

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated July 2, 2024 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Manhattan Beach Chamber of Commerce, Inc., a California non-profit corporation ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. The City Council of the City of Manhattan Beach formed a Property & Business Improvement District pursuant to the provisions of the Parking & Business Improvement Law of 1989 (the "Act," codified at California Streets and Highways Code Section 36500) for providing services to the businesses within the area designated as the North Manhattan Beach Business Improvement District (the "District").

B. City desires to utilize the services of Consultant as an independent contractor to provide management and executive coordination services for the District.

C. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

D. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") for management and executive coordination services for the District, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes to the scope or cost of work must be in writing and mutually agreed upon by the Parties.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be David Archer, President/CEO (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

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

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through July 1, 2025, unless sooner terminated as provided in Section 12 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$67,300 (the "Maximum Compensation") for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Services and Unanticipated Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. At the request of the Consultant, the City Council may, in writing, reimburse Consultant for an unanticipated expense at its actual cost. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

5. Independent contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Consultant covenants that all data, reports, 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 or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the 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 the City. A response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, 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 the City. City may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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 City's property, and City may use all or any portion of the Data submitted by Consultant 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 Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

D. Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. 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 Services contemplated by this Agreement. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

8. Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) To the fullest extent permitted by law, Consultant 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 payment 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 Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant 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. Consultant 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. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant 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.

3) Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws.

4) City may 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 subparagraph A.2).

5) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant 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 Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant'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. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant 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 Consultant 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 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. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant 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 Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant 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 \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

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 Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 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.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section 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 elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant 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, 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.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 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 is canceled or reduced in coverage or limits, Consultant 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 Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, 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 Consultant's expense, the premium thereon.

Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant 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. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant 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. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant 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.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

11. Records and Inspections. Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, 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. Consultant 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 three years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 30 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date 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.

13. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, judicial orders, enemy or hostile governmental action, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

14. Default.

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, 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.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by

courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: George Gabriel
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: 310-802-5054
Email: ggabriel@manhattanbeach.gov

If to Consultant:

Attn: David Archer
Manhattan Beach Chamber of
Commerce
425 15th Street
Manhattan Beach, California 90266
Telephone: 949-422-0873
Email:
David@ManhattanBeachChamber.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@rwglaw.com

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

21. Corrections. In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

23. Exhibits. Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a

provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

24. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

25. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

26. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Business Days. "Business days" means days Manhattan Beach City Hall is open for business.

29. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

30. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

31. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and

enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

Consultant:

Manhattan Beach Chamber of Commerce,
Inc., a California non-profit corporation

By: _____
Name: Bruce Moe
Title: City Manager

By: _____
Name: David Archer
Title: President/CEO

ATTEST:

By: _____
Name: Liza Tamura
Title: City Clerk

By: _____
Name: David Curry
Title: Board Chairman

APPROVED AS TO FORM:

By: _____
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

By: _____
Name: Steve Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

By: _____
Name: George Gabriel
Title: Assistant to the City Manager

EXHIBIT A SCOPE OF SERVICES

City shall provide funding to the Manhattan Beach Chamber of Commerce, on behalf of the North Manhattan Beach Business Improvement District (“BID”) for the period of July 2, 2024, through July 1, 2025, for management and executive coordination services. The portfolio of services to be provided by the Chamber of Commerce to the City is set forth below.

General Responsibilities and Services

- Provide personnel to serve as Executive Coordinator(s) (“EC”)
- Supervision and Management of the EC’s Responsibilities
- Manage BID activities
- Provide Social-Media/Website Coordination and Management Services
- Execute 2024 Activity Plan Items as directed by the BID Advisory Board

Executive Coordinator Responsibilities

- Develop positive relationships and liaise with BID board members, committees, government agencies, city council, community organizations, business owners, and BID vendors
- Provide guidance regarding adherence to the bylaws and policies
- Have financial knowledge in order to provide cost control and accurate budget forecasting
- Meet with Chairperson and/or Vice-Chairperson regularly to update on the progress of projects
- Maintain and coordinate master Calendar of Events
- Oversee and coordinate direction of committees and task forces
- Be proactive in creating systems to streamline the BID
- Be proactive in creating inclusion for all North Manhattan Beach businesses
- Coordinate meeting agendas and minutes to assure timely completion of annual goals and objectives
- Attend monthly BID meetings
- Complete projects on the BID annual activity plan
- Work with vendors and City of Manhattan Beach staff on projects and programs
- Act as a resource and ombudsman for the BID to the City
- Coordinate planning and execution of special events, programs and other activities
- Represent the interests of the BID with local city & community organizations
- Maintain communication with Chamber of Commerce and the Downtown Business and Professional Association
- Attend City, Chamber of Commerce, School District and community meetings as needed
- Promote North MB as a shopping, dining and business location using social media

- Communicate with North MB business owners using email or other communication and face to face visits to ensure that business licenses are current
- Adhere and ensure compliance with the approved BID bylaws.

BID Management Services

- Prepare agendas and minutes for the BID Advisory Board monthly meetings.
- The EC must meet with the BID Chair monthly to update the progress.
- EC must attend all monthly BID meetings and take minutes at the meeting. EC must attend any City Council or Ad Hoc Committee meetings as necessitated by the BID Chair.
- Take steps necessary to establish a non-profit association (similar to Manhattan Beach Downtown Business Professional Association) in accordance with BID Advisory Board direction.

Social Media/Website Services

- Develop marketing campaigns and create social media content, including high quality and creative videos and photographs that align with the North Manhattan Beach brand.
- Repost social media content of North Manhattan Beach businesses and the business district as appropriate.
- Collaborate social media posts with City, Downtown Manhattan Beach and Chamber of Commerce as appropriate.
- Update website as requested by BID Advisory Board Chairperson.
- Assess social media analytics and update strategy based on engagement levels.

EXHIBIT B APPROVED FEE SCHEDULE

For services satisfactorily provided, City shall pay Consultant in accordance with the following fee schedule.

1. **Executive Coordinator (EC) Services** – Total Compensation not to exceed \$36,000.00 per year. EC will provide approximately 90-110 Hours per month and be paid at \$30.00 per hour. Hours may be flexed depending on direction of the BID Advisory Board or events that require additional hours.
2. **North MB Management Services** – Total Compensation not to exceed \$15,000.00 per year, \$1,250.00 monthly.
3. **Social Media and Website Coordination Services** – Total Compensation not to exceed \$6,300 per year, \$525 monthly.

Consultant's monthly fees for all services shall not exceed \$4,775 without the City's prior approval.

All reimbursable costs are in accordance with the approved budget and activity plan however, cannot exceed \$10,000 for expenses over the duration of contract. All reimbursable costs must be authorized by the BID Advisory Board at a duly noticed and agenda meeting.

Invoices are submitted to the Assistant to the City Manager or designee on a monthly basis.

In no event shall Consultant be paid more than the total sum of \$67,300 over the entire term of the Agreement.

**EXHIBIT C
APPROVED 2024 ACTIVITY PLAN**

**NORTH MANHATTAN BEACH
BUSINESS IMPROVEMENT DISTRICT
(NORTH MBBID)**



2024 Annual Report, Budget and Activity Plan

<u>Location:</u>	The general area surrounding the Rosecrans Avenue and Highland Avenue intersection (See Attachment B). Specific boundaries are: • (North to South) the extent of the Highland Avenue Right-Of-Way from the northernmost City line at 45th Street to 32nd Place on the south. • (East to West) the extent of Rosecrans Avenue Right-Of-Way from Bell Avenue to the west side of Highland Avenue.
<u>Stakeholders:</u>	North Manhattan Beach Businesses – All business license holders in the North Manhattan Beach area, with the exception of home-based businesses, residential rental units, commercial property owners and residents.
<u>Improvements and Activities:</u>	A. Capital Improvement Project Design B. Marketing, Social Media & Advertising C. Project Implementation D. Professional Communications
<u>Method of Financing:</u>	Benefit-based assessments on City Business License Tax.
<u>Assessment:</u>	An 80% surcharge on the City Business License Tax not to exceed \$500.00.
<u>Collection:</u>	The fees are collected in March/April of each year with the Business License Tax. The funds shall be retained, including interest earned, in a designated fund and disbursed through the City. Approximately \$25,000 per year.
<u>Governance:</u>	A City Council-ratified Advisory Board serves to make recommendations to the City Council for the North Manhattan Business Improvement District (BID) on such topics as budget and assessments. The Advisory Board consists of up to seven (7) members composed of area business owners or resident ex-officio members. There must be a quorum to conduct a meeting and adherence to the Brown Act. The City Council ratifies the board members annually once the membership has held its election (typically in December). It is anticipated that the Advisory Board will meet at least once per month, on the 2nd

Wednesday at 6:00 PM. In delivering BID improvements and activities, the Advisory Board will strive to meet the following objectives:

- Maximize coordination with the City and other civic organizations to leverage resources.
- Identify streetscape, landscape and other improvements, and create an identity plan for North Manhattan Beach.
- Provide accountability to business owners who pay assessments.

Maintaining the District:

The City Council maintains the district by adopting a Resolution of Intention. A Public Hearing shall be held around 30 days after the adoption of the Resolution of Intention. If there is insufficient protest from owners representing over 50% of the assessments to be paid, the BID assessment will continue.

Benefits of the District:

The BID allows for streetscape, signage and landscape improvements, and the creation of a North Manhattan Beach identity through integrated marketing efforts such as promotions, branding and advertising.

The BID shall provide key promotional and organizational support through a variety of functions that directly benefit its ratepayers as well as the City; such as:

- Enhancing the appearance of North Manhattan Beach through signage, landscaping, improvements etc.
- Establishing and implementing a North Manhattan vision and image that is in line with the rest of Manhattan Beach and reflects the good health and economic vitality of the entire City; making the City an attractive venue for business.

ACTIVITY PLAN

The BID activity plan for 2024 includes the following items:

- A. Continue using www.northmanhattanbeach.org and www.visitnorthmanhattanbeach.com for visitor and community outreach and marketing. Maintain and enhance the digital presence of the North Manhattan Beach district through public engagement (surveys, individual outreach), website, social media (Instagram @visitnorthmanhattanbeach, @northmanhattanbeach, Facebook @northmanhattanbeachca, @visitnorthmanhattanbeach, twitter @VisitNorthMB) and e-notifications.
- B. Trademark and begin to utilize approved North Manhattan Beach Logo.
- C. Explore the feasibility of becoming a professional non-profit association similar to the Downtown Manhattan Beach Business Professional Association (DBPA) by utilizing the Chamber of Commerce's non-profit status.
- D. Continue to develop North Manhattan Beach branding using the new approved logo throughout the district (Pole flags with approval and permits from the City, refurbish the North Manhattan Beach welcome monument on Rosecrans utilizing the new color scheme and logo).
- E. Solicit Bids for Public Art and work with the City Public Arts Commission for installation and placement, specifically the Surfboard Sculpture.
- F. Continue to develop event and partnership opportunities to draw more foot traffic and awareness to North Manhattan Beach.
- G. Continue to establish participation and support for the NMB BID among NMB businesses.
- H. Continue to grow the annual NMB BID Holiday Stroll and establish additional collaborative events.
- I. Promote transportation alternatives that mitigates traffic and greater parking opportunities while increasing foot traffic to the NMB BID Businesses.
- J. Update the community on the status of the crosswalks and other street markings and street repairs north of Rosecrans after the construction done in this area. Collaborate with the City on the replacement of the crosswalks and intersection design at the intersection of Rosecrans & Highland also affected by the construction in the area. Continue to work on

the functionality of the lighting of the crosswalks south of Rosecrans.

- K. Continue the Highland Avenue improvement discussions with Community Development, Traffic Engineering and Public Works to find solutions to improve the safety of Highland Ave. especially north of Rosecrans where there are not enough crosswalks, they need to more visual indicators and implement solutions to reduce the excessive speed in the area.
- L. Continue discussions to find additional parking solutions including contacting Chevron to discuss the parking lot adjacent to the Highrose Project. Continue collaborating with the Downtown Business District and the Manhattan Beach Chamber of Commerce to best serve our NMB BID Businesses.

ATTACHMENT A-1

BUDGET

FY 2022-2023 Actuals	
<i>Beginning Reserve Balance July 1, 2022</i>	\$ 390,866.92
<i>Revenues</i>	23,156.67
<i>Interest</i>	8,203.43
<i>Expenditures</i>	-48,535.50
<i>Ending Reserve Balance as of June 30, 2023</i>	\$ 373,691.52
FY 2023-2024 Budgeted	
<i>Beginning Reserve Balance July 1, 2023</i>	\$ 373,691.52
<i>Revenues (1)</i>	25,000.00
<i>Interest</i>	10,000.00
<i>Expenditures</i>	-96,476.30
<i>Ending Reserve Balance as of June 30, 2024 (2)</i>	\$ 312,215.22

(1) Budgeted Revenues are projected based on business license tax assessments not to exceed \$500 annually per business.

(2) The Projected Ending Reserve Balance is based on actual reserves at the beginning of the fiscal year adjusted for projected revenues with no estimated expenditures

ATTACHMENT A-2
BUDGET



NORTH MB BID BUDGET

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NOTES LEGEND

* Assumes Assessments and Interest revenue remain constant
** Historically, both BID's in the City contribute to additional service fees associated with street sweeping and/or pressure washing. Staff is conducting internal assessment of these fees.
*** Projection if North MB BID continues to approve Chamber services
Denotes negative amount
Denotes positive amount

ATTACHMENT B

AREA MAP

