

FUNDING AGREEMENT BY AND BETWEEN THE
CITY OF MANHATTAN BEACH AND THE
MANHATTAN BEACH CHAMBER OF COMMERCE
FOR ECONOMIC AND BUSINESS DEVELOPMENT
SERVICES FOR FISCAL YEAR 2012-2013

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").

RECITALS

A. The 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, the Chamber has special knowledge and experience to promote economic and business development, including business attraction and retention programs, for the benefit of City.

C. The City and the 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 the Chamber to conduct business attraction and retention services for Fiscal Year 2012-2013.

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

Section 1. Fund Authorization/Use of Funds.

(a) For the Fiscal Year 2012-2013 (July 1, 2012 – June 30, 2013) ("Period"), City shall provide the Chamber from the City's General Fund for

expenditures not to exceed \$ 75,000 for economic and business development programs for the benefit of City as detailed in Exhibit A ("Scope of Services"), attached hereto and incorporated herein. If there are any funds remaining from this allocation to the Chamber, such funds shall be reallocated to the Chamber for the remainder of fiscal year 2012-2013 at the discretion of City.

(b) Chamber shall use the funds from the City during the Period, as specified in Exhibit A, or as otherwise mutually agreed by the parties hereto.

(c) In connection with Chamber's programs and activities, Chamber may, on behalf of and at the sole discretion of City, use the funds to produce, purchase, install and de-install light pole banners or other displays in the public-right-of-way. All such light pole banners shall comply with the City's adopted Banner Policy, copies of which are available from the City, and shall be approved in writing in advance by City prior to installation. City shall have sole discretion over the design, placement, and duration of display and shall retain ownership of all banners funded under this Agreement.

Section 2. Payments. Chamber shall submit written requests for advanced payments for expenditures based on the Chamber's adopted budgets under the Scope of Services and in the time-frame and amount set forth in Exhibit B. City shall provide payment to the Chamber upon approval of the request by the City's Finance Director. City shall use its best efforts to make payment to Chamber within 15-days of receipt of request. Any monies not expended by Chamber in Fiscal Year 2012-2013 shall be returned to the City, unless reallocated to the Chamber in accordance with Section 1(a) hereinabove.

Section 3. Reports.

(a) Chamber shall present quarterly updates to the City Council at a regularly scheduled city council meeting on the status of its efforts listed in the Scope of Services attached as Exhibit A.

(b) Prior to the conclusion of the Period, the 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 Chamber's work plan and budget as set forth in Exhibit A.

(c) Upon the request of the City, Chamber shall provide City with an annual report prepared by a Certified Public Accountant itemizing how the Chamber expended the City's payment specified in Section 1A. Such report shall provide separately detailed accounts for each program funded by City. This provision shall survive the termination of this Agreement.

(d) 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"). This 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 (3) years after the termination of this Agreement. This provision shall survive termination of this Agreement.

(e) 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.

(f) 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 the 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 the 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. The City and Chamber agree that the Work Product 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 Product 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 payments to Chamber and that Chamber shall have no such rights.

(d) From time to time the 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 the Chamber negotiates to purchase not only the photograph or image but also the copyright or other intellectual property rights, the provisions of this Section 4 will apply. As to those third party photographs or images whereby the 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 the 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"). The Chamber reserves all rights, title and interest in the Chamber Property, and hereby grants the 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 Product.

(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 independent contractors and Chamber, their 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. City shall approve all subcontractors used in the provision of services under this Agreement within five (5) business days of Chamber's submission and prior to their engagement by Chamber. Such approval shall not be unreasonably withheld by City. Chamber, however, shall be solely responsible for the work performed by those third party contractors, including timely performance and payment

Section 8. Term. This Agreement shall remain in full force and effect from July 1, 2012 until June 30, 2013, unless terminated earlier as provided in Section 9 of this Agreement.

Section 9. Termination of Agreement. City may terminate this Agreement at any time, with or without cause, upon thirty days (30) written notice to Chamber. In the event of such termination, City shall pay Chamber for all costs and obligations reasonably incurred by Chamber in performing its services under this Agreement prior to the date of termination and such payment shall be in full satisfaction of City's obligations hereunder. City shall not be obligated to pay additional funds after issuance or receipt of such notice.

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 seventy-two (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. Insurance.

(a) Chamber shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance with minimum limits of Two Million Dollars (\$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 Chamber.

(b) Chamber shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

(c) Chamber agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.

(d) Chamber shall require each of its sub-consultants or sub-contractors to maintain insurance coverage, which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.

(e) 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 B+;VII in the latest edition of Best's Insurance Guide.

(f) If Chamber fails to keep the aforesaid insurance in full force and effect, City shall notify Chamber that it is in breach of the Agreement and Chamber has three (3) days to cure such breach. If such breach is not cured by Chamber as required in this paragraph, City may terminate the Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Chamber's expense, the premium thereon.

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

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

(i) Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

Section 12. Indemnification. Chamber shall defend, indemnify, and hold the City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of city officials (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Chamber, its employees, or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of the City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Chamber shall defend Indemnitees, at Chamber's own

cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Chamber shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Chamber's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Chamber, the City, its directors, officials, officers, employees, agents or volunteers. All duties of Chamber under this Section shall survive termination of this Agreement.

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. The 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the ____ day of _____ 2012, at Manhattan Beach, California.

CITY OF MANHATTAN BEACH,
a municipal corporation

DAVID N. CARMANY
City Manager


ATTEST:

LIZA TAMURA
City Clerk

MANHATTAN BEACH
CHAMBER OF COMMERCE
AND CIVIC ASSOCIATION


James O'Callaghan


President / CEO


DEANN CHASE
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 July 1, 2012 through June 30, 2013 for business attraction and retention services in the amount of \$75,000. The portfolio of services to be provided by the Chamber to the City is set forth below.

The Manhattan Beach Chamber of Commerce will build a strong local economy by promoting the community, providing valuable business connections and representing business located in the City of Manhattan Beach.

Name of Task

Description:	Create partnerships with the local business community to facilitate and enhance economic development. Work with the city and local businesses to increase business attraction and retention.
Deliverables:	<ul style="list-style-type: none">• Identify business development opportunities in the Sepulveda corridor, Downtown, North Manhattan Beach, Rosecrans corridor and Manhattan Village Mall by conducting town hall meetings.• Establish community programming focused on creating economic benefits for local business. (Examples: Art Walk, Dine Week, and Shop Week.)• Prepare leakage study and develop recommendations for properly aligning business needs with current and projected consumer demands.• Host Economic Forum with business panels.
Timeline:	<ul style="list-style-type: none">• Schedule Quarterly Meetings starting in September 2012.• Complete Leakage Study and deliver findings by September• Develop strategic plan and action plan by October 1, 2012.• Work with local business community to establish first event beginning Fall 2012, with another one to follow Winter 2013.• Conduct Economic Forum for the last week of September 2012 at the Marriott hotel.
Est. Cost:	\$14,000
Performance Measurement:	<ul style="list-style-type: none">•

II.

Description:	Develop Manhattan Beach Visitors Bureau to promote the city as the premier destination in Southern California.
Deliverables:	<ul style="list-style-type: none"> • Rebuild the Manhattan Beach Chamber of Commerce website, www.ManhattanBeachChamber.com, to provide actionable information for visitors and businesses. The site will serve as a means of controlling flow of communication and centralizing existing services, such as a master calendar of events and one stop information guide. • Develop Manhattan Beach destination guide and distribute to LAX, regional hotels, and California Welcome Center network. • Develop and distribute Manhattan Beach promotional material to include map, destination guide, and doing business in Manhattan Beach brochure. • Explore legal incorporation of Visitors Bureau.
Timeline:	<ul style="list-style-type: none"> • Initial design of the chamber website will begin Fall 2012, with launch date of January 2013. • Design Destination Guide in Fall 2012, to be completed in February 2013. • Additional promotional material will be designed after the first of the year to be completed by the end of April 2013.
Est. Cost:	\$26,000

III

Description:	Promote and implement economic development of Manhattan Beach by increasing visits from business travelers and visitors.
Deliverables:	<ul style="list-style-type: none"> • Increase transient occupancy tax revenues by attracting meeting and hotel business. • Attend 2 to 3 industry trade shows: ex. ASAE, Pow Wow, MPI, Small Business Expo. Produce trade show booth to be used by chamber, city, and partner hotels along with collateral attracting meetings business. • Host local concierge event to highlight local businesses and create partnerships with regional hotels. • Develop welcome program from December through February to be launched in March 2013. Program to include call to action for visitors with regards to where to shop and dine, as well as any travel needs they may have. Consists of signs for local merchants as well as a central listing of any discounts being offered to

	meeting attendees.
Timeline:	<ul style="list-style-type: none"> • Trade show registrations will be scheduled during the months of August-November 2012, with the events following in February, May, and August 2013. • Promotional material will be printed and developed over the months of August and September 2012. • The trade show booth initial design and production work will commence in September, and completed by January 2013. • First concierge event will be held in September 2012.
Est. Cost:	\$35,000
Performance Measurement:	•

Exhibit B

PAYMENT SCHEDULE

Unless otherwise agreed to by the City Manager, invoices and payments shall be governed by the schedule below.

Funding Period (July 1, 2012 – June 30, 2013)				
	Chamber Remits Invoice to City	City Issues Payment to Chamber	Period Covered	Payment Amount
First Payment Installment	9/2012	10/2012		\$40,000
Second Payment Installment	11/2012	12/2012		\$20,000
Third Payment Installment	03/2013	4/2013		\$15,000
TOTAL				\$75,000