

## **Request for Proposal # 999-15 Skate Park Planning Services**

### **INTRODUCTION**

The City of Manhattan Beach (“City”) is soliciting proposals from qualified firms to work in conjunction with City staff to provide community facilitation and expertise in planning skateboard parks. The overall goal is to review and analyze the history of the public outreach process and documents for skateboard park feasibility in the City of Manhattan Beach and prioritize locations, type of skate park and how it would be funded. The City will select a consultant team to provide professional and technical services to engage our local residents to determine the top locations, type of skate park and funding opportunities based on the following Request for Proposal (RFP).

### **MANHATTAN BEACH HISTORY**

The City of Manhattan Beach is located within the southwestern coastal portion of Los Angeles County in what is commonly referred to locally as the “South Bay” area. The City is bounded on the north by El Segundo, on the east and south by Redondo Beach, on the south by Hermosa Beach, and on the west by the Pacific Ocean. The City is a beach community with approximately 2.1 miles of beachfront. The City has a total land area of 1,788 acres (3.88 square miles). The city is generally bound by Rosecrans Avenue on the north, Aviation Boulevard on the east, Artesia Boulevard on the south and the Pacific Ocean on the west. Sepulveda Boulevard (State Highway 1) runs north-south through the middle of the City.

The modern history of Manhattan Beach began in 1888, when the first railroad spur (now Veterans Parkway) connected Redondo Beach Wharf to Downtown Los Angeles. In 1897, the townsite of “Potencia” first appeared as a stop on the Santa Fe timetable. Potencia later became Shore Acres in 1902 and Manhattan Beach the following year. Incorporation of Manhattan Beach came in 1912. The 1920s saw major growth that included restaurants, housing tracts, hotels and businesses. Most of the early buildings were beach cottages, since the City was promoted as a place to vacation. Prior to the 1940s, many residents in town only stayed for the summer months. It wasn’t until after World War II that residents started living in Manhattan Beach year-round.

Manhattan Beach has always been known as a popular recreational spot in Southern California with its beaches and recreational activities. The first beach volleyball courts were inaugurated in 1930 and the City is also home to the Manhattan Beach Open Pro Beach Volleyball Tournament. During the 1950s, the City began to settle as an established community with elegant homes and flourishing commercial centers, including some industrial uses.

Manhattan Village Mall and residential development were built on the site where a Chevron Tank Farm once stood. In 1980, the City annexed the area of North Manhattan Beach (El Porto) from Los Angeles County, which added 34 acres of land to the northwest corner of the City. During the 1980s, Manhattan Village Mall began to take shape, which was followed by the residential development in the mid to late 1980s, and then followed by the development of the

golf course, a hotel, tennis club and office complexes. Raleigh Studios came to the City in 1988, providing space for commercial, film and television production.

## **BACKGROUND**

In 2001 the Parks and Recreation Commission began discussions of developing a skateboard park in the City of Manhattan Beach. Over the course of the last 12 years, the Commission and City Staff have conducted research to gauge community interest and support and determine possible locations, size, estimated costs and potential funding sources, and options for usage control. Their findings have been presented in staff reports dated 2001 to 2012.

In January of 2014, the City Council directed the Parks and Recreation Commission to form an Ad-Hoc Committee to receive input on funding options, location, design and operations. The Ad-Hoc Committee held six public outreach meetings to solicit input. In addition, the Parks and Recreation Commission held three meetings to receive updates from the Ad-Hoc Committee and receive input on the skateboard park feasibility.

The Parks and Recreation Commission evaluated and prioritized the twenty potential sites. The top three sites were selected and publicly noticed for community feedback. After receiving feedback from the neighborhood, none of top three sites received strong support. Therefore, the item returned to the City Council for further direction. The City Council directed staff to draft an RFP to provide community outreach, propose skate park location, type of park and funding options.

All historical and current information related to the skate park feasibility can be found on the City's website: <https://manhattanbeach.granicusideas.com/projects/skateboard-park-project>

## **PROJECT DESCRIPTION**

The Consultant will provide community outreach, propose skate park locations, type of skate park and funding options. The consultant will have expertise in facilitating community meetings, to engage, educate, listen and provide creative solutions for a skate park in the City of Manhattan Beach. The consultant will analyze the existing public outreach data from previous Parks and Recreation Commission, Skate Park Ad-Hoc Committee and City Council meetings. The consultant will also provide a skate park survey and community needs assessment, give design examples (streetscape, transition, skateable artistic elements, etc.) along with cost estimates for up to three sites. Funding options for skate park development will also be addressed.

## **SCOPE OF WORK**

The City is seeking a dynamic consulting team that has extensive experience in preparing skateboard park projects and has been effective in community outreach and demonstrated success in building community consensus. This team will work with City staff to review the public process, and walk potential sites within the City of Manhattan Beach. While a final scope of work will be crafted upon selection of a Consultant team, the City anticipates that the Scope of Work submitted through this RFP will, at a minimum, address all of the following components. The City is also open to suggestions and alternate locations that have not been previously considered during the skateboard park public outreach process. The estimated timeframe for

developing skate park project options and community outreach is five months with \$20,000 budgeted.

The selected firm will need to be familiar with County and City codes, restrictions, and processes. All deliverables will be submitted to the City in hard copy and original electronic format (for example: Excel, AutoCAD, Word, etc.). All work produced by the consultant for this project will become property of the City of Manhattan Beach, and it is expected that information pertinent to this project will be shared freely with all City employees involved in the project.

The Scope of Work includes, but is not limited to:

1. Review of data from previous skate park public outreach meetings
2. Conduct a community needs assessment and skate park survey
3. Site analysis and assessment of previously reviewed and potential locations throughout the City (excluding any location in Polliwog Park).
4. Development of community outreach meetings and public input process
5. Selection of skate park location
6. Selection of skate park type
7. Recommendations for funding and cost estimates
8. Presentation to the Parks and Recreation Commission
9. Presentation to City Council for Action

Importance is placed on effective community outreach and public input that maximizes opportunities to develop a community consensus for a proposed location. The City would like to ensure that the majority of the needs and concerns identified by the community are effectively addressed. It is anticipated that 2 community meetings (estimated 8 hours) will be required in addition to other outreach efforts.

The Consultant shall address each of the following phases by describing how the firm would meet the written criteria. Include experience and examples of similar work performed and/or provide information on subcontractor's experience.

***1. Review of data from previous skate park public outreach meetings***

The City Council approved an Ad-Hoc Committee to solicit public input regarding the feasibility of a skate park in the City of Manhattan Beach. The Ad-Hoc Committee held six public outreach meetings to discuss skate park location, design, funding and operations. In addition, the Parks and Recreation Commission held three meetings to receive public input on the skate park feasibility. A comprehensive list of all historical meeting agendas, notes, minutes, presentations and resource information can be found on the City's website ([www.citymb.info](http://www.citymb.info)): <https://manhattanbeach.granicusideas.com/projects/skateboard-park-project> The public input process provided an excellent foundation of information for the proposed scope of work including: a community survey, site analysis, community

***2. Conduct a community needs assessment and skate park survey***

The City's Ad-Hoc Committee distributed a skate park survey. The results can be found on the City's website (listed above). The consultant shall provide a survey that will be distributed throughout the community. Staff will assist with survey distribution.

***3. Site analysis and assessment of previously reviewed and potential locations throughout the City (excluding any location in Polliwog Park)***

This phase will include a site analysis of each of the previously proposed locations (excluding Polliwog Park) and potential new locations. Site evaluation and assessment should include: Site criteria such as: visibility, accessibility, impact on the neighborhood (traffic, noise, etc.), size of space, ease of development, impact on existing facilities, etc.

***4. Development of community outreach meetings and public input process***

A minimum of two public outreach meetings will be held to solicit input from the residents. The public outreach process will be vital to the success of the skate park planning process. The meetings should capture public input and community consensus. It is essential that a diverse cross section of the community participate and that each group's voice is heard.

***5. Selection of Skate Park Location***

The top three proposed skate park locations will be selected and prioritized. Priority of locations should be in non-residential areas with the least impact on surrounding neighborhoods.

***6. Selection of Skate Park Type***

Based upon the population in the City of Manhattan Beach, a 12,000 square foot skate park was proposed. As part of the public outreach process, the community is also interested in evaluating "skate dots" or "skate spots" as alternatives to one large skate park. A determination should be made, based on community input and site characteristics, as to the style (plaza, park, bowl, etc.) of the skate park to meet the project needs. Non-project-specific sample designs are requested for use as a baseline and for cost estimates.

***7. Recommendations for Funding and Cost Estimates***

All funding options should be evaluated and proposed including: grants, community fundraising efforts, corporate sponsorships, donation of private property, etc. Cost estimates will be provided for each of the top three recommended locations.

***8. Presentation to the Parks and Recreation Commission***

Once the public outreach process has been completed, the Consultant will make a presentation to the City Council detailing the public input and recommendations to include: the proposed skate park location, type of park and funding options.

***9. Presentation to City Council for Action***

The Consultant will make a final presentation to the City Council detailing the public input and recommendations to include: the proposed skate park location, type of park and funding options.

## **TECHNICAL AND FEE PROPOSAL INFORMATION**

The contents of the proposal shall be submitted in the order as specified below. The proposal shall include, at a minimum, the following information listed below in the same order as requested, and shall not exceed 10 double-sided pages.

1. **Understanding of Job Description and Scope of Work** – Please describe your understanding of the scope of work to be performed.
2. **Methodology and Work Plan** – Please provide a brief description of the proposed work program and techniques to complete the scope of work. The work program should demonstrate your firm’s ability to conduct these services in a professional, timely, and efficient manner.
3. **Experience and Qualification of Firm** – Please provide a description of firm qualifications and relevant experience.
4. **Qualifications and Experience for all Consultants and Sub-Consultants** – Please provide a resume including qualifications and relevant experience for all of the individuals being proposed to work on this project. Experience under different companies can be included, however, please provide each company name with contact name and phone number. In addition, provide all current engagements and availability. Resumes are not included in the 10 double-sided pages limitation.
5. **Other Personnel** – Specific project/task order work may be requested occasionally which will require the utilization of other personnel within your firm. Include a resume for each individual that may be proposed for project/task order work.
6. **References** – Please provide a list of references where similar work of similar size and nature is currently in process or recently completed. Include name of firm, telephone, and name of contact person. These references will be checked and may affect the award of the contract. The City of Manhattan Beach reserves the right to contact any of the organizations or individuals listed or any others that may stem from the inquiry.
7. **Contract Exceptions** – Provide any proposed exceptions, additions, and/or deletions to the City’s request for proposal and/or Professional Services Agreement. Proposed exceptions will be considered on a case by case basis, but there is no guarantee that proposed exceptions will be accepted by the City.
8. **Fee Proposal** (under separate cover) – The consultant shall provide a fee schedule for the proposed services. The fee schedule shall include the hourly rate for each personnel category, and any other additional charges to complete the services required of this contract. The City will use the fee proposal in the selection process and reserves the right to negotiate the final fee with the consultant. See selection process summary below for more information.

## **SCHEDULE**

The tentative schedule for this procurement is as follows:

<b>ACTION</b>	<b>DATE</b>
Availability of Request for Proposal	September 8, 2014
Last Day to Submit Questions	September 18, 2014
Request for Proposal Submission Deadline	October 6, 2014
Staff Review of Proposals	October 16, 2014
City Negotiations with Top Ranked Consultant Team(s)	October 30, 2014
Consultant Team Selection	November 6, 2014
Recommendation to City Council	November 18, 2014

*\*Dates are subject to change*

## **PROPOSAL EVALUATION**

Selection of the consultant team for interview with the City will be based in the contents of the written proposal. The proposal will be evaluated and ranked by a committee of City staff and community representatives. The proposal will be rated according to the following selection criteria (in no particular order):

1. Demonstrated understanding of City and scope of work
2. Consultant's qualifications and experience
3. Other personnel
4. Reference checks
5. Availability of proposed Consultant
6. Fee proposal
7. Interviews
8. Ability to meet insurance requirements

## **EVALUATION AND SELECTION PROCESS**

The City will review proposals for experience, qualifications, and project approach of the firms to address the Scope of Work included in the Request for Proposal. In a separate envelope to be opened after review of proposal qualifications and project approach, the Consultant should include the fee to provide the services in the timeline provided in the proposal.

Upon completion of the RFP evaluation process, a short list will be established and the City will enter into negotiation with the top ranked Consultant for the desired services. Compensation for the subject services will be negotiated based on what is fair and reasonable to the City. Should City staff and the top-ranked Consultant be unable to reach an agreement, negotiations with that firm will be terminated and negotiations will commence with the next ranked Consultant in order of their evaluation ranking until an agreement is reached and a Consultant is selected.

## **PROPOSAL REQUIREMENTS**

Proposals shall specify each item as set forth in this Request for Proposal (RFP). Failure to comply with all requirements and conditions set forth by these specifications and RFP instructions will be the cause for the rejection of the proposal(s). No exceptions or deviations from these specifications will be considered unless each exception or deviation is specifically identified with a detailed statement fully defining the exception(s). All exception(s) must be fully supported by detailed specification regarding the deviated item and shall accompany the proposal for evaluation by the City. If no exceptions are identified, the Proposer shall be required to furnish the service exactly as specified herein. The burden of proof of compliance with these specifications is the responsibility of the Proposer. Acceptance or rejection of the changes is the sole prerogative of the City. The City reserves the right to reject any and all proposals or to make no award.

## **BIDDER MUST MAKE THOROUGH INVESTIGATION**

It is the bidder's responsibility to examine the location of the proposed work to fully acquaint themselves with the specifications and the nature of the work to be accomplished. Proposers shall have no claim against the City based upon ignorance of the nature and requirements of the project, misapprehension of the site conditions, or misunderstanding of the specifications or contract provisions.

## **ACCEPTANCE OF CONDITIONS**

By submitting a bid proposal, each bidder expressly agrees to and accepts the following conditions.

- a. All parts of the Instructions to Bidders and Specifications will become part of the contract between the selected bidder and the City.
- b. The City may require whatever evidence is deemed necessary relative to the bidder's financial stability and ability to perform this project.
- c. The City reserves the right to request further information from the bidder, either in writing or orally, to establish any stated qualifications.
- d. The City reserves the right to solely judge the bidder's representations, and to solely determine whether the bidder is qualified to undertake the project pursuant to the criteria set forth herein. The bidder, by submitting a bid or proposal, expressly acknowledges and agrees that the judgment of the City as to whether or not the bidder is qualified to perform the project shall be final, binding, and conclusive.

## **GENERAL CONDITIONS**

The City will not reimburse respondents to this RFP for any costs incurred in the preparation and submittal of the proposal. Further, the request does not obligate the City of Manhattan Beach to accept or contract for any expressed or implied services. The City reserves the right to:

- Request any firm/person submitting a proposal to clarify its proposals during the selection phase;
- Negotiate the project schedule and reasonable costs with the selected vendor;
- Modify or alter any requirements herein, and;
- Identify additional tasks to be accomplished prior to establishing a formal contractual agreement.

### **CONTRACT TERMINATION**

The City of Manhattan Beach may terminate without cause at any time upon thirty (30) calendar days advance written notice, delivered as certified mail by the United States Postal Service. The Contractor may cancel the contract upon 30 days written notice.

### **LICENSES**

Consultant shall be responsible for all licenses and permits required to perform this work in accordance with Federal, State and local requirements and shall be responsible for all fees resulting there from.

### **PAYMENT AND INVOICING**

Consultant shall submit a monthly invoice in duplicate to the City of Manhattan Beach, 1400 Highland Ave., Manhattan Beach, CA 90266. Invoice shall be submitted on standard company forms and shall state (1) invoice number, (2) invoice date, (3) invoice period, (4) brief description of work including location, (5) the purchase order number, (6) total amount requested, and (7) contractors tax ID number. Payment will be made after approval of the invoices by Contract Administrator, subject to the routine processing requirements of the City.

### **INSURANCE REQUIREMENT**

The Consultant shall, at its own expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultants, its agent, representatives, employees, or subcontractors. Consultant shall also require all of its sub-consultants assigned to the project to procure and maintain the same insurance requirement for the duration of the Agreement.

### **PROFESSIONAL SERVICES AGREEMENT**

No agreement shall be binding upon the City until a Professional Services Agreement is completely executed by the Consultant, City Council, and approved by the City Attorney. Failure to execute and return the contact agreement and acceptable insurance documentations in a timely manner may be just cause for the City to rescind the contract offer.

### **CONFLICT OF INTEREST**

It shall be the duty of the Consultant to comply with all applicable and State and federal laws relating to the prohibited conflicts of interest. As part of its response to the RFP, the Consultant shall disclose in writing any financial, business, employment or other relationships with the City or with any of its officers, employees, or agents that are or were in existence during the twelve (12) calendar months immediately preceding, and including, the date the Consultant's response to the RFP is filed. In addition, the Consultant shall disclose in writing, any financial, business, employment or other relationships with any Consultants who may have a financial interest in securing design and/or construction contacts for the project. The Consultant shall have a continuing obligation to keep the foregoing disclosures current and up-to-date during the term of the contract, and the Consultant's failure to timely disclose the existence of such a relationship shall be grounds for immediate termination of the contract.



The undersigned has checked carefully the entire Request for Proposal (RFP) #\_\_\_\_\_. By signing this document, I attest that I am authorized to contractually bind the company listed, and will meet the Proposal requirements if awarded a contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Name Printed: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Manhattan Beach, a municipal corporation ("City") and \_\_\_\_\_, a \_\_\_\_\_ ("Contractor") (collectively, the "Parties").

### RECITALS

- A. City desires to obtain services of Contractor for \_\_\_\_\_.
- B. Contractor represents that it is qualified and able to perform the services ("Services") required by this Agreement.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

Section 1. Contractor's Services. Contractor shall perform the Services described in Exhibit A in a manner satisfactory to City and consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Term of Agreement. This Agreement shall apply to services rendered on or after \_\_\_\_\_, and shall terminate when the work is completed, unless sooner terminated by the City.

Section 3. Time of Performance. Contractor shall commence its services under this Agreement upon receipt of a written notice to proceed from City in the manner described in Exhibit A. Contractor shall complete the services in conformance with the timeline set forth in Exhibit A, or as otherwise directed by the City's representative.

Section 4. Compensation.

(a) City agrees to pay Contractor in accordance with the fee schedule attached hereto as Exhibit \_\_\_\_. Except as otherwise stated in subsection (c) of this section, in no event shall the Contractor be paid more than \$\_\_\_\_\_ during the term of this Agreement. Any terms in Exhibit \_\_\_\_, other than the payment rates and schedule of payment, are null and void.

(b) Unless expressly provided for in Exhibit \_\_\_\_, Contractor shall not be entitled to reimbursement for any expenses. Any expenses incurred by Contractor that are not expressly authorized by this Agreement will not be reimbursed by City.

(c) The City Manager may authorize cumulative increases for additional work of up to \_\_\_\_\_. Any additional work in excess of this amount shall be approved by the City Council.

Section 5. Method of Payment. City shall pay Contractor said consideration in accordance with the method and schedule of payment set forth in Exhibit B, attached hereto and incorporated herein. Unless otherwise specified in Exhibit B, Contractor shall submit to City a detailed invoice on a monthly basis for the services performed pursuant to this Agreement. Each invoice shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period, as applicable. Within 45 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice.

Section 6. 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. Contractor shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Contractor's personnel practices. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

Section 7. 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.

Section 8. Responsible Principals.

(a) Contractor's responsible principal, \_\_\_\_\_, shall be principally responsible for Contractor's obligations under this Agreement and shall serve as principal liaison between City and Contractor. Designation of another Responsible Principal by Contractor shall not be made without prior written consent of City.

(b) City's Responsible Principal shall be the City Manager, who shall administer the terms of the Agreement on behalf of City.

Section 9. Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the Services under this Agreement. All personnel engaged in the work shall be qualified to perform such Services.

Section 10. Permits and Licenses. Contractor shall obtain and maintain during the term of this Agreement all necessary licenses, permits, and certificates required by law for the provision of the Services, including a business license.

Section 11. Interests of Contractor.

(a) Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Contractor further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Contractor shall not accept any employment or representation during the term of this Agreement which is or may likely make Contractor "financially interested" (as provided in California Government Code §§ 1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained.

(b) Contractor further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Contractor, to solicit or obtain this Agreement. Nor has Contractor paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Contractor, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Contractor hereunder the full amount or value of any such fee, commission, percentage or gift.

(c) Contractor warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Contractor, and that if any such interest comes to the knowledge of Contractor at any time during the term of this Agreement, Contractor shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

Section 12. Insurance. [Check if Applicable]

(a) Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1.  A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$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 Contractor.

2.  A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the Services required by this Agreement.

3.  Workers' compensation insurance as required by the State of California.

4.  A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of \$2,000,000 per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by City. Further, Contractor agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.

2. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be excess of Contractor's insurance and shall not contribute with it.

3. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy, except for the professional liability policy, required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials.

5. Each insurance policy required by this Agreement shall be endorsed to state: should the policy be canceled before the expiration date, the issuing insurer shall mail 30 days' prior written notice to the City.

6. If insurance coverage is canceled or reduced in coverage or in limits, Contractor shall within two business days of notice from insurer, phone, fax and/or notify the City via certified mail, return receipt requested, of the changes to or cancellation of the policy.

(c) The City's Risk Manager may, in writing, amend and/or waive any or all of the insurance provisions set forth herein. In such case, the Contractor shall comply with the insurance provisions required by the City's Risk Manager.

(d) 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-;VII in the latest edition of Best's Insurance Guide, unless waived in writing by City's Risk Manager.

(e) Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

(f) All insurance coverages shall be confirmed by execution of endorsements on forms approved by City. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before services commence. As an alternative to City forms, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

(g) Any deductibles or self-insured retentions must be declared to and approved by City, and shall not exceed \$25,000.

(h) Contractor shall require each of its sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.

Section 13. Indemnification. Contractor shall defend, indemnify, and hold harmless the City, its officials, and every officer, employee and agent of City (collectively "City") from any claim, liability or financial loss (including, without limitation, attorneys fees and costs), injuries to property or persons (including without limitation, attorneys fees and costs) arising out of any acts or omissions of Contractor, its officials, officers, employees or agents in connection with the performance of this Agreement, except for such claim, liability or financial loss or damage arising from the gross negligence, sole negligence, or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend City, with counsel of City's choice, 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 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 or City. All duties of Contractor under this Section shall survive termination of this Agreement.

Section 14. Termination.

(a) City shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to Contractor. Contractor agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) City may at any time, for any reason, with or without cause, suspend this Agreement, or any portion hereof, by serving upon the Contractor written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends only a portion of this Agreement, such suspension shall not make void or invalidate the remainder of this Agreement.

(c) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Contractor, Contractor shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

Section 15. City's Responsibility. City shall provide Contractor with all pertinent data, documents, and other requested information as is available for the proper performance of Contractor's Services.

Section 16. Information and Documents.

(a) Contractor covenants that all data, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, 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. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, 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 retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, the City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) All Data required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the Data submitted by Contractor 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 work, surveys, notes, and other documents prepared in the course of providing the Services shall become the sole property of the City and may be used, reused or otherwise disposed of by City without Contractor's permission.

(d) Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts 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. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit said 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 3 years after receipt of final payment.

(e) Contractor's covenants under this Section shall survive the termination of this Agreement.

#### Section 17. Default

(a) Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to Contractor. If such failure by Contractor to make progress in the performance of work hereunder arises out of causes beyond Contractor's control, and without fault or negligence of Contractor, it shall not be considered a default.

(b) If the City Manager or his delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of



this Agreement, to 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.

Section 18. Changes in the Services. City shall have the right to order, in writing, changes in the Services or the services to be performed. Any changes in the Services requested by Contractor must be made in writing and approved by both Parties.

Section 19. Notice. 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.

If to City:                      City of Manhattan Beach  
    1400 Highland Avenue  
    Manhattan Beach, California 90266  
    Attn: \_\_\_\_\_

If to Contractor:              \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_  
    Attn: \_\_\_\_\_

Section 20. Attorneys' Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

Section 21. Entire Agreement. This Agreement represents the entire integrated agreement between City and Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Contractor.

Section 22. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 23. Venue. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Manhattan Beach.

Section 24. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Contractor.

Section 25. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any 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.

Section 26. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

Section 27. 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.

EXECUTED on the date first written above at Manhattan Beach, California.

CITY OF MANHATTAN BEACH

CONTRACTOR:

\_\_\_\_\_  
MARK DANAJ  
City Manager

ATTEST:

\_\_\_\_\_  
LIZA TAMURA  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
QUINN M. BARROW  
City Attorney