



CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

OCTOBER 30, 2016

FOR

SAN CLEMENTE RIDESHARE SERVICES

910 Calle Negocio, Suite 100, San Clemente, CA 92673

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

AUGUST 30, 2016

Prospective Contractors:

The City of San Clemente (City) is inviting qualified contractors (Contractors) to submit proposals for Rideshare Services for a period of two (2) years commencing October 9, 2016, with the option, at the City's sole discretion, to award up to five (5) additional years upon successful demonstration of exemplary contract performance and the City securing additional grant funding for the project. The purpose of this Request for Proposals (RFP) is to have a qualified, professional and responsive Contractor (s) provide Rideshare Services to the City. The Public Works Department will administer this Agreement.

Anticipated Schedule of Events from Issuance of the RFP to Award of Contract:

- Request for Proposals sent out and advertised August 30, 2016
- Proposals due (4:00 p.m.) September 14, 2016
- Finalist interviews and final selection September 19-22, 2016
- Contract Award October 4, 2016
- Project Service Starts October 9, 2016

City Point of Contact:

The sole source of contact regarding this RFP is Tom Frank (949) 361-6127 or FrankT@san-clemente.org. Contractors interested in submitting a proposal are asked not to contact other members of the City of San Clemente staff or Councilmembers in connection with the RFP prior to the announcement of the contractor selected.

Proposals and all written inquires related to this RFP are to be submitted confidentially to Tom Frank at the following address:

Public Works Department
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92673

Confidential

Proposal Closing Date:

Three (3) copies of each contractor's proposal (and one electronic pdf file) must be received by the City not later than 4:00 p.m. on Wednesday September 14, 2016. All proposals must be delivered to the above address. Proposals will become part of the official files of the City of San Clemente and cannot be returned.

Sincerely,

Tom Frank
Transportation Engineering Manager

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

FOR

RIDESHARE SERVICES

Background as well as information about the Scope of Services to be undertaken are discussed in this section of the RFP.

A. INTRODUCTION

On June 13, 2016, the Orange County Transportation Authority (OCTA) Board approved the grant for the first two years of the Rideshare Beta Test Rider. The Ridership Beta Test Rider (Rideshare) cooperative agreement provided as Attachment 1 was expedited in hopes of establishing the rideshare program prior to the termination of bus routes 191 and 193 scheduled for October 9, 2016. The City Council approved the OCTA cooperative agreement for Measure M funding on August 2 and has been coordinating with OCTA staff to complete the logistics for the project.

The City is interested in awarding possibly two contracts for this program including:

1. A rideshare service based on a computer (or smartphones) application (App) for users over 18 and a valid electronic payment option; and
2. A rideshare service based on providing service to those without a computer application, those under 18, those with special needs, or those without electronic payment capabilities. This service would manage the rides via a phone center administered by the contractor.

Contractors may submit proposals for either or both contract options.

B. SCOPE OF SERVICES

The proposed scope will be developed using the selected contractors proposed scope to address information in Updated City Summary of Project provided in Attachment 2. The final scope will be negotiated based on the selected contract's proposed scope and will comply with grant objectives and project budgets. In addition to the information provided in the attachments, the following scope items are required:

1. The Contractor shall provide supervisory personnel to see that activities are taking place at the required locations and times, and in accordance with all terms of this Agreement.
2. Provide a communications system so that communications can be maintained with drivers at all times when in service.
3. Prepare and submit all operating reports on-time in the requested format. The City anticipates a monthly billing report that would include customers name and Program ID (if applicable), trip origin and destination, trip mileage, pickup and drop off times, number of trips provided, information detailing all trips which were marked as a no-show (passenger information), and trips cancelled prior to driver arrival.
4. Attend meetings with staff as needed.
5. Respond to all customer comments related to service.
6. Services must comply with local, state and federal laws.

7. Maintain and provide reports on Service Feed back including a compliment/complaint web based portal.
8. Contractor shall notify City within 24 hours of any accident or incidents that occur while providing the service.

C. EXAMINATION OF WORK AREA

Prior to submitting a proposal, proposers are responsible for familiarizing themselves with the applicable route areas in order to understand the sites and the range of service requested.

Submission of a proposal shall be deemed conclusive evidence that such a tour has been made by each proposer and shall constitute a waiver by each of all claims of error in the proposal, withdrawal of the proposal, or combination thereof, under the executed agreement, or any revision thereof.

D. BASIS OF AWARD

City is not obligated to award a contract and reserves the right to reject all proposals. If City Council determines to award a contract, it is not obligated to make the award to the lowest proposer. Other factors will be considered such as performance under other contracts, qualifications of personnel, financial condition, and such other evidence as might convince City Council that a particular proposer would provide the most effective, economic and reliable service to the City. The award, if made, will be within 45 calendar days after opening proposals.

The City will evaluate the information submitted. The evaluation will consider but not be limited to the following criteria:

- Approach to the work, staffing, and cost.
- Experience and technical competence of your firm and key personnel on similar projects.
- Reports of references and the willingness to agree to all terms of the Contract Agreement.
- Proposed Fee Schedule

The City reserves the right to accept or reject any or all proposals and to waive any defects or irregularities in the proposals.

E. EMPLOYEES

Contractor agrees that all individuals employed in this program will be employees of Contractor and Contractor will provide recruitment, hiring, and firing of employees.

The Contractor shall investigate all public complaints concerning services. Contractor shall furnish a written report of the incident to the City Public Works Department within five (5) business days after the occurrence.

Contractor agrees that in carrying out its responsibilities under this agreement, and in particular with regard to the employment of persons and sub-contractors working on the project, it will not discriminate on the basis of race, color, creed, national origin, religion, sex, age, or handicap.

F. PAYROLL

Contractor (including the actual processing/distribution of payroll checks, processing payroll reports, etc.) will handle all payroll services.

G. FINANCIAL RESPONSIBILITY

All proposers shall be required to demonstrate to the satisfaction of the City that they have adequate financial resources to perform the services. No contract will be awarded to any proposer who, as determined by the City, has an unsatisfactory performance record or inadequate experience, or who at any time lacks the necessary financial resources to provide the services in strict accordance with the specifications.

H. QUALIFICATIONS OF PROPOSERS

All proposers shall furnish satisfactory evidence to the City that they have operated, or are presently operating, a service of the type similar to the operation described herein. If they have not operated such a system, they must show that they have had sufficient experience in comparable fields, or employ qualified personnel to comply with the requirements of the service.

I. ATTACHMENTS

- 1. Rideshare Cooperative Agreement
- 2. Updated City Summary of Project (as of 8-30-16)
- 3. Draft Professional Services Agreement

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

FOR

RIDESHARE SERVICES

INSTRUCTIONS AND CONDITIONS

The following instructions and conditions apply to this RFP:

A. GENERAL CONDITIONS

1. Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the Professional Services Contractor (contractor) in:

- Preparing a proposal in response to this RFP
- Submitting that proposal to the City of San Clemente
- Negotiating with the City of San Clemente on any matter related to this RFP, proposal and/or contractual agreement
- Any other expenses incurred by the contractor prior to the date of an executed contract

The City of San Clemente shall not, in any event, be liable for any pre-contractual expenses incurred by any contractor. In addition, no contractor shall include any such expenses as part of the price proposed to conduct the scope of work for this project.

2. Authority to Withdraw RFP and/or Not Award Contract

The City of San Clemente reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any contractor responding to this RFP. The City expressly reserves the right to postpone the opening of proposals for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s).

3. Right to Reject Proposals

The City of San Clemente reserves the right to reject any or all proposals submitted. Any award made for this engagement will be made to the contractor which, in the opinion of the City, is best qualified to conduct the project.

B. PROPOSAL FORMAT AND CONTENT

Proposals should be typed as brief as possible and to not exceed 20 pages total. They should not include any elaborate or unnecessary promotional material. The following order and content of proposal sections should be adhered to by each contractor.

RFP - INSTRUCTIONS AND CONDITIONS

1. Cover Letter

A cover letter not to exceed three pages in length should summarize key elements of the contractor's proposal. The letter must be signed by an individual authorized to bind the contractor. The letter must stipulate that the proposed price will be valid for a period of one year. Indicate the address and telephone number of the contractor's office where the contract will be managed.

2. Work Approach

Discuss methods and procedures that will be used to meet the objectives of the program.

3. Key Personnel

Include a listing, with qualifications, of personnel who have had experience in supervising rideshare programs and other employees who will be associated with the service. Provide resumes of the key personnel involved with this service in an appendix (resumes will not count toward 20 page limit).

4. Work History/References

In order to determine the eligibility of the proposers, proposers shall submit a work history, listing of other public entities for which the proposer has performed similar work, including names, mailing addresses, email addresses and telephone numbers. Existing services will be subject to inspection by the City. Proposers without the experiences herein described, but with sufficient experience in a comparable field, must show that they will have responsible management personnel who are qualified to plan, supervise, direct, and operate the service described herein.

5. Fee Schedule

Proposed schedule should clearly show the costs for meeting the objectives of the program and include a list of limitations regarding the service and include any issues that would not fully meet the objectives of the program.

6. Statement of Compliance

Contractors must submit a Statement of Compliance with all parts of the Request for Proposal and Draft Agreement terms and conditions, or a listing of exceptions and suggested changes, along with a description of any cost implications or schedule changes the exceptions and/or changes cause. The Statement of Compliance must declare either:

- A. This proposal is in strict compliance with the Request for Proposal and Draft Agreement and no exceptions to either are proposed; or
- B. This proposal is in strict compliance with the Request for Proposal and Draft Agreement except for the items listed.

For each exception and/or suggested change, the contractor must include:

RFP - INSTRUCTIONS AND CONDITIONS

1. The suggested change in the RFP or rewording of the contractual obligations.
2. Reasons for submitting the proposed exception or change.
3. Any impact the change or exception may have on project costs, scheduling or other considerations.

7. Other Information

Include any other information you consider to be relevant to the proposal.

COOPERATIVE AGREEMENT NO. C-6-1301

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SAN CLEMENTE

FOR

PROJECT V COMMUNITY- BASED TRANSIT/CIRCULATORS

THIS AGREEMENT, is effective this ___day of _____, 2016, by and between the Orange County Transportation Authority, 600 South Main Street, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY" or "OCTA"), and the City of San Clemente, 910 Calle Negocio, Suite 100, San Clemente, California 92673, a municipal corporation (hereinafter referred to as "CITY") each individually known as "PARTY" and collectively known as the "PARTIES".

RECITALS:

WHEREAS, AUTHORITY and CITY desire to enter into a Cooperative Agreement to define the roles and responsibilities related to funding between AUTHORITY and CITY for the operating subsidy funds for rideshare services (hereinafter referred to as PROJECT) further defined by the project description provided by the Project description in Exhibit A; and

WHEREAS, AUTHORITY's Board of Directors (Board) approved the Renewed Measure M2 Eligibility Guidelines - Local Agency Preparation Manual on January 25, 2010 and subsequent amendments, most recently on April 13, 2015; and

WHEREAS, AUTHORITY's Board approved the Comprehensive Transportation Funding Programs (CTFP) Guidelines on March 22, 2010; and

WHEREAS, AUTHORITY's Board approved the revised Project V - Community based Transit Circulator Program Guidelines on November 23, 2015; and

WHEREAS, AUTHORITY will periodically update the Renewed Measure M2 Eligibility Guidelines

1 - Local Agency Preparation Manual and the CTFP Guidelines whereby the most recent update is
2 incorporated herein by reference; and

3 **WHEREAS**, AUTHORITY and CITY agree that M2 funding is subject to CITY fulfilling
4 M2 eligibility requirements; and

5 **WHEREAS**, AUTHORITY and CITY agree that PROJECT must adhere to the CTFP Guidelines
6 precepts except where specific more detailed instruction is provided through Project V Guidelines or
7 within this cooperative agreement; and

8 **WHEREAS**, CITY will contract directly with service provider to operate rideshare service; and

9 **WHEREAS**, CITY's service is, open to the public, and fully accessible for persons with disabilities,
10 in compliance with the Americans with Disabilities Act; and

11 **WHEREAS**, AUTHORITY has agreed to provide Project V funding in the amount not-to-exceed
12 Nine Hundred Fourteen Thousand, Four Hundred Dollars (\$914,400) for up to two years of operating
13 subsidy for rideshare services consistent with operating statistics as defined in the Exhibit C; and

14 **WHEREAS**, CITY has agreed to provide ten percent (10%) local match of One Hundred One
15 Thousand, Six Hundred Dollars (\$101,600) for operating match for up to two years in accordance with
16 Exhibit B: San Clemente Project V Rideshare Services Funding Schedule subject to performance
17 requirements identified in Exhibit C and AUTHORITY funding limitations; and

18 **WHEREAS**, this Cooperative Agreement defines the specific terms, conditions, roles and funding
19 responsibilities between AUTHORITY and CITY for PROJECT(s); and

20 **WHEREAS**, the AUTHORITY's Board approved this PROJECT on June 13, 2016; and

21 **WHEREAS**, CITY's Council approved this Cooperative Agreement on this _____day of
22 _____ 2016;

23 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CITY as follows:

24 **ARTICLE 1. COMPLETE AGREEMENT**

25 A. This Agreement, including any attachments incorporated herein and made applicable
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1 by reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of this
2 agreement between PARTIES and it supersedes all prior representations, understandings, and
3 communications. The invalidity in whole or in part of any term or condition of this Agreement shall not
4 affect the validity of other term(s) or condition(s) of this Agreement. The above referenced Recitals
5 are true and correct and are incorporated by reference herein.

6 B. AUTHORITY's failure to insist on any instance(s) of CITY's performance of any term(s)
7 or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
8 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s), and
9 CITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of
10 this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing
11 by an authorized representative of AUTHORITY by way of a written amendment to this Agreement
12 and issued in accordance with the provisions of this Agreement.

13 C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any term(s)
14 or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of CITY's right
15 to such performance or to future performance of such term(s) or condition(s), and AUTHORITY's
16 obligation in respect thereto shall continue in full force and effect. Changes to any portion of this
17 Agreement shall not be binding upon CITY except when specifically confirmed in writing by an
18 authorized representative of CITY by way of a written amendment to this Agreement and issued in
19 accordance with the provisions of this Agreement.

20 **ARTICLE 2. SCOPE OF AGREEMENT**

21 This Agreement specifies the roles and responsibilities of both AUTHORITY and CITY as they
22 pertain to the subjects and PROJECT addressed herein. Both AUTHORITY and CITY agree that each
23 will cooperate and coordinate with the other in all activities covered by this Agreement and any other
24 supplemental agreements, including Letter Agreements, which may be required to facilitate purposes
25 thereof.

1 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

2 AUTHORITY agrees to the following responsibilities for PROJECT:

3 A. Upon invoice, to provide CITY operating subsidy in the amount not-to-exceed Nine
4 Hundred Fourteen Thousand, Four Hundred Dollars (\$914,400) for up to two years consistent with Exhibit
5 B: San Clemente Project V Rideshare Services Funding Schedule. Operating subsidy will be no more
6 than Nine Dollars (\$9.00) per boarding consistent with Exhibit B or Ninety Percent (90%) of operations
7 and maintenance (O&M) costs whichever is lower.

8 B. To provide funding in accordance with the Board-approved Project V guidelines and
9 funding may be discontinued in the event that the minimum performance standards of six passengers
10 per hour within the first 12 months of service and 10 passengers per hour within the first 24 months of
11 service are not met.

12 C. In the event that the minimum performance standards are not met after one year of service
13 and maintained every year thereafter to provide sixty (60) days' notice to CITY that support for service
14 will be discontinued.

15 **ARTICLE 4. RESPONSIBILITIES OF CITY**

16 CITY agrees to the following responsibilities for PROJECT:

17 A. To provide eligible local match funds in the amount of Ten Percent (10%) of required O&M
18 cost in accordance with Exhibit B: San Clemente Project V Rideshare Services Funding Schedule OR
19 balance of net operations and maintenance costs after AUTHORITY has paid Nine Dollars (\$9.00) per
20 boarding and inflated annually consistent with Exhibit B, whichever is greater.

21 B. If CITY receives operating subsidy from any other non-AUTHORITY source, CITY will not
22 invoice AUTHORITY for the amount received from the other non-AUTHORITY source(s).

23 C. CITY shall notify AUTHORITY regarding any non-OCTA revenues received for the
24 PROJECT and AUTHORITY funds may not pay for services already supported through these
25 non-OCTA revenues.

1 D. CITY shall provide to AUTHORITY actual revenue vehicle miles, boardings, and O&M
2 cost related to PROJECT service on a quarterly basis.

3 E. CITY shall act as the lead agency for operations, maintenance, and management of
4 PROJECT.

5 F. CITY service shall meet minimum boardings standard per revenue hour identified in
6 paragraph B under Article 3.

7 G. CITY shall provide separate and distinct cost accounting for rideshare services.

8 H. To notify AUTHORITY of any non-AUTHORITY revenues received for the PROJECT.

9 I. To include and identify any non-AUTHORITY or grant revenues received along with any
10 requirements associated with external fund sources for the PROJECT in payment to AUTHORITY for
11 local match.

12 J. CITY shall invoice AUTHORITY within sixty (60) days of each event consistent with
13 ARTICLE 5. REQUEST FOR REIMBURSEMENT.

14 **ARTICLE 5. REQUEST FOR REIMBURSEMENT**

15 A. CITY shall contribute matching funds, as is specified within this Agreement in ARTICLE
16 4, Paragraph A, toward the actual costs of PROJECT.

17 B. CITY shall prepare and submit to AUTHORITY invoices in accordance with the
18 reimbursement procedures identified in the CTFP guidelines. CITY's invoice shall include allowable
19 PROJECT costs incurred and paid for by CITY consistent with the PROJECT's Scope of Work identified
20 in Exhibit A. The invoice submitted by CITY shall be signed by an authorized agent who can duly certify
21 the accuracy of the included information. Advance payments by AUTHORITY are not allowed.

22 C. The invoice must be submitted on CITY's letterhead.

23 D. The invoice shall be submitted by CITY and in duplicate to AUTHORITY's Accounts
24 Payable Office. Each invoice shall include the following information:

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- a. Agreement Number C-6-1301;
- b. The total of PROJECT expenditures shall specify the percent and amount to be reimbursed which shall not exceed Ten Percent (10%) of O&M or the balance of net operations and maintenance costs after AUTHORITY has paid Nine Dollars (\$9.00) per boarding, in accordance with Exhibit B: San Clemente Project V Rideshare Services Funding Schedule. In addition, if CITY receives operating subsidy from any other non-AUTHORITY source, CITY will not invoice OCTA for the amount received from the other non-AUTHORITY source(s). Supporting documentation for all expenses must be provided including invoices.
- c. Adequate detail describing all work completed.
- d. Documentation providing evidence that the contractor has been paid by CITY.
- e. Each invoice for O&M subsidy will include the following operating statistics for the fiscal year (July 1 through June 30) to date: Revenue Vehicle Hours, Total Boardings, Boardings per Revenue Hour, Operating Costs, Net Operating Costs (Costs less fares), Reimbursement per Net Operating Costs, and Reimbursement per Boarding.
- f. Certification signed by the CITY or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The invoice does not include any amount which CITY intends to withhold or retain from a subcontractor or supplier unless so identified

1 on the invoice.

2 g. Such other information as requested by AUTHORITY.

3 E. Total payments shall not exceed the Funding Amount specified in ARTICLE 3, paragraph
4 A above.

5 F. CITY shall submit final invoice no later than Ninety (90) days after completion of
6 PROJECT.

7 **ARTICLE 6. DELEGATED AUTHORITY**

8 The actions required to be taken by CITY in the implementation of this Agreement are delegated
9 to its Director of Public Works, or his/her designee, and the actions required to be taken by AUTHORITY
10 in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or his
11 designee.

12 **ARTICLE 7. AUDIT AND INSPECTION**

13 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
14 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
15 representatives of AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and
16 other data and records of CITY for a period of five (5) years after final payment, or completion of audit by
17 the AUTHORITY, or after final payment of debt service, whichever is longer. For purposes of audit, the
18 date of completion of this Agreement shall be the date of AUTHORITY's payment of CITY's final billing
19 under this Agreement. AUTHORITY shall have the right to reproduce any such books, records, and
20 accounts. The above provision with respect to audits shall extend to and/or be included in contracts with
21 CITY's contractor(s).

22 **ARTICLE 8. INDEMNIFICATION**

23 A. To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and expense
24 with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect, and hold harmless
25 AUTHORITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from
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1 and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration
2 awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and
3 attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of
4 persons (CITY's employees included), for damage to property, including property owned by AUTHORITY,
5 or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent
6 acts, omissions or willful misconduct of CITY, its officers, directors, employees or agents in connection
7 with or arising out of the performance of this Agreement.

8 B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole
9 cost and expense with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold
10 harmless CITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from
11 and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration
12 awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and
13 attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of
14 persons (AUTHORITY's employees included), for damage to property, including property owned by CITY,
15 or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent
16 acts, omissions or willful misconduct of AUTHORITY, its officers, directors, employees or agents in
17 connection with or arising out of the performance of this Agreement.

18 C. The indemnification and defense obligations of this Agreement shall survive its expiration
19 or termination.

20 **ARTICLE 9. ADDITIONAL PROVISIONS:**

21 PARTIES agree to the following mutual responsibilities:

22 A. Term of Agreement: This Agreement shall continue in full force and effect on an annual
23 basis subject to meeting minimum performance standards of ridership or December 31, 2018, whichever
24 is later. This Agreement may only be extended upon mutual agreement by both PARTIES.

1 B. Termination: AUTHORITY may terminate this Agreement at any time for any reason
2 following sixty (60) calendar days' written notice to CITY.

3 C. Termination for Convenience: Either PARTY may terminate this Agreement for its
4 convenience by providing sixty (60) days' prior written notice of its intent to terminate for convenience to
5 the other PARTY.

6 D. Amendments: This Agreement may be amended in writing at any time by the mutual
7 consent of all PARTIES. No amendment shall have any force or effect unless executed in writing by all
8 PARTIES.

9 E. PARTIES shall comply with all applicable federal, state, and local laws, statues,
10 ordinances and regulations of any governmental authority having jurisdiction over the PROJECT.

11 F. Legal Authority: PARTIES hereto consent that they are authorized to execute this
12 Agreement on behalf of said PARTIES and that, by so executing this Agreement, the PARTIES hereto
13 are formally bound to the provisions of this Agreement.

14 G. Severability: If any term, provision, covenant or condition of this Agreement is held to be
15 invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
16 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or
17 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18 H. Counterparts of Agreement: This Agreement may be executed and delivered in any
19 number of counterparts, each of which, when executed and delivered shall be deemed an original and all
20 of which together shall constitute the same agreement. Facsimile signatures will be permitted.

21 I. Force Majeure: Each of the PARTIES shall be excused from performing its obligations
22 under this Agreement during the time and to the extent that it is prevented from performing by an
23 unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of
24 God; commandeering of material, products, plants or facilities by the federal, state or local government;
25 national fuel shortage; or a material act or omission by the other PARTY; when satisfactory evidence of
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1 such cause is presented to the other PARTY, and provided further that such nonperformance is
 2 unforeseeable, beyond the control and is not due to the fault or negligence of the PARTY not performing.

3 J. Assignment: Neither this Agreement, nor any of the PARTIES' rights, obligations, duties,
 4 or authority hereunder may be assigned in whole or in part by any PARTY without the prior written consent
 5 of the other PARTIES in their sole and absolute discretion. Any such attempt of assignment shall be
 6 deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any
 7 subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

8 K. Governing Law: The laws of the State of California and applicable local and federal laws,
 9 regulations and guidelines shall govern this Agreement.

10 L. Litigation fees: Should litigation arise out of this Agreement for the performance thereof,
 11 the court shall award costs and expenses, including attorney's fees, to the prevailing PARTY.

12 M. Notices: Any notices, requests, or demands made between the parties pursuant to this
 13 Agreement are to be directed as follows:

To CITY:	To AUTHORITY:
City of San Clemente	Orange County Transportation Authority
910 Calle Negocio, San Clemente, California 92673	600 South Main Street Orange, CA 92863-1584
Attention: William Cameron	Attention: Donald Herrera
Director of Public Works	Contracts Administrator
949-361-6120	Tel: 714-560-5644
cameronw@san-clemente.org	E-mail: dherrera@octa.net

23 N. Successors and Assigns: The provisions of this Agreement shall bind and inure to the
 24 benefit of each of the PARTIES hereto, and all successors or assigns of the PARTIES hereto. This
 25 Agreement shall be made effective upon execution by both PARTIES.
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1 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this Agreement
2 No. C-6-1301 to be executed on the date first above written.

3 **CITY OF SAN CLEMENTE**

**ORANGE COUNTY TRANSPORTATION
4 AUTHORITY**

5 By: _____
6 Bob Baker
 Mayor

By: _____
 Darrell Johnson
 Chief Executive Officer

7 **ATTEST:**

APPROVED AS TO FORM

8 By: _____
9 Joanne Baade
 City Clerk

By: _____
 James Donich
 General Counsel

10 **APPROVED AS TO FORM:**

APPROVAL RECOMMENDED:

11 By: _____
12 Scott Smith
 City Attorney

By: _____
 Kia Mortazavi
 Executive Director, Planning

13 Dated: _____

Dated: _____

14 Attachments:

15 Exhibit A: Project Scope of Work

16 Exhibit B: San Clemente Project V Rideshare Services Funding Schedule
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OCTA Project V Rider Application

San Clemente Rideshare Beta Test Project

The guidelines request specific information to accompany the application. This information is contained in the preceding paragraphs.

The following section addresses the requirements in Section 8.0 of the program guidelines.

Project Need, Goals and Objectives

Need: This project will provide transit mobility for the existing users of Bus Routes 191 and 193 following the termination of the current bus service.

Goals:

- Team with OCTA to maintain access and mobility to the existing users of routes 191 and 193.
- Provide access and mobility to other potential qualified users of routes 191 and 193.
 - This would help to address the performance measures required by project V (10 passengers per hour within the first 24 months).
- Provide a project that meets the objectives of Project V listed below.

Objective: Provide a community- based transit service to enable the existing users of bus routes 191 and 193 to maintain their existing mobility capabilities through a ridesharing transit service.

The proposed project would meet the Project V objectives:

- To provide community transit service that is safe, clean and convenient.
- To encourage new, well-coordinated, flexible transportation systems customized to each community's needs.
- To develop local transit services that complement regional bus and rail service.
- To meet transportation needs in areas not served by regional transit.

Project Description:

The project would utilize a public partnership to establish ridesharing service to provide transit for the public users in the areas previously served by OCTA routes 191 and 193 which may be terminated. The service would be provided during similar hours to the existing 191 and 193 routes from 6 am to 6pm every day of the year.

The transit rideshare program would pickup riders within 500 feet of an existing route 191/193 bus stops and drop off riders at destinations within 500 feet of the route envelope provide in Attachment A.

Existing riders would be informed of new program by a marketing strategy including signs on existing bus stop poles, flyers on the buses, and other measures to register existing rider of the two bus routes and other potential users.

How the riders use the project transit system

1. Potential riders would register for program as explained in the project description and be assigned a Promo-code or QR code to use when ordering rides.
2. Riders would use a rideshare App. to input pickup location and drop off at a safe public location within 500 feet of route within the City limits.
3. The project is not a door to door taxi service, and the number of program rides could be limited by use of promo-code quantity limits.

Implementation Scope

- Marketing and registering existing users and other potential qualified users for program.
- Request for Proposal to solicit companies to submit proposals for the rideshare partnership – Agreement would include terms of service and payment including:
 - Guaranteed maximum wait time which will not be greater than existing bus route waiting times.
 - Guaranteed maximum cost per trip, not to exceed the \$9 per ride
 - Patrons would pay what they currently pay for fare.
 - OCTA/City Project V would pay the difference.
- Project capital costs could include the installation of bicycle racks at feasible existing pickup locations.
- Program would assess ridership on a monthly basis to monitor use/expenses and determine if additional trip limits on promo-codes where needed.
- A ridership cap would also be implemented to assure budget performance.
- Future Phases- Future project scope could be expanded for other community needs and/or special events.

Project Development and Implementation Schedule

The City has done the environment work including the development of this proposed project and has attached a letter from the City Planner addressing compliance with CEQA. The project would target implementation in coordination with the elimination of the OCTA bus routes 191 and 193.

Considering the unique nature of this beta-test project, The City plans to contract with a consultant to help implement the project. The specific details will be coordinated with OCTA.

Exhibit B

San Clemente Project V Rideshare Services Funding Schedule

Year 1
FY /16/17

Year 2
FY17/18

Operations:

Operations OCTA Share 90%	\$	457,200	\$	457,200	\$	914,400
Local Match 10%	\$	50,800	\$	50,800	\$	101,600
Total Project Cost	\$	508,000	\$	508,000	\$	1,016,000

San Clemente Rideshare Beta Test Project

Summary of Project
As of October 30, 2016

The guidelines request specific information to accompany the application. This information is contained in the preceding paragraphs.

The following section addresses the requirements in Section 8.0 of the program guidelines.

Project Need, Goals and Objectives

Need: This project will provide transit mobility for the existing users of Bus Routes 191 and 193 following the termination of the current bus service.

Goals:

- Team with OCTA to maintain access and mobility to the existing users of routes 191 and 193.
- Provide access and mobility to other potential qualified users of routes 191 and 193.
 - This would help to address the performance measures required by project V (10 passengers per hour within the first 24 months).
- Provide a project that meets the objectives of Project V listed below.

Objective: Provide a community- based transit service to enable the existing users of bus routes 191 and 193 to maintain their existing mobility capabilities through a ridesharing transit service.

The proposed project would meet the Project V objectives:

- To provide community transit service that is safe, clean and convenient.
- To encourage new, well-coordinated, flexible transportation systems customized to each community's needs.
- To develop local transit services that complement regional bus and rail service.
- To meet transportation needs in areas not served by regional transit.

Project Description:

The project would utilize a public partnership to establish ridesharing service to provide transit for the public users in the areas previously served by OCTA routes 191 and 193 which will be terminated October 9, 2016. The service would be provided during similar hours to the existing 191 and 193 routes from 6 am to 6pm every day of the year.

The transit rideshare program would pickup and drop off locations at existing 191 and 193 bus stop locations. Depending on the volume of ridership, the City may consider in the future months expanding the service to include input pickup location and drop off at a safe public location within 500 feet of route within the City limits. A schematic showing the tentative pickup and drop off areas and surrounding 500 foot limits is provided as Attachment A

Existing riders would be informed of new program by a marketing strategy including signs on existing bus stop poles, flyers on the buses, and other measures to register existing rider of the two bus routes and other potential users.

How the riders use the project transit system using an App.

1. Potential riders would register for program as explained in the project description and be assigned a Promo-code or QR code to use when ordering rides.
2. The project is not a door to door taxi service, and the number of program rides could be limited by use of promo-code quantity limits.

The following are the major features the City would like to see in an on-demand transportation partnership with an established and reputable vendor:

Seamless system for recruiting and staffing a sufficient number of drivers and vehicles to offer a high level of service during peak times

Mobile application that provides transportation options relative to program rides and options for outside the fixed route area:

- Easy and simple access to ride availability
- Clear confirmation and accurate pick-up/drop-off times
- Simple and friendly electronic payment options
- Marketing system to promote program utilization
- Established and effective system for screening drivers and vehicles
- Established policies to ensure drivers and vehicles are properly insured

The selected contractor will provide the necessary hardware and software to support each of the above requirements.

How the riders use the project transit system using a Phone Center

1. The riders would register call for rides by calling a phone number provided by the contractor.

Implementation Scope

- Marketing and registering existing users and other potential qualified users for program.
- Request for Proposal to solicit companies to submit proposals for the rideshare partnership – Agreement would include terms of service and payment including:
 - Maximum wait time which will not be greater than existing bus route waiting times.
 - Guaranteed maximum cost per trip, not to exceed the \$9 per ride under program.
 - Patrons would pay what they currently pay for fare. OCTA fare schedule here - <http://www.octa.net/bus/Fares-and-Passes/Overview/>
 - OCTA/City Project V would pay the difference up to a maximum.
 - Any additional travel beyond the City's program would be paid by the patron.

- A proposed plan for utilizing the OCTA passes if possible – OCTA pass fares here - <http://www.octa.net/Bus/Fares-and-Passes/Types-of-Passes/>
- Project capital costs could include the installation of bicycle racks at feasible existing pickup locations.
- Program would assess ridership on a monthly basis to monitor use/expenses and determine if additional trip limits on promo-codes where needed.
- A ridership cap would also be implemented to assure budget performance.
- Future Phases- Future project scope could be expanded for other community needs and/or special events.

Project Development and Implementation Schedule

The City has done the environment work including the development of this proposed project addressing compliance with CEQA. The project would target implementation in coordination with the elimination of the OCTA bus routes 191 and 193.

Considering the unique nature of this beta-test project, The City plans to contract with a consultant to help implement the project. The specific details will be coordinated with OCTA.

Funding Plan

Project V – Rideshare Beta Test Cost Estimates

San Clemente Project V Rideshare Services Funding Schedule			
	Year 1	Year 2	
	FY /16/17	FY17/18	
Operations:			
Operations OCTA Share 90%	\$ 457,200	\$ 457,200	\$ 914,400
Local Match 10%	\$ 50,800	\$ 50,800	\$ 101,600
Total Project Cost	\$ 508,000	\$ 508,000	\$ 1,016,000

Ongoing Service and Operations Plan

The rideshare service will operate similar to the time frames of existing 191 and 193 service from 6am to 6pm, 365 days a year. The City intends to advertise a Request for Proposals (RFP) for a private contractor to operate the service.

Ridership Projection

Ridership estimates were based upon 2015 annual ridership counts for the 191 and 193 with projected increases in the 2nd year and beyond.

The first year ridership estimates are 150 riders per day, or 12 riders per hour. Second year ridership and beyond is estimated to increase to 300 riders per day, or 24 riders per hour. Ridership information is provided in Attachment B.

Coordination with Existing Services

The service will connect with other OCTA bus service and with Metrolink and Amtrak rail service to the greatest extent possible.

APPLICATION GUIDELINES

This section addresses the requirements in Section 9.0 of the application guidelines.

VIII. Fixed-Route Bus/Rail Connections

There are four total fixed-route bus/rail connections within ¼ mile:

- OCTA Route 1
- OCTA Route 91
- Amtrak rail service at San Clemente Pier
- Metrolink rail service at the North Beach station and San Clemente Pier.

XI. Special Event Transit

There are three special events that occur each year in San Clemente:

- OceanFest at the San Clemente Pier during a weekend in July
- Fiesta, a one-day music festival on Avenida Del Mar in August
- The Classic Car Show in San Clemente Village on a Sunday in June.

Other Application Material: Project Documentation

Attachment A - The Ridershare Beta Test Project Coverage Area diagram is attached for reference.

Attachment B – Bus Route ridership information for existing routes 191 and 193.- Will be provided upon request from interested contractor. Contact Tom Frank via email.

**PROFESSIONAL SERVICES AGREEMENT
FOR RIDESHARE SERVICES**

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 _____ of _____ **[address]** hereinafter referred to as the "CONTRACTOR".

RECITALS:

A. CITY requires professional **Rideshare** services to be performed at or in connection with **the Orange County Transit Authority's 191 and 193 bus routes proximity within the City of San Clemente.**

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 October 9, 2018, unless terminated earlier pursuant to the terms hereof. 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 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 nine hundred seventy six thousand (\$976,000), 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").

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.

X 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 [address] , and to the City of San Clemente, [address] , San Clemente, California , Attention: [specify] .

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

[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]

EXHIBIT “B”

SCHEDULE OF PERFORMANCE

[To be inserted by CITY]

[See 1.3 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 _____

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
