

**FUNDING AGREEMENT BETWEEN THE CITY OF
MANHATTAN BEACH AND THE MANHATTAN
BEACH CHAMBER OF COMMERCE FOR
ECONOMIC AND BUSINESS DEVELOPMENT
SERVICES FOR FISCAL YEAR 2017-2018**

THIS AGREEMENT is made and entered into by and between the City of Manhattan Beach, a municipal corporation ("City"), and the Manhattan Beach Chamber of Commerce, a non-profit corporation ("Chamber") (collectively, the "Parties").

RECITALS

A. Chamber is organized to encourage a strong local economy and quality of life by promoting commerce, sound government, and an informed membership and community.

B. Comprised of business leaders throughout the South Bay, Chamber has special knowledge and experience to promote economic and business development, including business attraction and retention programs, for the benefit of City.

C. City and Chamber have mutual interests in enhancing the economic growth and vitality of the community in pursuit of the following goals:

1. To cultivate community involvement,
2. To encourage business alliances,
3. To nurture the growth and development of new and existing businesses,
4. To create educational opportunities for community youth, and
5. To ensure that operation of the Chamber of Commerce is performed in the most responsible, cost-effective, and efficient manner possible.

D. City desires to engage the services of Chamber to conduct business attraction and retention services for Fiscal Year 2017-2018.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties hereto, the Parties agree as follows:

Section 1. Fund Authorization/Use of Funds.

A. For the Fiscal Year 2017-2018 (July 1, 2017 – June 30, 2018), City shall provide Chamber funds necessary to accomplish the economic and business development programs detailed in Exhibit A ("Scope of Services"), in accordance with the Disbursement

Schedule set forth in Exhibit B, each as attached hereto and incorporated herein. In no event shall Chamber receive from City more than \$_____ (the "City Grant").

B. Chamber shall use the City Grant for the purposes specified in Exhibit A, or as otherwise mutually agreed to by the Parties in writing.

Section 2. Disbursements.

A. Chamber shall submit written requests for advance disbursements of the City Grant in the time-frame and amounts set forth in Exhibit B. Each request for disbursement shall specify the programs, or portions of programs, to be funded from the disbursement, and the schedule for completion of those programs, with supporting documentation reasonably acceptable to City's Finance Director. The second and any subsequent disbursements shall include a progress report, describing progress in implementing the programs funded from prior disbursements, with supporting documentation reasonably acceptable to City's Finance Director.

B. City shall issue the disbursement to Chamber upon approval of the request by City's Finance Director. City shall use reasonable efforts to make the disbursements to Chamber within 30 days of receipt of the request.

Section 3. Reports.

A. On or before June 15, 2018, Chamber shall submit a report to City in a form acceptable to the City Manager or his designee, which shall include, without limitation, detailed information on overall project management and achievement of goals as compared to the work plan and budget set forth in Exhibit A.

B. Chamber shall provide two presentations/status reports to the City Council, with the first in January 2018 and the second in June 2018.

C. With reasonable notice from City, Chamber shall provide to City copies of any and all work product, documents reports, property and books produced by Chamber in fulfillment of this Agreement ("Documents"). The Documents shall be solely for the purpose of confirming and evaluating the execution of the programs described in this Agreement and shall not include records and documents unrelated to the execution of such programs (e.g., personnel records). Chamber's obligation to maintain such Documents shall continue for three years after the termination of this Agreement. This provision shall survive termination of this Agreement.

D. Chamber shall establish and maintain an accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to City under this Agreement and shall substantiate all such costs and comply with any applicable State and Federal standards.

E. Chamber shall endeavor to develop, in consultation with City, a program-based budget for all City-funded programs. Implementation of a program-based budget is

not intended to affect the requirements outlined in paragraph D. of this Section relating to generally accepted accounting principles.

Section 4. Ownership of Work Product.

A. Unless otherwise agreed upon in writing, all reports, documents, or other written or visual material or any other material in any media, including any images, taglines, logos, or other media created or developed by Chamber or any third party contracted by Chamber in the performance of this Agreement, if paid in whole by the funding provided by this Agreement (“Work Product”), shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. All Work Product shall be considered to be “works made for hire”, and all such Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. Chamber shall not obtain or attempt to obtain copyright protection as to any of the Work Products.

B. Chamber hereby irrevocably assigns exclusively to City, all right, title and interest in such trademarks and/or copyrights or other intellectual property rights in the Work Products. Chamber shall take all acts requested by City in order to enforce City’s rights under this Section.

C. Chamber shall not retain ownership of or any right, title or interest in any of the Work Products, including, but not limited to, in any related trademarks, copyrights, or other proprietary rights. City and Chamber agree that the Work Products and all such rights, title and interest in or to the Work Products belong to and are being sold and assigned in their entirety to City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all right, title and interest in and to all of the Work Products worldwide, any modifications thereto and any derivative works based thereon (including, but not limited to, all patent, copyright, trademark, service mark and trade secret rights). Nothing contained herein shall be deemed to constitute a mere license or franchise in City. The Parties further agree that City will be free to use, modify, distribute, sell, license or otherwise exploit all such Work Products and any modifications to or derivative works based thereon without any restrictions or limitations or any obligations or Disbursements to Chamber and that Chamber shall have no such rights.

D. From time to time Chamber will engage photographers to take photographs or will purchase images for use in Chamber’s marketing campaigns, collateral or other uses. As to those third party photographs or images whereby Chamber negotiates to purchase not only the photograph or image but also the copyright or other intellectual property rights, the provisions of this Section will apply. As to those third party photographs or images whereby Chamber negotiates to purchase only the use of the photograph or image and the copyright is maintained with the photographer, the provisions of this Section will not apply.

E. It is understood and agreed that Chamber currently owns exclusively intellectual property rights to its name, committee and event titles, and logos, which will be utilized in the performance of this Agreement (“Chamber Property”). Chamber reserves all rights, title and interest in the Chamber Property, and hereby grants City a revocable, non-exclusive, license to the use of the Chamber Property to the extent it becomes incorporated into, and inseparable from, the Work Products.

F. This Section shall survive termination of this Agreement.

Section 5. Assignment. This Agreement shall not be assigned by Chamber without the written consent of City.

Section 6. Independent Contractor. At all times during the term of this Agreement, Chamber shall be an independent contractor and Chamber, its officers, employees and agents shall not be employees of City.

Section 7. Personnel. Chamber represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. Chamber shall be solely responsible for the work performed by third party contractors, including timely performance and Disbursement.

Section 8. Term. This Agreement shall remain in full force and effect from September 5, 2017 until June 30, 2018, unless terminated earlier as provided in Section 9 of this Agreement.

Section 9. Termination of Agreement. Either Party may terminate this Agreement at any time, with or without cause, upon 30 days’ written notice to the other Party. In the event of such termination, Chamber shall immediately return to City any portion of previously disbursed funds that have not been paid to third parties by Chamber, together with documentation of all expenditures of proceeds of the City Grant.

Section 10. Notice. Whenever it shall be necessary for any party to serve notice on another respecting this Agreement, such notice shall be served by certified mail, postage pre-paid, to the addresses below, unless and until a different address may be furnished in writing by any party:

To City: City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

To Chamber: Manhattan Beach Chamber of Commerce
425 15th Street
Manhattan Beach, California 90266

Such notice shall be deemed to have been served within 72 hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

Section 11. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Chamber shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the Disbursement of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Chamber, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Chamber shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Chamber shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Chamber shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Chamber shall pay all required taxes on amounts paid to Chamber under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Chamber shall fully comply with the workers' compensation law regarding Chamber and Chamber's employees. Chamber shall indemnify and hold City harmless from any failure of Chamber to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Chamber under this Agreement any amount due to City from Chamber as a result of Chamber's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Chamber shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Chamber in the performance of this Agreement. If Chamber fails to obtain such indemnity obligations, Chamber shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Chamber's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Chamber's subcontractor shall bear the legal liability thereof) in the

performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Chamber's indemnifications and obligations under this Section 11, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Chamber expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not waive any rights that it may possess against Chamber because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 11 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Chamber's indemnifications and obligations under this Section 11 shall survive the expiration or termination of this Agreement.

Section 12. Insurance.

A. Minimum Scope and Limits of Insurance. Chamber shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Chamber is a limited liability company, the commercial general liability coverage shall be amended so that Chamber and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. If Chamber does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Chamber shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section 12.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Chamber has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Chamber shall execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Section 12 shall be issued by an insurer admitted to write insurance in the State of

California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 12.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 12 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Chamber's insurance and shall not contribute with it.

E. Chamber's Waiver of Subrogation. The insurance policies required under this Section 12 shall not prohibit Chamber and Chamber's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Chamber hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Chamber shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Chamber shall procure a bond guaranteeing Disbursement of losses and expenses.

G. Cancellations or Modifications to Coverage. Chamber shall not cancel, reduce or otherwise modify the insurance policies required by this Section 12 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section 12 is canceled or reduced in coverage or limits, Chamber shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Chamber does not maintain the policies of insurance required under this Section 12 in full force and effect during the term of this Agreement, or in the event any of Chamber's policies do not comply with the requirements under this Section 12, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Chamber's expense, the premium thereon. Chamber shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from Disbursements due to Chamber.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Chamber shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 12. The endorsements are subject to City's approval. Chamber may

provide complete, certified copies of all required insurance policies to City. Chamber shall maintain current endorsements on file with City's Risk Manager. Chamber shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Chamber shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Chamber shall not be construed as a limitation of Chamber's liability or as full performance of Chamber's duty to indemnify City under Section 11 of this Agreement.

K. Subcontractor Insurance Requirements. Chamber shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 12.

Section 13. Extent of Agreement. This Agreement represents the entire and integrated Agreement between the Parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by all Parties to the Agreement.

Section 14. City not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Chamber.

Section 15. 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]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the
____ day of _____ 2017, at Manhattan Beach, California.

CITY OF MANHATTAN BEACH

MANHATTAN BEACH CHAMBER OF
COMMERCE AND CIVIC
ASSOCIATION

By:

David J. Lesser, Mayor

Mark Lipps, President/CEO

ATTEST:

Liza Tamura, City Clerk

Lilly Swardstrom, Board Chair

APPROVED AS TO FORM:

Quinn M. Barrow, City Attorney

EXHIBIT A

SCOPE OF SERVICES

City shall provide funding to the Chamber of Commerce for the period of September 5, 2017 through June 30, 2018 for business attraction and retention services in an amount not to exceed \$100,000. The portfolio of services to be provided by the Chamber to the City is set forth below.

Budget

Work Plan Item	Cost
I. Local Marketing	
Visitor Business Map	\$12,750
Online Visitor Resource	\$25,000-\$30,000
LAX Hotel Outreach	\$5,000
Hospitality Committee	\$5,000
Local Marketing Subtotal	\$47,750 – 52,750
II. Business Education and Engagement	
Young Entrepreneurs Academy (YEA)	\$500-\$8,000
Collaborative Town Hall Forum	\$3,000
Small Business Education Seminars	\$6,000
Business Education and Engagement Subtotal	\$9,500 - \$17,000
TOTAL	\$57,250-\$69,750

I. Local Marketing Programs:

Description	Visitor Business Map Create a high-quality, city-wide business map of the City to help circulate visitors to Manhattan Beach businesses. The map was requested at April meeting of Manhattan Beach hotel General Managers. The Chamber is responsible for working with the vendor to ensure accurate business listings and handling distribution.
Deliverables	Production of map and distribution to multiple venues in and around Manhattan Beach.
Timeline	Winter 2017-18
Cost	\$12,750

Description	Online Visitor Resource • Optimize the MB Chamber website to offer resources to visitors, such as: ○ Provide all hotel information ○ Lists of 10 things to do in MB ○ Links to activities and additional resources • Emphasize search engine optimization (SEO) • Assess what visitors are looking for and how the Chamber can provide it • Consider an app for biking, running, visitor services
Deliverables	Either a rebuild of current MBCC website or creation of separate platform with possible title of “DiscoverMB,” DestinationMB,” ThinkManhattanBeach,” “ExperienceManhattanBeach”
Timeline	Ongoing
Cost	\$25,000 - \$30,000

Description	LAX Hotel Outreach • Promote Manhattan Beach to hotels along Century Blvd. near LAX. • Create promotional materials that increase awareness of Manhattan Beach and provide resources to be distributed to these hotels. • Facilitate communication and FAM (familiarization) tours with concierges, organize tours. • Promote use of Manhattan Beach promotional video in the hotel rooms, gyms, around hotel
Deliverables	Distribution of MB map, Destination Guide, coordinate tour of MB with concierges from top hotels, perhaps include representatives from our Hospitality Committee
Timeline	Ongoing
Cost	\$5,000

Description	Hospitality Committee Chamber of Commerce will convene and facilitate quarterly meetings with major MB businesses involved in the hospitality industry. Intention of meeting is to gather stakeholder input about ways to improve hospitality climate in Manhattan Beach.
Deliverables	Quarterly reports of the meetings with updates and next steps

Timeline	Ongoing (four meetings)
Cost	\$5,000

II. Business Education and Engagement

Description	Young Entrepreneurs Academy (YEA) An opportunity for students in grades 6-12 to demonstrate creativity, innovation, determination, enthusiasm and the ability to communicate while developing a business idea. Sponsorship levels include: • Title Level - \$8,000 – this will cover the cost of the entire program • Investor Panel Level - \$1500 per investor – this is the Shark Tank-esque panel that analyzes the student business pitches and awards cash for start-up funding. The Investor Panel also chooses one student to compete at the national competition in Rochester, New York. • Champion Level - \$1,000 • Event Level - \$500
Deliverables	- Annual update on the graduates of YEA and their projects - Exclusive judging seat and featured speaker opportunity on YEA Investor Panel + CEO Roundtable - 24 weeks of social media marketing (Facebook, Instagram, Twitter) - Inclusion in 24-week YEA marketing campaign - Four standalone email blasts - Opportunity to be primary speaker on Manhattan 360 Radio (Friday 8:00 a.m.) - additional event tickets to represent company and YEA at Economic Forum
Timeline	Ongoing
Cost	\$500- \$8,000 (Title Level Sponsor)

Description	Collaborative Town Hall Forum
Deliverables	Create awareness among our local business to attend the town hall to engage with our elected officials and city management. Event will complement State of the City and provide forum for business owners to better interact with staff.

	Booths representing the city departments will be located around the room where staff can interact with members of the public.
Timeline	One event, time TBD
Cost	\$3,000

Description	Small Business Education Seminars Produce bi-monthly small business seminars through qualified agencies, such as the Small Business Development Center (SBDC) at El Camino College. These seminars would be on subjects ranging from social media marketing to small business loans and would be open to all businesses in Manhattan Beach.
Deliverables	Regular reports on attendance and satisfaction
Timeline	Ongoing
Cost	\$6,000

EXHIBIT B**DISBURSEMENT SCHEDULE**

Disbursements shall be governed by the schedule below, contingent upon work items funded by Council and their funding levels.

Funding Period (September 5, 2017 – June 30, 2018)				
	Chamber Submits Disbursement Request to City	City Issues Payment to Chamber	Work Item Covered	Disbursement Amount
First Disbursement	9/15/2017	10/1/2017	Visitor Map (100%) Education Seminars (50%) Online Visitor Resource (50%) LAX Hotel Outreach (50%) Hospitality Committee (50%) Young Entrepreneurs Academy (50%)	\$33,500- 39,750
Second Disbursement	1/15/2017	2/1/2018	Online Visitor Resource (25%) Town Hall Forum (100%) Education Seminars (25%) LAX Hotel Outreach (25%) Hospitality Committee (25%) Young Entrepreneurs Academy (50%)	\$13,500- 18,500
Third Disbursement	3/15/2018	4/1/2018	Online Visitor Resource (25%) Education Seminars (25%) LAX Hotel Outreach (25%) Hospitality Committee (25%)	\$10,250- 11,500
TOTAL				\$57,250- 69,750