

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into on this ____ day of _____, 2014, by and between City of Manhattan Beach, a municipal corporation ("City") and the Urban Land Institute, a non-profit corporation ("Contractor" or "Institute") (collectively, the "Parties").

RECITALS

A. City desires to engage the services of Contractor to perform its Advisory Services Program.

B. Contractor represents that it is qualified and able to perform the services required by this Agreement.

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

Section 1. Contractor's Services. Contractor shall perform the "Services" described in Exhibit A in a manner satisfactory to City and consistent with the level of care and skill ordinarily exercised by members of the land use and planning profession.

Section 2. City's Obligations. City shall, at City's expense:

(a) Furnish each panel member, not less than 10 days in advance of the panel meeting, such pertinent background data in the form of reports, plans, charts, etc., as may be presently available or readily developed for the preliminary study of the panel, prior to its inspection on site. Two copies are to be sent to Contractor's Project Manager.

(b) Arrange, insofar as possible, to have appropriate persons, including public and private officials, representatives of the relevant organizations, and others, available for the purpose of consulting with and furnishing information to the panel on specific matters relevant to the assignment as may be necessary and advisable during the period of the panel's visit.

Section 3. Term of Agreement. This Agreement shall apply to services rendered on or after October 22, 2014, and shall terminate when the work is completed, unless sooner terminated by City.

Section 4. Time of Performance. Contractor shall commence its Services under this Agreement upon receipt of a written notice to proceed from City. Contractor shall complete the Services in conformance with the timeline set forth in Exhibit A, or as otherwise directed by City's representative.

Section 5. Time of the Essence. Time is of the essence of this Agreement.

Section 6. Compensation. In no event shall Contractor be paid more than \$125,000 during the term of this Agreement. Contractor shall not be entitled to reimbursement for any expenses.

Section 7. Method of Payment. City shall pay Contractor \$60,000 within 10 days of the City Council's approval of this Agreement. City shall pay Contractor the second installment of \$60,000 at the end of the panel's visit. Finally, City shall pay the remaining \$5,000 within 10 days after City Council's acceptance of the final report. In the event City cancels the panel assignment, the initial payment is non-refundable.

Section 8. Independent Contractor. The Parties agree, understand, and acknowledge that Contractor is not an employee of City, but is solely an independent contractor. Contractor 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 Contractor shall not be in any way an employee of City. As such, Contractor 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 Contractor or any of Contractor's employees. Contractor 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. Contractor 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 Contractor's personnel practices. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

Section 9. Assignment. This Agreement shall not be assigned, in whole or in part, by Contractor without the prior written approval of City. Any attempt by Contractor to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

Section 10. Responsible Principals.

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

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

Section 11. Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the Services under this Agreement. All personnel engaged in the work shall be qualified to perform such Services.

Section 12. Permits and Licenses. Contractor shall obtain and maintain during the term of this Agreement all necessary licenses, permits, and certificates required by law for the provision of the Services, including a business license.

Section 13. Interests of Contractor.

(a) Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Contractor further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Contractor shall not accept any employment or representation during the term of this Agreement which is or may likely make Contractor "financially interested" (as provided in California Government Code §§ 1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained.

(b) Contractor further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Contractor, to solicit or obtain this Agreement. Nor has Contractor paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Contractor, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Contractor hereunder the full amount or value of any such fee, commission, percentage or gift.

(c) Contractor warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Contractor, and that if any such interest comes to the knowledge of Contractor at any time during the term of this Agreement, Contractor shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

Section 14. Insurance.

(a) Contractor 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 Contractor.

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 Contractor in performing the Services 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. Further, Contractor agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.

2. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be excess of Contractor's insurance and shall not contribute with it.

3. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy, except for the professional liability policy, required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials.

5. Each insurance policy required by this Agreement shall be endorsed to state: should the policy be canceled before the expiration date, the issuing insurer shall mail 30 days' prior written notice to City.

6. If insurance coverage is canceled or reduced in coverage or in limits, Contractor shall within two business days of notice from insurer, phone, fax and/or notify City via certified mail, return receipt requested, of the changes to or cancellation of the policy.

(c) City's Risk Manager may, in writing, amend and/or waive any or all of the insurance provisions set forth herein. In such case, the Contractor shall comply with the insurance provisions required by City's Risk 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, unless waived in writing by City's Risk Manager.

(e) Contractor agrees that if it does not keep the required 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 Contractor's expense, the premium thereon.

(f) All insurance coverages shall be confirmed by execution of endorsements on forms approved by City. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before services commence. As an alternative to City forms, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

(g) Any deductibles or self-insured retentions must be declared to and approved by City, and shall not exceed \$25,000.

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

Section 15. Mutual Indemnity. Each party shall indemnify, save, defend and hold harmless the other, its elected/appointed officials, officers, directors, employees and agents from any and all liability, claims, suits, demands, actions, damages and expenses (including reasonable attorney fees) of whatsoever kind and by whomsoever brought against the indemnified party, its elected/appointed officials, officers, directors, employees and agents, arising from or in connection with any willful or negligent act, error or omission of the indemnifying party, its elected/appointed officials, officers, directors, employees, and agents in the performance of this Agreement. All duties under this Section shall survive termination of this Agreement.

Section 16. Termination.

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

(b) City may at any time, for any reason, with or without cause, suspend this Agreement, or any portion hereof, by serving upon the Contractor written notice. Upon receipt of such notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City suspends only a portion of this Agreement, such suspension shall not make void or invalidate the remainder of this Agreement.

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

Section 17. City's Responsibility. City shall provide Contractor with all pertinent data, documents, and other requested information as is available for the proper performance of Contractor's Services.

Section 18. Information and Documents.

(a) Contractor covenants that all data, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors, shall not without written authorization from City Manager or unless requested in writing by City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within City. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding.

Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite the response.

(c) 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 Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the Services shall become the sole property of City and may be used, reused or otherwise disposed of by City without Contractor's permission.

(d) Notwithstanding subsection (c), Contractor may make such noncommercial use of the report consisting of the panel's findings and recommendations as it may deem desirable, and the City specifically agrees that Contractor may publish and disseminate such report or any part thereof in conjunction with its research and educational programs.

(e) Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of 3 years after receipt of final payment.

(f) Contractor's covenants under this Section shall survive the termination of this Agreement.

Section 19. Default

(a) Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to Contractor. If such failure by Contractor to make progress in the performance of work hereunder arises out of causes beyond Contractor's control, and without fault or negligence of Contractor, it shall not be considered a default.

(b) If the City Manager or his delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall

serve the Contractor with written notice of the default. The Contractor shall have 10 days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

Section 20. Changes in the Services. City shall have the right to order, in writing, changes in the Services or the services to be performed. Any changes in the Services requested by Contractor must be made in writing and approved by both Parties.

Section 21. 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: Mark Danaj, City Manager

If to Contractor: Urban Land Institute
 1025 Thomas Jefferson Street, N.W.
 Suite 500 West
 Washington, D.C. 20007-5201
 Attn: Patrick Phillips, CEO

Section 22. 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 23. Entire Agreement. This Agreement represents the entire integrated agreement between City and Contractor, 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 Contractor.

Section 24. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 25. Venue. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over City of Manhattan Beach.

Section 26. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Contractor.

Section 27. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any 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.

Section 28. 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 the Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

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

CITY OF MANHATTAN BEACH

CONTRACTOR:

MARK DANAJ
City Manager

PATRICK PHILLIPS
Chief Executive Officer

ATTEST:

LIZA TAMURA
City Clerk

GAYLE BERENS
Senior Vice President, Education

APPROVED AS TO FORM:

TOM EITLER
Vice President, Advisory Services



QUINN M. BARROW
City Attorney

EXHIBIT A

SCOPE OF SERVICES

Contractor shall provide the following services in order to advise the City on future development and planning efforts in the City:

1. To provide a panel composed of members of the Institute and others who collectively have a varied and broad experience and knowledge applicable to the particular problems to be considered.
2. To arrange for the panel members to visit the location upon which its recommendations are sought for a period of not less than five days, starting on or about January 11, 2015. During that time, the panel, directly and through its staff, will study the designated area; consult with public and private officials, representatives of other relevant organizations, and other individuals familiar with the problems involved; and prepare its conclusions and recommendations which will be presented to the City and its invited guests in oral form at the close of the on-site assignment.
3. To provide the City with a full-color written summary of the Contractor's conclusions and recommendations, illustrated with photographs and drawings, as appropriate. The City will be provided a draft copy of the report within 30 days after the completion of the panel's site visit.