

**AGREEMENT BETWEEN THE CITY OF MANHATTAN
BEACH AND MIA LEHRER & ASSOCIATES, INC. FOR
LANDSCAPE MASTER PLANNING SERVICES**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2012, by and between the City of Manhattan Beach, a municipal corporation ("City") and Mia Lehrer & Associates, Inc., a California corporation ("Consultant") (collectively, the "Parties").

RECITALS

A. City desires to obtain services of Consultant for landscape master planning services for the Veterans Parkway in the City of Manhattan Beach, in accordance with RFP #890-13.

B. Consultant represents that it is qualified and able to perform the Scope of Work.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

Section 1. Consultant's Scope of Work. Consultant shall perform landscape architecture design services, as further described in the City's Request for Proposal #890-13, and the Consultant's Proposal, attached hereto as Exhibit A and incorporated herein by reference. Consultant shall perform such services in a manner satisfactory to City and consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Term of Agreement.

(a) This Agreement shall apply to services rendered on or after December 12, 2012, and shall terminate on May 15, 2013, unless sooner terminated or extended in writing by the City.

Section 3. Time of Performance. Consultant shall commence its services under this Agreement upon receipt of a written notice to proceed from City. Consultant shall complete the services in conformance with the timeline set forth in Exhibit A, or as otherwise directed by the City's representative.

Section 4. Compensation.

(a) City agrees to pay Consultant upon the completion of each task, in accordance with the fees set forth in Exhibit B. In no event shall Consultant be paid more than \$37,230 for services pursuant to this Agreement.

(b) Except as expressly stated in Exhibit B, Consultant shall not be entitled to reimbursement for any expenses. Any expenses incurred by Consultant that are not expressly authorized by this Agreement will not be reimbursed by City.

Section 5. Method of Payment. City shall pay Consultant said consideration in accordance with the method and schedule of payment set forth in Exhibit B, attached hereto and incorporated herein. Unless otherwise specified in Exhibit B, Consultant shall submit to City a detailed invoice on a monthly basis for the services performed pursuant to this Agreement. Each invoice shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period, as applicable. Within 45 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice.

Section 6. Independent Contractor. The Parties agree, understand, and acknowledge that Consultant is not an employee of the City, but is solely an independent contractor. Consultant expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Consultant shall not be in any way an employee of the City. As such, Consultant shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers' compensation and unemployment insurance and that of his/her employees or subcontractors. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

Section 7. Assignment. This Agreement shall not be assigned, in whole or in part, by Consultant without the prior written approval of City Manager. Any attempt by Consultant to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

Section 8. Responsible Principal(s).

(a) Consultant's responsible principal, Jeff Hutchins, shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. Designation of another Responsible Principal by Consultant shall not be made without prior written consent of City.

(b) City's Responsible Principal shall be the City Manager, who shall administer the terms of the Agreement on behalf of City.

Section 9. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 10. Permits and Licenses. Consultant shall obtain and maintain during the term of this Agreement all necessary licenses, permits, and certificates required by law for the provision of services under this Agreement, including a business license.

Section 11. Interests of Consultant. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Consultant.

Section 12. Insurance.

(a) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by Consultant in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(4) A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of \$2,000,000 per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by City Manager. Further, Consultant agrees to maintain

in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) Consultant shall require each of its sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.

(c) The City Manager may, in writing, amend and/or waive the insurance provisions set forth in paragraph (a) herein. In such case, the Consultant shall comply with the insurance provisions required by the City Manager.

(d) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide

(e) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(f) At all times during the term of this Agreement, Consultant shall maintain on file with the City Clerk a certificate or certificates of insurance on the form approved by the City Manager, showing that the aforesaid policies are in effect in the required amounts. Consultant shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance and vehicle insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on 30 days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(g) The insurance provided by Consultant shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(h) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Section 13. Indemnification.

(a) Indemnity for Design Professional Services. Consultant is considered a "design professional" as that term is defined in Civil Code Section 2782.8. In connection with its design professional services, Consultant shall hold harmless and indemnify City, and its elected officials, officers, employees, servants, designated volunteers, and those City agents serving as independent consultants in the role of City officials (collectively, "Indemnitees"), with respect to any and all claims, demands, damages, liabilities, losses, costs or expenses, including reimbursement of attorneys'

fees and costs of defense (collectively, "Claims" hereinafter), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to in whole or in part to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, subcontractors, or agents in the performance of its design professional services under this Agreement.

(b) Other Indemnities. In connection with any and all claims, demands, damages, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense (collectively, "Damages" hereinafter) not covered by Section (a) herein, Consultant shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, including but not limited to, Damages relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the acts or omissions of Consultant or any of its officers, employees, subcontractors, or agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. With respect to such claims, Consultant shall defend City, with counsel of City's choice, at Consultant's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against City.

(c) Consultant shall reimburse City for any and all legal expenses and costs actually incurred by it in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant or City. All duties of Consultant under this Section shall survive termination of this Agreement.

Section 14. Termination.

(a) City shall have the right to terminate this Agreement for any reason or for no reason upon 30 days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Consultant, Consultant shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

Section 15. City's Responsibility. City shall provide Consultant with all pertinent data, documents, and other requested information as is available for the proper performance of Consultant's Scope of Work.

Section 16. Information and Documents. Consultant covenants that all data, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. All Data required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. All data shall be returned to City upon the termination of this Agreement. Consultant's covenants under this Section shall survive the termination of this Agreement.

Section 17. Changes in the Scope of Work. City shall have the right to order, in writing, changes in the Scope of Work or the services to be performed. Any changes in the Scope of Work requested by Consultant must be made in writing and approved by both Parties.

Section 18. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to this section.

If to City: City of Manhattan Beach
 1400 Highland Avenue
 Manhattan Beach, California 90266
 Attn: City Manager

with a copy to the City Attorney.

If to Consultant: Mia Lehrer & Associates, Inc.
 3780 Wilshire Boulevard, Suite 250
 Los Angeles, California 90010
 Attn: Jeff Hutchins

Section 19. Attorneys' Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

Section 20. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Consultant.

Section 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California. Any action commenced related to or concerning this Agreement shall be filed in the appropriate court in Los Angeles County.

Section 22. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Consultant.

Section 23. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. In addition, the provisions of the City's Request for Proposal #890-13, dated September 20, 2012 and hereby incorporated by reference, shall take precedence over any conflicting provision in the Consultant's Proposal included in Exhibit A.

Section 24. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

Section 25. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

[Signatures begin next page]

EXECUTED on the date first written above at Manhattan Beach, California.

CITY OF MANHATTAN BEACH

CONSULTANT

DAVID N. CARMANY
City Manager

MIA LEHRER
President

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney

EXHIBIT A
CONSULTANT'S PROPOSAL

(Please see Attachment 3)

EXHIBIT B
FEE PROPOSAL

(Please see Attachment 4)