.

#### Conclusion

Thank you again for the opportunity to present to the City of San Clemente our proposal for lobbying services on an on-going basis. We look forward to the opportunity of discussing further the above with you.

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