

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is dated September 1, 2020 (“Effective Date”) and is between the City of Manhattan Beach, a California municipal corporation (“City”) and Contemporary Services Corporation, a California corporation, (“Contractor”). City and Contractor are sometimes referred to herein as the “Parties”, and individually as a “Party”.

RECITALS

A. City issued Request for Proposal No. 1240-20 on March 13, 2020, titled “Unarmed Security Services”. Contractor submitted a proposal dated April 1, 2020, in response to the RFP.

B. While staff was in the process of evaluating all of the bid proposals received, City entered into an emergency short-term agreement with Contractor (agreement dated May 15, 2020 – September 15, 2020), established within the City Manager’s emergency authority to assist with emergency enforcement of social distancing.

C. The City now desires to enter into a long-term agreement with the Contractor.

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

E. City desires to retain Contractor as an independent contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Contractor’s Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the “Services”) unarmed security services, crowd control, public safety-related services, and traffic control services, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the “City Representative”). For the purposes of this Agreement, the Contractor Representative shall be Roy Sukimoto, Los Angeles General Manger (the “Contractor Representative”). The Contractor Representative shall directly manage

Approved for Use 2/15/20

Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

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

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

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

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

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

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through September 1, 2023, unless sooner terminated as provided in Section 12 of this Agreement or extended. The term may be extended for an additional two years upon mutual agreement of the Parties, as evidenced by a written amendment.

3. Compensation.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Contractor at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Contractor be paid more than \$300,000 annually (the "Maximum Compensation") during the term of this Agreement, unless agreed in writing by the Parties.

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

4. Method of Payment.

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

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

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

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

6. Information and Documents.

A. Contractor covenants that all data, reports, 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 may, but has no obligation to, represent Contractor 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, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, except for privileged or confidential Data belonging to Contractor, 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 Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission, except for privileged or confidential Data belonging to Contractor. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

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

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

8. Employment Offerings. The City understands the time and expense Consultant incurs to recruit and train employees and the City, therefore, agrees not to solicit, offer to hire, or hire, Consultant's employees (defined as anyone employed by Consultant during the term of this Agreement or within one (1) year prior to such solicitation, offering or hiring, whichever is longer) either during the term of this Agreement or for a period of one (1) year thereafter, without first obtaining the written consent of Consultant. The Parties agree that it would be difficult and impractical to calculate the damage sustained by Consultant and its operations as a result of a violation of this paragraph. Therefore, should the City violation this paragraph, the City agrees to pay twenty percent (20%) of

the employee's expected first year's gross earnings from the City or \$5,000.00, whichever is greater, and the reasonable costs and attorney's fees to collect those liquidated damages regardless of whether or not suit is filed.

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

A. Indemnities.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, except for Liabilities arising from the gross negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may 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 subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from

and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, , except for Liabilities arising from the gross negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

10. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$5,000,000.00 per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and \$5,000,000.00 in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section.

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

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

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

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Contractor shall, within two Business Days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

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

K. Broader Coverage/Higher Limits. If Contractor maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

11. Mutual Cooperation.

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

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

12. Records and Inspections. Contractor shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such

information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

13. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least five calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

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

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

15. 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.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have ten calendar days after service upon it of the notice in

which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

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

TO CITY:

City of Manhattan Beach
Police Department
Attn: Derrick Abell
1400 Highland Avenue
Manhattan Beach, California 90266

TO CONTRACTOR:

Contemporary Service Corporation
Attn: Roy Sukimoto
369 Van Ness Way, Suite 702
Torrance, California 90501

COPY TO CITY ATTORNEY:

City of Manhattan Beach
Attn: City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266

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

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

to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

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

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

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

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

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

fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

24. Exhibits. Exhibits A, B and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

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

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

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

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

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

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

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

in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

32. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

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

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

[SIGNATURE PAGE FOLLOWS]

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

City:

City of Manhattan Beach,
a California municipal corporation

Contractor:

Contemporary Services Corporation,
a California corporation

DocuSigned by:
By: Bruce Moe 9/2/2020
Name: Bruce Moe
Title: City Manager

DocuSigned by:
By: Edward S. Kim 8/25/2020
Name: Edward S. Kim
Title: Associate General Counsel

ATTEST:

DocuSigned by:
By: Scott Leavitt 8/26/2020
Name: Scott Leavitt
Title: General Counsel

DocuSigned by:
By: Liza Tamura 9/2/2020
Name: Liza Tamura
Title: City Clerk

**PROOF OF AUTHORITY TO BIND
CONTRACTING PARTY REQUIRED**

APPROVED AS TO FORM:

DocuSigned by:
By: Quinn M. Barrow 8/26/2020
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:
By: Steve S. Charelian 8/26/2020
Name: Steve S. Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:
By: Derrick Abell 8/25/2020
Name: Derrick Abell
Title: Chief of Police

EXHIBIT A SCOPE OF SERVICES

Contractor shall perform all work necessary to enhance safety and security at City events and at locations identified by the Manhattan Beach Police Department (MBPD) Incident Commander, which may include but not limited to: crowd control, traffic and parking control, perimeter security, entry inspection, surveillance, and report writing as directed in advance and in writing by the City.

Traffic Control

Traffic control involves directing vehicle and pedestrian traffic around daytime and evening special events, including around directing traffic intersections. Contractor's staff must wear a CalTrans approved safety vest, utilize a CalTrans approved handheld stop sign, and carry a MBPD-approved flashlight.

Crowd Control

A professional demeanor, training, and experience with crowds are required to ensure that rules and regulations are followed by attendees. Contractor's staff must act in a diplomatic manner as they are the liaison between the community & City. Proper reporting is important to ensure that City performs all enforcement activities. Contractor's staff must be trained in the Incident Command System, consistent with the requirements set by the State of California's Emergency Management System Section.

Perimeter Security

Contractor's staff will be trained to assist MBPD personnel with event perimeter security during special events. Perimeter security also includes monitoring event sites off-hours to ensure event safety and that no criminal activity occurs.

Event Director

During each event, Contractor will provide an Event Director (Event Manager or Event Supervisor, depending on the number of personnel requested) to carry out provisions of this contract. The Event Director shall have full authority to act for the Contractor with regard to security related activities at the event and will take general instructions and direction from City. Duties for the Event Director shall include:

1. Responsibility for the actions of all security personnel employed by Contractor including but not limited to, hiring, disciplinary actions and terminations.
2. Training and supervision of all its employees.
3. Attendance or attendance of his/her designee(s) at all event-related meetings.
4. Coordinate with the MBPD in handling criminal violations during the event.

Supervisors

During the event, Contractor will provide a sufficient number of supervisors to oversee and provide direction to personnel assigned to their respective areas. Supervisors are accountable for the job performance of individuals assigned to them.

Barricade Post Attendants

During each event, Contractor is responsible for overseeing barricade posts and ensuring that only authorized vehicles enter. The Contractor's supervisor will coordinate with MBPD Incident Commander regarding the areas of the post locations to be assigned. Barricade post attendants must operate in a courteous manner, direct all inquiries appropriately, and ensure the safe and orderly flow of entering and exiting vehicles and/or event participants.

Court Appearances

Contractor's personnel shall work with and assist the proper local authorities and appear in court and other proceedings, as necessary.

Personnel Selection

Contractor shall be responsible for providing competent and trained personnel to assist the MBPD with realizing a safe and secure environment. Personnel shall have knowledge of Incident Command Structure (ICS), how it works, and an understanding of their role within ICS. Within Federal, State, and Municipal guidelines, Contractor shall provide personnel who meet the following criteria:

1. Skills

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

2. Other Qualifications

Each employee:

- a. Shall be at least eighteen (18) years of age.
- b. Shall be physically and mentally capable of performing Event Security 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 MBPD.

- 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, including a certificate of completion of Introduction to Incident Command Structure (ICS).
- g. Shall have passed developed reference check and background check to perform required duties. Contractor shall certify that such checks have been performed.

Staffing Levels and Work Schedules

At least one (1) week prior to the first day of an Event for which Services will be necessary, MBPD shall provide to Contractor a written job order that includes the number and classifications of personnel requested and the time periods for which they will be needed.

If MBPD provides notice less than one week in advance, Contractor shall make best efforts to provide the requested personnel for the Event; however, Contractor's inability to do so shall not be a breach of this Agreement. MBPD acknowledges that shortfalls in staffing of less than 10% shall not be deemed a breach of the Agreement.

Staffing levels and specific posts will be determined by MBPD following consultation with Contractor. MBPD Incident Commander shall have the final decision as to the number of Contractor's personnel to be used and the deployment (i.e., placement at the Job Site). MBPD agrees that for all requests for personnel: (i) at least one Event Supervisor shall be ordered and such Supervisor shall act as the Event Director where the personnel request is for less than ten (10) personnel; (ii) for any event where ten (10) or more personnel are requested, an Event Manager shall be ordered; and, (iii) for every ten (10) personnel requested, a minimum of one (1) Supervisor shall be ordered. The Event Director shall not be assigned to a fixed post.

In order for Contractor to be effective in delivery of services, Contractor must manage and supervise its employees. Therefore, Contractor shall be accountable for the direct supervision of its employees. MBPD Incident Commander shall make all requests regarding deployment, positioning, post assignments and conduct through Contractor's Event Director. The Event Director will be accountable for the satisfaction of such requests to the extent that such requests are consistent with job site policies, this Agreement and local, state and federal laws.

Training

All of Contractor's employees shall meet any and all applicable training or licensing standards set forth by the State of California. Contractor shall provide training for all

employees. Training shall be comprehensive and include information on, but not be limited to, patrol, surveillance, and traffic control techniques, crime prevention methods, incident reporting procedures, conflict avoidance, conflict resolution, and mitigation techniques and legal responsibilities, and liabilities associated with providing Event Security Services. Additionally, the Contractor shall provide instruction on the proper and acceptable use of security equipment (e.g. radios), basic report preparation, customer service and public relations. However, the MBPD retains the right to review any employee training program.

Employee Replacement

Contractor shall have the right to release from employment any employee for cause. If at any time MBPD feels that any employee of the Contractor is not satisfactory, MBPD Incident Commander shall notify Contractor of the reasons for its dissatisfaction with such employee verbally and in writing. Contractor shall attempt to promptly correct the employee's conduct to the satisfaction of MBPD Incident Commander, or if the initial conduct was so egregious as to warrant dismissal, MBPD may demand that Contractor cease using said employee at the event. Contractor shall promptly comply with such request. MBPD Incident Commander agrees that any requests pursuant to this paragraph shall not be based upon unlawful discrimination in regards to an employee's race, religion, national origin, age, gender sexual orientation, or disability. The MBPD Incident Commander retains the right to require the Contractor to replace any employee for, but not limited to, the following reasons, subject to the above requirements:

- 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; provided that MBPD shall have no right to review any Contractor's employee's personal information or employee files, nor shall it have any right to attend any employee's employment related interviews or disciplinary hearings.
- 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 MBPD 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.
- 5) Incomplete or unacceptable uniform/attire.

Uniforms

Contractor's employees shall wear uniforms provided by their firm. The uniforms will include visibly numbered shirts and/or jackets. The Contractor's supervisor uniform shirts shall visibly include the word "supervisor." Contractor shall provide a black, navy blue or khaki short and/or pant, vendor to choose, to employees and shall be consistent in color

and style. The MBPD's Incident Commander retains the right to determine what is considered a proper, complete, and acceptable uniform. Contractor shall be responsible for making sure uniforms are complete, clean, in good repair and worn by all employees while on duty.

Equipment

Contractor shall provide all equipment necessary for the provision of designated Event Security Services including but not limited to uniforms, flashlights, flashlight batteries, and radios. Contractor shall not issue, directly or indirectly, to employees or to contract employees firearms, batons, pepper spray, handcuffs or other weapons, unless specifically requested by City in writing. If the MBPD Incident Commander determines that radios and/or metal detecting wands are needed for the safety of the event, the Contractor shall provide radio communication equipment for event staff (including portable radios and repeaters, if determined to be necessary). Please see Exhibit B for pricing of equipment.

Safety

Supplier shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety. Furnished equipment, materials and services shall comply with all OSHA standards and regulations, and all applicable governmental laws and orders. Supplier shall provide proof of compliance, if requested by the MBPD Incident Commander. Contractor shall be responsible for compliance with all applicable Federal, State, and local safety regulations including any confined space requirements.

Parking & Check-In Area

MBPD Incident Commander shall supply Contractor with a suitable area for check-in and roll-call of personnel, and a work area at the command post. Contractor's personnel shall be provided parking at the event site, or off-site parking with a shuttle service to the event site, at no cost to Contractor or its personnel.

Event Reporting Times

Contractor requires time prior to an Event for the briefing and distribution of employees at the Job Site. The following minimum reporting time requirements shall be used:

- a. Where the number of employees ordered is ten (10) or less, the reporting time shall be fifteen minutes prior to the facility opening.
- b. Where the number of employees ordered is more than ten (10) but less than fifty-one (51), the reporting time shall be thirty (30) minutes prior to the facility opening.
- c. Where the number of employees ordered is fifty-one (51) but less than one hundred (100), the reporting time shall be forty-five (45) minutes prior to the facility opening.
- d. Where the number of employees ordered is one hundred one (101) but less than two hundred (200) then the reporting time shall be one (1) hour.
- e. Where the number of employees ordered is two hundred one (201) or more, the reporting time shall be one and one-half (1-1/2) hours.

Communication

Contractor shall provide the MBPD Incident Commander with at least one Contractor radio for communication purposes. The Event Director will act as a liaison with the MBPD Incident Commander.

**EXHIBIT B
APPROVED FEE SCHEDULE**

Staff	\$25.06/hr (up to 8 hours)
Staff (overtime)	\$37.59/hr (over 8 hours in a day)
Staff (double time)	\$50.12/hr (over 12 hours in a day)
Supervisor	\$27.80/hr (up to 8 hours)
Supervisor (overtime)	\$41.70/hr (over 8 hours in a day)
Supervisor (double time)	\$55.60/hr (over 12 hours in a day)
Event Manager	\$36.50/hr (up to 8 hours)
Event Manager (overtime)	\$54.75/hr (over 8 hours in a day)
Event Manager (double time)	\$73.00/hr (over 12 hours in a day)

Radio Equipment (at the request of the Manhattan Beach Police Department)

Radio Repeater	At Cost
Portable Radios	\$18.00/radio/day
Metal Detecting Wands	\$18.00/wand/day

If State, Federal, local city or county Minimum Wage Standards, applicable Living Wages, governmentally mandated health benefits payments or related levies or taxes or the like are increased or levied, as the case may be, against Contractor during this Agreement, the rates paid to Contractor by the City shall be adjusted by any such increase, levy, payments or taxes, times 1.4 to reflect the increase in minimum wages and/or related benefits. Thirty (30) days written notice is required.

The City shall pay one and one-half (1 ½) times the rates for all services provided on the following holidays (except as noted, holidays shall be celebrated on the day observed by the Federal Government):

New Year's Day (January 1)	Labor Day
Martin Luther King Jr. Day	Thanksgiving Day
Easter Sunday	Christmas Eve
Memorial Day	Christmas Day (December 25)
Independence Day (July 4)	New Year's Eve
President's Day	

If a Contractor employee works more than eight hours per day or forty (40) hours per week for Events covered by this Agreement, the overtime hours shall be paid by the City at one and one half (1 1/2) times the rates or as otherwise required by applicable law. If a Contractor employee works more than twelve (12) hours per day, double-

overtime hours shall be paid by the City at two (2) times the rates or as otherwise required by applicable laws.

If the MBPD cancels any or all of its personnel requests less than twenty-four (24) hours prior to Event reporting time, the City shall pay, in addition to sums due for services actually provided, at the regular rate for each canceled employee as if such employee worked four (4) hours.

Under California law, absent a lawful waiver, employees are entitled to uninterrupted, off-duty meal and rest periods. Employees are entitled to one hour of pay at his/her regular rate of pay for any missed meal period(s) in a workday and another hour of pay at his/her regular rate of pay for missed rest period(s) in a workday. When compliance of California meal and rest period laws is not practically possible due to the nature of the work assignment, the Contractor will bill the City for the payment of missed meals and breaks.

EXHIBIT C

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROCUREMENT CLAUSES

Federal Emergency Management Agency (FEMA) Procurement Clauses
Under Contract Provisions for Non-Federal Entity Contracts Under Federal Award under 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, the following clauses are applicable to the goods and/or services acquired by the City of Manhattan Beach.

Applicable to all Purchases below \$10,000:

- 1) Suspension and Debarment - Contractor guarantees that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state-funded health care program, or from receiving Federal funds as listed in the List of parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the City if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state-funded health care program, as defined by 42 U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the City harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.
- 2) Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- 3) Procurement of Recovered Materials –
 - (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— • Competitively within a timeframe providing for

compliance with the contract performance schedule; • Meeting contract performance requirements; or • At a reasonable price.

(ii) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

4) Access to Records –

(a) The Contractor agrees to provide the City of Manhattan Beach, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(d) In compliance with the Disaster Recovery Act of 2018, the City of Manhattan Beach and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

5) Changes – Any change, modification, change order, or constructive change are allowable, to the contract by either party will be documented in writing and agreed to by both parties.

6) Department of Homeland Security (DHS) Seal, Logo, and Flags – Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

7) Compliance with Federal Law, Regulations, and Executive Orders - This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

8) No Obligation by Federal Government - The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

9) Program Fraud and False or Fraudulent Statements or Related Acts - The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Additional Clause for Purchases over \$10,000:

- 1) Termination - The performance of work under this contract may be terminated in whole or from time to time in part by the City of Manhattan Beach representative.

Additional Clause for Contracts over \$250,000

35. 1) Remedies - DEFAULT: Buyer, may by written notice to Seller, cancel for default this contract, in whole or from time to time in part, (1) if the Seller fails to deliver the Articles or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (2) if the Articles delivered do not conform to contractual requirements or if Seller fails to perform any of the other provisions of the contract in accordance with its terms; or (3) if the Seller becomes insolvent or commits an act of bankruptcy. If this contract is cancelled for default, Buyer, in addition to all other rights afforded by law for Seller's breach of contract, shall have the right to charge Seller that amount by which the costs of fabricating or procuring the Articles cancelled from another source exceed the prices specified herein, and Buyer may set off any such charge against any amount which may become payable to Seller under the contract or otherwise. Upon such cancellation Seller will deliver to Buyer any of the Articles, parts or material, for which Buyer shall make written request at or after cancellation and Buyer will pay Seller the fair value of any such property so requested and delivered. Notwithstanding Buyer's right to cancel the contract for delay in delivery, Seller shall not be liable to Buyer for any damages therefor if Seller's delay is due to causes beyond its control, and without its fault or negligence, provided Seller exercises due diligence in promptly notifying Buyer of conditions causing delay or, if Seller's delay is caused by the default of a subcontractor or supplier, if such default arises out of cause beyond the control of both Seller and the subcontractor or supplier and without the fault or negligence of either of them, and the supplies or services to be furnished by them were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

Contracts of amounts in excess of \$150,000:

"Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C.

§ 7401 et seq.

- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.