

**MEMORANDUM OF UNDERSTANDING**  
**Between the City of Manhattan Beach**  
**and**  
**LoveMB Foundation**

This MEMORANDUM OF UNDERSTANDING (“**MOU**”) is between the City of Manhattan Beach, a California municipality (“**City**”) and LoveMB Foundation, a California non-profit public benefit corporation (“**LMBF**”) with its principal place of business at c/o JJ Turkmany, 920 Manhattan Beach Blvd. #2, Manhattan Beach, CA 90266. Together, the City and the LMBF are referred to as the “Parties” and individually as a “Party” (“**Party**”).

**RECITALS**

- A. Manhattan Beach is a 3.9 square mile city that has many community assets including beaches, parks, open spaces, events, and programs to support the enjoyment, recreation and leisure activities of the community.
- B. LMBF is a California nonprofit public benefit corporation formed under Section 501(c)(3) of the Internal Revenue Code (“IRC”) which qualifies for the charitable contribution deduction under IRC Section 170(b)(1)(A).
- C. The purpose of LMBF is to collaborate with the community of Manhattan Beach and the City to identify, evaluate, and fundraise for programs, facilities, and projects that enhance the quality of life of the residents and community of the City of Manhattan Beach.
- D. The City and LMBF agree that LMBF will be the principal fundraiser/ing vehicle for the City and that this MOU will formalize the framework for cooperation between the City and LMBF, including their respective roles and responsibilities.
- E. LMBF solicits and receives donations (“**Donations**”) by way of gifts, grants, or bequests of real or personal property from public or private sources, to carry out its purposes.

F. To facilitate LMBF's fundraising efforts and website communications, the City will authorize the use of the name of Manhattan Beach, the Manhattan Beach logo and ability to refer to and link to the Manhattan Beach official website, unless deemed inappropriate by the City.

G. The City and LMBF share an interest in supporting continued improvement, restoration, renovation and programming in Manhattan Beach by facilitating the identification, funding, and timely completion of City or community-generated projects.

NOW, THEREFORE, the Parties have reached the following understanding:

## **ARTICLE I**

### **MOU Purpose**

The purpose of this MOU is to formally establish LMBF as the principal fundraiser/ing vehicle for improvements or enhancements to Manhattan Beach facilities, parks, open spaces, events, and programs and to set forth the respective roles and responsibilities of the City and LMBF.

## **ARTICLE II**

### **Relationship of Parties.**

2.1 Legal Entity. At all times, LMBF is and shall remain a legal entity separate from the City. LMBF shall retain sole authority over its own operations and will make its own decisions regarding its participation in any proposed program, facility or project, subject to all applicable federal and state laws.

2.2 Authorizations. The City will designate a liaison ("**Staff Liaison**") to work directly with LMBF to develop a process and identify programs, facilities and projects targeted for fundraising efforts. LMBF will be authorized to use the name of Manhattan Beach, the Manhattan Beach logo and to refer to and link to the Manhattan Beach official website in conjunction with the LMBF website to enable the solicitation of Donations from public or private sources for designated programs, facilities and projects, unless otherwise deemed inappropriate by the City.

2.3 City Authority. The City shall retain sole authority over program, facility or project approval specific to the City. LMBF will work with the Staff Liaison to enable the City to make informed

decisions that would facilitate approval of a program, facility or project. It is understood that all programs, facilities and projects (notwithstanding which entity initiated the prospective program, facility or project) will be evaluated for consistency with the City's Space Plan, the 5 year CIP Plan, the Parks Master Plan, the MBUSD Master Plan, budget priorities, timing, and strategic objectives of the City, and any other legal requirements applicable to the City.

2.4 Fundraising Use. This MOU is for fundraising purposes only. Nothing in this MOU is intended to nor shall it be deemed to transfer ownership of any Manhattan Beach facilities and programs for which funds raised by LMBF may be expended. The City also operates programs, facilities and projects on school district land for which LMBF may also raise and expend funds. Nothing in this Agreement modifies, changes or restricts any programs, facilities or projects operated between City and the Manhattan Beach Unified School District or other entities, or any agreement or MOU between the City and the District or any other entities.

2.5 Ownership. The City will own, operate, manage, and maintain any specific program, facility or project throughout its useful life.

2.6 Non-Exclusive. LMBF acknowledges that this MOU is non-exclusive, and that the City may enter into other memoranda of understanding or agreements with other public, private or non-profit entities for fundraising activities encompassed by or similar to the fundraising activities that are within the scope of this MOU, or may have its own employees perform fundraising activities encompassed by or similar to those contemplated by this MOU to the extent authorized by law.

## **ARTICLE III**

### **Reporting**

LMBF shall make reports available to the City and the public annually, which shall include a financial accounting of all donations and expenditures.

## **ARTICLE IV**

### **Term, Renewal and Termination**

This MOU shall have an initial term of three (3) years and shall commence on the date of execution by both Parties. This MOU shall be automatically renewed for additional three-year terms, subject to any amendment, modification or termination mutually agreed by the Parties, unless either Party gives the other Party notice of non-renewal not less than ninety (90) days prior to the end of a three-year term.

## **ARTICLE V**

### **Legal Relations**

5.1 No Third Party Beneficiaries. This MOU is solely for the benefit of the Parties and creates no right, duty, privilege, or cause of action in any other person or entity.

5.2 Independent Contractor. This MOU does not create or establish, and shall not be construed as creating or establishing, any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the Parties and neither Party shall have, or represent to any other person or entity that it has, the authority to contract for or bind the other party in any manner whatsoever. Each Party shall be acting as an independent contractor in carrying out its obligations under this MOU.

## **ARTICLE VI**

### **Counterparts**

This MOU may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same instrument.

## **ARTICLE VII**

### **OPERATING AND APPROVAL PROCEDURES**

7.1 Objective. The objective of this MOU between the City of Manhattan Beach and LMBF is to identify and collaborate on programs, facilities and projects that both the City and LMBF have approved. To achieve that objective, the City and LMBF agree that the following general steps outlined in this Article VII will be followed to ensure adequate evaluation, approval, and implementation of any program, facility or project proposed.

## 7.2 Project Proposal Presentation.

7.2.1 The parties agree that a program, facility or project idea may arise from any community source including City Council members, City staff, LMBF, community members, business owners or other stakeholder groups (“**Project Proposal**”).

7.2.2 Any program, facility or project must be presented to the City or LMBF in writing, or may be submitted in person followed by a written submittal, to be considered a formal and valid Project Proposal. The Project Proposal must include: (a) a description of the proposed program, facility or project; (b) the proposed location for the program, facility or project; (c) the expected benefit/value of the program, facility or project for the residents and the community of Manhattan Beach; (d) estimated cost, if available; and (e) estimated timeline, if possible.

7.2.3 If the City receives a Project Proposal first, and the City deems that it is a candidate to be submitted for consideration by the City and LMBF, the City will inform LMBF within thirty (30) days of receipt in order to ensure that LMBF can consider the Project Proposal as specified in Section 7.4. Notification may be given by electronic mail addressed to the LMBF representative, or by any of the methods set forth in Section 8.1.

7.2.4 If LMBF receives a Project Proposal first, and LMBF deems that it is a candidate to be submitted for consideration by the City and LMBF, LMBF will inform the City within thirty (30) days of receipt in order to ensure that City can consider the Project Proposal as specified in Section 7.4. Notification may be given by electronic mail addressed to the City representative, or by any of the methods set forth in Section 8.1.

## 7.3 Project Proposal Evaluation Process.

7.3.1 The LMBF Board will evaluate the Project Proposal by taking into consideration its public benefits, potential costs, site, timeframe, and fundraising appeal. If the Project Proposal receives initial support from LMBF, LMBF will proceed to Subsection 7.3.2 below. If the Project Proposal does not receive support from LMBF, LMBF will provide a written notice to the original submitting entity stating the outcome.

7.3.2 An LMBF representative will present the Project Proposal to the City’s Parks and Recreation Director and Public Works Director for high level initial staff-level feedback, including an

initial determination of the Project Proposal's (i) feasibility; (ii) estimated costs; (iii) expected manpower needs; (iv) bidding implementation process; (v) expected timeline; (vi) likely maintenance costs; and (vii) community vision/interest, feasibility and harmony with existing/adopted plans. This feedback will be used by LMBF to develop its Project Proposal as indicated in Section 7.4.

#### 7.4 Project Proposal Approval Process.

7.4.1 Following the steps for the Project Proposal evaluation process in section 7.3, the Project Proposal will be presented on a timely basis by LMBF as provided in section 7.4, together with the Project Proposal's originator (if available), to the City Council's delegate to LMBF ("**City Council Delegate**").

7.4.2 If the Project Proposal receives a recommendation from the City Council Delegate, the City Council Delegate will introduce the Project Proposal as a Future Agenda Item at the next regular meeting of the City Council. If the Project Proposal receives support from a second member of the City Council, it will return at the following regular meeting of the City Council to determine if there is a third member of the City Council supportive of receiving a full presentation on the Project Proposal. If support is received from a third Councilmember, a full presentation will be scheduled for the City Council to discuss and consider the Project Proposal.

7.4.3 The Project Proposal will then be presented on a timely basis by City Staff and LMBF for formal conceptual consideration at a City Council Meeting.

7.4.4 Council will determine: (a) if it agrees in principle with the Project Proposal; (b) if referral to an applicable City commission is warranted to develop recommendations about the Project Proposal or obtain public input; (c) if it feels reasonably confident that the Project Proposal can be completed on a timely basis; (d) the amount of funding from the City budget that the City will contribute as part of the Project Proposal; and (e) the fundraising goal or percentage of the fundraising goal to be raised by LMBF to kick off the Project Proposal.

7.4.5 If the Project Proposal is approved by both LMBF and the City Council, then the project will become an Approved Project ("**Approved Project**").

7.4.6 If the Project Proposal is not approved by LMBF, the City Council Delegate and the City Council, then a designated LMBF representative will respond to the originator of the Project Proposal as to the outcome of the Project Proposal decision with specification as to the reason(s) why.

7.5 Approved Project Implementation Process.

7.5.1 LMBF and the City agree to be collaborative and mutually responsible for the marketing of an Approved Project and its fundraising efforts to City residents. This marketing and fundraising shall include, but not be limited to, all marketing and fundraising descriptive materials, project descriptions on websites, and participation in fundraising events hosted by LMBF. The objective of this collaboration is to ensure that information is disseminated on a timely basis to residents and the community, to provide timely opportunities for residents and community to participate financially in the Approved Project, and to provide updates of progress on and completion of a specific Approved Project.

7.5.2 The City and LMBF will agree on specific lines of communication with regard to any Approved Project including key leadership representatives from each Party, any ad hoc committees needed, and who will be the key persons from pivotal City departments and from LMBF.

7.5.3 The City will be responsible for the technical, administrative, supervisory, construction, regulatory, and liability implementation aspects of all Approved Projects. The City will also be responsible for the budget and the timely completion of all Approved Projects, subject to funding availability pursuant to this MOU and other funds that may be available or subsequently appropriated for the Approved Project. In the event that insufficient funds are raised to carry out a specific Approved Project, or a specific Approved Project is not completed for any reason, the City Council may, following consultation with and approval by LMBF, abandon and/or reallocate the funds to other Approved Projects.

7.5.4 LMBF will be responsible for the communication and fundraising goals it has made to the Approved Project.

7.5.5 For each Approved Project, LMBF will maintain the fundraised monies (per fundraising goal in 7.4.4) in its bank account and be responsible for accounting of those funds. Once the funding goal is achieved by both the City and LMBF, and the Approved Project is set to begin, LMBF will transfer funds to the City as provided within. Funds shall be transferred to the City in installments or as

a whole for any specific Approved Project, as directed by the City and agreed upon by LMBF. LMBF confirms that it will use any funds contributed for a specific Approved Project solely for that Approved Project's Purpose and as otherwise authorized by law.

7.5.6 The City confirms that it will keep an accounting of any funds transferred by LMBF to it for a specific Approved Project and will use such funds solely for that Approved Project's Purpose, or for any other Approved Project as determined by the City Council and LMBF.

## **ARTICLE VIII**

### **Miscellaneous**

8.1 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 LMBF's and the City's regular business hours, or (c) three (3) 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 or as set forth in Article IV:

If to City:

Public Works Director  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266

If to LMBF:

LoveMB Foundation  
c/o JJ Turkmany  
920 Manhattan Beach Blvd. #2  
Manhattan Beach, CA 90266

With a courtesy copy to:

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

8.2 Conflicts of Interest. LMBF 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 this MOU. LMBF and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to LMBF's activities and services under this MOU, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090.



During the term of this MOU, LMBF may provide similar fundraising activities for other persons or entities, but LMBF and its officers, employees, associates and subcontractors shall not, without the City Manager's prior written approval, provide fundraising or perform any other programs, services or activities for another person or entity for whom LMBF is not currently performing such activities that would require LMBF or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

8.3 Prohibition on Assignment or Delegation. LMBF shall not assign any of its rights or delegate any of its duties under this MOU, either in whole or in part, without the City's prior written consent. The City's consent to an assignment of rights under this MOU shall not release LMBF from any of its obligations or alter any of its primary obligations to be performed under this MOU. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle the 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 MOU 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.

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

IN WITNESS THEREOF, the Parties hereto, through their duly authorized representatives, have executed this MOU effective as of the last date written below.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

City:

City of Manhattan Beach,  
a California municipal corporation

By: \_\_\_\_\_  
Name: Talyn Mirzakhanian  
Title: City Manager  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: Liza Tamura  
Title: City Clerk  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Quinn M. Barrow  
Title: City Attorney  
Date: \_\_\_\_\_

APPROVED AS TO FISCAL IMPACT:

By: \_\_\_\_\_  
Name: Libby Bretthauer  
Title: Acting Finance Director  
Date: \_\_\_\_\_

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Name: Erick Lee  
Title: Public Works Director  
Date: \_\_\_\_\_

Consultant:

LoveMB Foundation, a California  
nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Karen Komatinsky  
Title: Chairman of the Board  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: J.J. Turkmany  
Title: Treasurer  
Date: \_\_\_\_\_