

SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND ALL CITY MANAGEMENT SERVICES, INC. FOR CROSSING GUARD SERVICES

THIS Second Amendment is to that certain Agreement entered into on the 7th day of August, 2012 (the "Agreement"), by the CITY OF MANHATTAN BEACH, a municipal corporation, ("City"), and ALL CITY MANAGEMENT SERVICES, INC., a California corporation ("Contractor") is entered into as of September __, 2016.

RECITALS

The following recitals are a substantive part of this Agreement:

1. On August 7, 2012, City and Contractor entered into the Agreement, whereby City engaged Contractor to provide crossing guard services at designated locations within the City of Manhattan Beach.
2. The Agreement provided for an initial term of three years, with the option to extend for two additional one-year terms upon the mutual agreement of the parties. The first extension was exercised by that certain First Amendment to Agreement dated August 24, 2015.
3. City and Contractor desire to amend the Agreement to exercise the remaining option to extend the term of the Agreement, and to increase the hourly rates.

AGREEMENT

NOW, THEREFORE, the parties hereby amend the Agreement as follows:

Section 1. Section 1 entitled "Term of Agreement" is hereby amended to read as follows:

"This Agreement shall terminate on August 7, 2017, unless earlier terminated pursuant to Section 1.1 herein."

Section 2. The parties agree that the hourly rates specified in the first paragraph of Section 3.1 will be adjusted to \$16.78 per hour for Crossing Guards, reflective of federal and state minimum wage increases and CPI adjustments. There are no longer original Manhattan Beach Crossing Guards in service (persons in service prior to 2007). There shall be no further adjustment of hourly rates during the term of the agreement. As full compensation for Services satisfactorily rendered, City shall pay Contractor at the hourly rates set forth. In no event shall Contractor be paid more than \$242,500 (the "Maximum Compensation"). The City Manager shall have authority to increase the Maximum Compensation by up to 5%; any further increase requires City Council approval.

Section 3. Except as specifically amended by this First Amendment, all terms and conditions set forth in the Agreement shall remain in full force and effect.

CONTRACTOR

By: _____

Name / Title

By: _____

Name / Title

CITY OF MANHATTAN BEACH

Mark Danaj
City Manager

ATTEST:

Liza Tamura
City Clerk

APPROVED AS TO FORM:

Quinn M. Barrow
City Attorney

APPROVED AS TO CONTENT:

Bruce Moe
Finance Director

AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND ALL CITY MANAGEMENT SERVICES, INC. FOR CROSSING GUARD SERVICES

THIS AGREEMENT is made this 7th day of August, 2012, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("City"), and ALL CITY MANAGEMENT SERVICES, INC., a California corporation ("Contractor").

RECITALS

The following recitals are a substantive part of this Agreement:

1. City desires to engage Contractor to provide crossing guard services at designated locations within the City of Manhattan Beach; and
2. Contractor is qualified by virtue of skills, experience, background, training, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall terminate on August 7, 2015, unless earlier terminated pursuant to Section 1.1 herein. This Agreement may be renewed by the parties in a writing signed by both parties for two additional one-year terms.
 - 1.1 **Termination.** City shall have the right to terminate this Agreement, without cause, by giving Contractor thirty (30) days' written notice. Contractor shall have the right to terminate this Agreement, without cause by giving City sixty (60) days' written notice.
2. **Services to be Provided.** Contractor shall perform the Scope of Work described in Exhibit A in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.
3. **Compensation.** Contractor shall be compensated as follows:
 - 3.1 **Amount.** Compensation under this Agreement shall be paid for the actual number of hours of crossing guard services provided by Contractor at the hourly rate of \$14.19 for Crossing Guards and \$16.89 for original Manhattan Beach Crossing Guards (persons in service prior to 2007) in a total amount not to exceed \$222,500 per year for each of the first three years. Upon written notification to Contractor, City may add to, delete from, or revise the work schedule locations at any time. Crossing Guard services provided at any additional intersections shall be compensated at the hourly rate of \$14.19.

No billing rate changes shall be made during the term of this Agreement without prior written approval of the City. In the event that this Agreement is extended beyond the initial three-year term, the billing rates may be adjusted by an amount not to exceed the Consumer Price Index (CPI) for the prior 12 month period for the Los Angeles County area, with a cap of three percent. Prices shall then remain firm for the following 12 month period. Contractor shall notify the City of any such increase in writing 60 days prior to the expiration of the three-year term of this Agreement. All price increases must be justified with evidence of the increased costs borne by the Contractor.

- 3.2 **Payment.** For work under this Agreement, payment shall be made per bi-weekly invoice. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. For extra work not a part of this Agreement, written authorization by City will be required.
- 3.3 **Expenses.** Contractor shall not be entitled to any additional compensation for expenses. Any expenses incurred by Contractor that are not expressly authorized by this Agreement will not be reimbursed by City.

4. **Professional Standards.** Contractor shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. **Time of Performance.** Contractor shall complete all services required hereunder as and when directed by City. However, City in its sole discretion, may extend the time for performance of any service.

6. **Personnel.** Contractor represents that it has, or shall secure at its own expense, all personnel required to perform Contractor's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work. Personnel shall be direct employees of the Contractor, fully trained, a minimum of 21 years of age, and capable of performing assigned duties. Contractor's personnel shall not have been convicted of any crimes other than minor traffic violations. All Crossing Guard personnel assigned to the City of Manhattan Beach must receive training on pedestrian and traffic safety. Crossing Guards assigned to work under this contract must have at least one year of experience in similar work, be a person of mature judgment, and be mentally alert and capable of exercising good judgment, implementing instructions, and assimilating necessary specialized training. In the event Contractor must use substitute personnel, they shall be equal in ability, skill, and knowledge to the employees they are replacing. Substitute personnel will be billed to the City at the same base Crossing Guard rate as regular employees.

7. **Insurance Requirements.**

- 7.1 **Commencement of Work.** Contractor shall not commence work under this Agreement until it has obtained City approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, Contractor must have and maintain in place, all of the insurance coverages required in this Section 7. Contractor's insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section 7 and Contractor shall be responsible to obtain evidence of insurance from each subcontractor and provide it to City before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by City.

- 7.2 **Coverages, Limits and Policy Requirements.** Contractor shall maintain the types of coverages and limits indicated below:

- (1) **COMMERCIAL GENERAL LIABILITY INSURANCE** - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting City. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.
- (2) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the City. The limit for bodily injury and property damage liability shall be

no less than one million dollars (\$1,000,000) per accident. City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

- (3) **WORKERS' COMPENSATION INSURANCE** - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of City.

- 7.3 **Additional Requirements.** The procuring of such required policies of insurance shall not be construed to limit Contract's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against City for payment of premiums or other amounts with respect thereto. City shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable insurance policies with City incorporating such changes within sixty (60) days of receipt of such notice, Contractor shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by City. Any deductible exceeding an amount acceptable to City shall be subject to the following changes:

- (1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to City and its officials, employees and agents (with additional premium, if any, to be paid by Contractor); or
- (2) Contractor shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

- 7.4 **Verification of Compliance.** Contractor shall furnish City with original endorsements effecting coverage required by this Agreement. The

endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, Contractor shall deliver to City a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to City.

8. **Non-Liability of Officials and Employees of the City.** No official or employee of City shall be personally liable for any default or liability under this Agreement.

9. **Non-Discrimination.** Contractor covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** The parties agree, understand, and acknowledge that Contractor is not an employee of the City, but is solely an independent Contractor. Contractor expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Contractor shall not be in any way an employee of the City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her employees or subcontractors. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

11. **Compliance with Law.** Contractor shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

12. **Notices.** Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

a. To Contractor:

All City Management Services
ATTN: Baron Farwell
10440 Pioneer Blvd., Suite 5
Santa Fe Springs, CA 90670

b. To City:
Chief of Police

City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

(with a copy to):

City Attorney
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

13. **Contractor's Proposal.** This Agreement shall include Contractor's proposal, which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

14. **Licenses, Permits, and Fees.** Contractor shall obtain and maintain during the Agreement term all necessary permits, licenses, and certificates required by law for the provision of services under this Agreement, including a business license.

15. **Familiarity with Work and Locations.** By executing this Agreement, Contractor warrants that:

- (1) it has investigated the work to be performed;
- (2) it has investigated the site of the work and is aware of all conditions there; and
- (3) it understands the difficulties and restrictions of the work under this Agreement. Should Contractor discover any conditions materially differing from those inherent in the work or as represented by City, it shall immediately inform City and shall not proceed, except at Contractor's risk, until written instructions are received from City.

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

17. **Interests of Contractor.** Contractor 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 Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Contractor.

18. **Indemnification.** Contractor shall defend, indemnify, and hold harmless the City, its officials, and every officer, employee and agent of City (collectively "City") 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 Contractor, its officials, officers, employees or agents in connection with the performance of this Agreement, 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 City, Contractor shall defend City, at Contractor's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Contractor 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. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its directors, officials, officers, employees, agents or volunteers.

19. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced in relation to this Agreement shall be filed in the County of Los Angeles.

20. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

21. **Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

22. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding.

23. **Modification.** Any modification of this Agreement will be effective only if it is in writing signed by the parties.

24. **Attorneys' Fees.** In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

25. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

26. **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 THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

CONTRACTOR

By: 

Baron Foreman / President
Name / Title

By: 

Demetra Foreman / Secretary
Name / Title

CITY OF MANHATTAN BEACH



David N. Carmany
City Manager


Attest:



Liza Tamura
City Clerk

8-9-12

Approved as to Form:



Quinn M. Barrow
City Attorney

EXHIBIT A

SCOPE OF WORK

General Requirements

Contractor shall provide fully trained Crossing Guards at twenty-one (21) designated locations throughout the City of Manhattan Beach, Monday through Friday, excluding days when schools are not in session. The total hours for Crossing Guard services is expected to be approximately 15,250, with service decreasing or increasing contingent upon school schedules and City desires.

City shall determine the hours and locations when and where the Crossing Guards shall be furnished by the Contractor. City further has the authority to add to, delete from, or revise the work schedule/locations at any time.

Contractor shall manage Crossing Guard personnel to see that the Crossing Guard activities are taking place at the required places and times, and in accordance with all items of the Agreement. Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location.

Contractor shall provide personnel with proper training for the performance of Crossing Guards duties. In the performance of their duties, Contractor and its employees shall conduct themselves in accordance with the conditions of this Agreement and the laws and codes of the State of California, and shall maintain familiarity with laws and codes regarding general pedestrian safety and school crossing areas.

Uniforms and Equipment

Contractor shall furnish all uniforms and equipment for Crossing Guards assigned to work in the City of Manhattan Beach. Uniforms shall fit properly with no rips or tears, and must be clean and present a neat appearance. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. Apparel must be appropriate for the weather conditions. Contractor shall also provide all Crossing Guards with hand held Stop signs and any other safety equipment that may be necessary, including whistles and raingear. A reflective vest must be worn at all times by each Crossing Guard and must be readily visible, making the personnel easily recognized as Crossing Guards. Vests must comply with all applicable Federal, State, and City laws and regulations. Contractor shall be responsible for making sure uniforms are complete, clean, in good repair and worn by all contract employees while on duty.

Schedule of Services

All hours worked shall be worked by 21 Crossing Guards, working split shifts for no more than 5.5 hours per day, 5 days per week, Monday through Friday. Hours of work shall be assigned by the City. The schedule for the first shift may vary between 7:00 a.m. and 9:00 a.m., and the second shift may vary between 11:30 a.m. to 4:30 p.m.

Designated Locations

Subject to revision as the City's discretion, the current designated locations in the City of Manhattan Beach are as follows:

1. Intersection of Laurel Avenue and 18th Street
2. Intersection of Laurel Avenue and 15th Street
3. Intersection of 24th Street and Blanche Road
4. Intersection of 24th Place and Manor Drive
5. Intersection of 27th Street and Bell Avenue
6. Intersection of 26th Street and Highland Avenue
7. Intersection of 15th Street and Redondo Avenue
8. Intersection of Redondo Avenue and Manhattan Beach Blvd. (Northwest Corner)
9. Intersection of Redondo Avenue and Manhattan Beach Blvd. (Southwest Corner)
10. Intersection of Manhattan Beach Blvd. and Peck Avenue
11. Intersection of Meadows Avenue and 12th Street (Northeast Corner)
12. Intersection of Manhattan Beach Blvd. and Meadows Avenue
13. Intersection of Pacific Avenue and Valley Drive/Ardmore Avenue
14. Intersection of Manhattan Beach Blvd. and Pacific Avenue
15. Pacific Avenue in front of Pacific School (Southwest side of the street)
16. Intersection of 17th Street and Poinsettia Avenue
17. Intersection of Peck Avenue and Second Street
18. Intersection of Peck Avenue and First Street
19. Intersection of First Street and Valley Drive
20. Intersection of Second Street and Ardmore Avenue
21. Intersection of Francisco Street and South Valley Drive

Personnel Selection

Contractor shall be responsible for providing competent and trained personnel to assist the Manhattan Beach Police Department with realizing a safe and secure environment. Within Federal, State, and Municipal guidelines, the Contractor shall provide personnel who meet the following criteria:

1. Skills

Each contract employee shall be able to read, write, and speak the English language and must be able to write legible and intelligible reports. Each contract employee shall be able to safely, properly, and legally operate necessary equipment and tools.

2. Other Qualifications

Each contract employee:

- a. Shall be at least twenty-one years of age.
- b. Shall be physically and mentally capable of performing Crossing Guard services.
- c. Shall have the ability to give and follow oral and written instructions in English.
- d. Shall have the ability to establish and maintain effective working relationships with the public and Police Department.
- e. Shall have the ability to remain calm and use good judgment and initiative in a confrontational or emergency situation.
- f. Shall be in possession of valid credentials and/or certificates required by the State of California for the performance of the designated duties.
- g. Shall have passed developed reference check and background check, a drug screening test, and undergone a medical examination to determine fitness to perform assigned duties. All Crossing Guards are to be fingerprinted. Contractor shall certify that such checks have been performed.

Training

All contract employees shall meet any and all applicable training or licensing standards set forth by the State of California and the City of Manhattan Beach. Contractor shall provide training for all contract employees. Training shall be comprehensive and include information on, but not limited to, traffic control techniques, incident reporting procedures, conflict avoidance, conflict resolution, and mitigation techniques and legal responsibilities, and liabilities associated with providing Crossing Guard services. Additionally, Contractor shall provide instruction on the proper and acceptable use of equipment (e.g. hand held stop sign), customer service and public relations. Contractor shall provide a copy of the training manual for review by the Manhattan Beach Police Department.

Employee Replacement

Contractor shall have the right to release from employment any contract employee for cause. However, the Manhattan Beach Police Department retains the right to require the Contractor to replace any contract employee for, but not limited to, the following reasons:

- 1) False information given on any employment application or given during any employment interview, or discovery of information that would otherwise disqualify the person from consideration.

- 2) Unlawful or improper conduct including, but not limited to, verbally or physically assaulting a member of the public, co-worker or any other individual, theft and misuse or attempted misuse of authority or equipment for personal benefit.
- 3) Conduct detrimental to the best interest of the Manhattan Beach Police Department or the general public.
- 4) Being under the influence, being in possession of or using alcohol, illegal or non-prescribed drugs while in the workplace or on duty.