

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is dated August 8, 2022 (“Effective Date”) and is between the City of Manhattan Beach, a California municipal corporation (“City”) and Wittman Enterprises LLC, a California corporation (“Consultant”). City and Consultant are sometimes referred to herein as the “Parties”, and individually as a “Party”.

RECITALS

City desires to utilize the services of Consultant as an independent contractor to provide professional emergency medical services (EMS) and fire inspection billing services.

A. Consultant 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.

B. City desires to retain Consultant and Consultant 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. Consultant’s Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the “Services”) for professional emergency medical services (EMS) and fire inspection billing 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 Consultant Representative shall be Corinne Wittman-Wong, CEO (the “Consultant Representative”). The Consultant Representative shall directly manage Consultant’s Services under this Agreement. Consultant shall not change the Consultant Representative without City’s prior written consent.

C. Time for Performance. Consultant 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. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like

Approved for Use 3/1/2021

professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant 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 Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

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

G. Permits and Licenses. Consultant 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 June 30, 2026, with two one-year extensions exercisable in the City's discretion, unless sooner terminated as provided in Section 12 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid an amount exceeding 4.25% of net collection amounts collected for emergency medical services (EMS) billing and more than \$17.00 per fire inspection billing (the "Maximum Compensation") for the term of the Agreement. If the City exercises the one-year extensions, the compensation for emergency medical services (EMS) billing shall remain at 4.25% of net collections and fire inspection billing shall increase by 3% each additional year.

B. Expenses. City shall only reimburse Consultant for those actual and necessary expenses expressly set forth in **Exhibit B**.

C. Unauthorized Services and Expenses. City will not pay for any services not specified in the Scope of Services, or reimburse for any expenses not set forth in **Exhibit B**, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services or expenses in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services 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. Any additional expense authorized by the City Council or (where authorized) the City Manager shall be reimbursed in the amounts authorized by the City Council or City Manager. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Invoices must be submitted to fireadministration@manhattanbeach.gov and revenue@manhattanbeach.gov. 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 Consultant 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 Consultant. Notwithstanding the preceding sentence, if Consultant 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. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

5. Independent Contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant 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 Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant 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. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, 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 Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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, and City may use all or any portion of the Data submitted by Consultant 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 Consultant's permission. Consultant 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 Consultant.

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

7. Conflicts of Interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant'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, Consultant may perform similar Services for other clients, but Consultant 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 Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

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

A. Indemnities.

1) To the fullest extent permitted by law, Consultant 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 Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant 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. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith. In the event of any dispute between Consultant and City, as to whether liability arises from the negligence of the City or its officers, employees, agents, subcontractors, or vendors, Contractor will be obligated to pay for the City's defense until such time as a final judgement has been entered adjudicating the City as negligent. Consultant will be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and cost of litigation.

2) Consultant shall pay all required taxes on amounts paid to Consultant 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. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant 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 Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant 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 Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole 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. Consultant'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. Consultant 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 Consultant 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. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant 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 \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant 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 \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant 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 Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant 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 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 Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant 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, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant 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, Consultant 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 Consultant 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 Consultant'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 Consultant's expense, the premium thereon.

Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant 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. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant 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. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

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

K. Broader Coverage/Higher Limits. If Consultant 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 Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Consultant 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.

10. Mutual Cooperation.

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

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

11. Records and Inspections. Consultant 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. Consultant 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.

12. 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 Consultant at least 60 calendar days before the termination is to be effective. Consultant 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. Consultant 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 Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant 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 Consultant's reasonable control and not due to any act by Consultant.

14. Default.

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant 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 Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant 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 Consultant 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.

15. 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 Consultant'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
Attn: Fire Department / Fire Chief
1400 Highland Avenue
Manhattan Beach, California 90266

TO CONSULTANT:

Wittman Enterprises, LLC
Attn: Corinne Wittman-Wong
11093 Sun Center Drive
Rancho Cordova, CA 95670

COPY TO CITY ATTORNEY:

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

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant 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. Consultant 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.

17. Prohibition of Assignment and Delegation. Consultant 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 Consultant 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.

18. 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.

19. 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.

20. Final Payment Acceptance Constitutes Release. The acceptance by Consultant 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 Consultant for anything done, furnished or relating to Consultant'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 Consultant, 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 Consultant, its employees, subcontractors and agents.

21. Corrections. In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant 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 Consultant. 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 Consultant under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Consultant 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 Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant'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.

23. Exhibits. Exhibits A and B 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 Consultant's proposal, the provisions of this Agreement shall control.

24. 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.

25. 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.

26. 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.

27. 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.

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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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

Consultant:

Wittman Enterprises, LLC,
a California Corporation

By: _____
Name: Bruce Moe
Title: City Manager

DocuSigned by:
Corinne Wittman-Wong 5/27/2022
By: _____
FFAFB11C38A84F...
Name: Corinne Wittman-wong
Title: CEO Wittman Enterprises LLC

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

By: _____
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:
Steve S Charelian
By: _____
1A2E390F2B9C494...
Name: Steve S. Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:
Michael Lang
By: _____
0C20B300410D43B...
Name: Michael E. Lang
Title: Fire Chief

EXHIBIT A SCOPE OF SERVICES

The Scope of Services shall include:

1. **AMBULANCE BILLING AND COLLECTION SERVICES.** During the Term of this Agreement, except for accounts referred to a collection agency as provided herein, Wittman Enterprises LLC shall be exclusively responsible for the billing and collection of all charges and fees resulting from the delivery of EMS by City, including but not limited to all charges and fees to private insurers, Medicare, Medicaid, Medical, other governmental programs, individual patients and their responsible parties (collectively, "Payers"). Wittman Enterprises LLC shall be exclusively responsible for the following:

- a. **Billing and Collection Efforts**

Consultant shall follow the City's existing billing and collection procedures as follows:

- Day 1 – Send original invoice
- Day 31 – Send past due notice
- Day 61 – Send past due notice
- Day 91 – Send Final Attempt Letter Indicating next steps for collections
- Day 120 – Send account to collections after write-offs are approved by City Finance Subcommittee
- At any point during the timeline above, the Consultant shall provide a notice to the ambulance patient if their account is missing insurance documentation, required signatures and/or other critical information necessary for medical billing.
- If an ambulance patient expresses hardship and/or difficulty paying their medical bill, Consultant may offer and administer a payment plan.
- Any account that has entered into a payment plant or account that is currently in review and/or being appealed shall be omitted from the collections process.

These billing and collection procedures may change from time to time by the City.

- b. **Insurance Information Gathering**

Consultant to prepare all Request for Insurance Information mailings. A toll free 800-like telephone number shall be provided to patients. An initial telephone call shall also be made at this time to elicit any insurance information from the patient or patient's family. If they receive no answer on this call, Consultant will send an inquiry letter in addition to the initial invoice.

c. Medicare and Medi-Cal

Consultant shall prepare all invoices and electronically convey to Medicare and Medi-Cal fiscal intermediaries within seven (7) days of receipt patient documentation. All secondary and coinsurance billing will be transferred immediately to the appropriate secondary pay source and billed within 24 hours to that source.

d. Workers' Compensation and Private Insurance

Consultant to bill private insurance, supplemental insurance, secondary insurance and Workers' Compensation billed according to specific requirements. Electronic billing of insurance companies is performed where appropriate. Any correspondence for additional information or follow up necessary to secure insurance payments will be performed by Consultant.

e. Delinquent Claim Handling

Telephone follow up at a minimum of 3 calls will continue to the patient until insurance information is received, or account is returned to the City for collection or other handling. Consultant will provide the City a report listing all accounts that have been inactive for six (6) months in a format specified by the City.

f. Receipts Processing

Consultant will accept payments in the form of cash, check, money order, cashier's check or credit card. All cash receipts will be deposited and posted within one (1) day of receipt of funds. All funds will be deposited into a City-designated bank account. Bank deposit receipts will be sent electronically to the City. Consultant shall have no access to the proceeds of the receipts. All funds are under the exclusive control of the City.

g. Refunds

Consultant shall research and verify all overpayments. If a refund is required, Consultant will submit electronically all supporting documentation to the City upon completion of research. The City will issue payment directly to specified party and will send an electronic copy to Consultant, to be posted to the Patients account within 24 hours.

h. Collection Files Required for Finance Subcommittee

Consultant shall prepare quarterly reports on past due ambulance accounts for the purposes of establishing a write-off list for collections, which requires approval by the City of Manhattan Beach Finance Subcommittee.

i. Reports

Operational and financial data reports will be available for the City's review. The format and content of the data will be established and defined by the

City and such reports may be added, modified or deleted. Notwithstanding the foregoing, City may request that specific, custom reports be made available.

On a monthly basis, Consultant will perform accurate month end close procedures that will result, as a minimum, in the following reports:

1. Monthly Ticket Survey
2. Monthly Sales Journal
3. Monthly Cash Receipts Journal
4. Monthly Receivables Aging
5. Management A/R Analysis
6. Statistical Reports customized to City needs

Such reports will be available to the City on the 15th day of the month following the date of service, or ten (10) business days after the final submission of patient care records from the previous month.

On a quarterly basis, Consultant shall provide the following reports:

1. Quarterly QAF / GEMT reporting data
2. Quarterly collection files on past due ambulance account required for Finance Subcommittee

On an annual basis, Consultant shall provide updates and reminders on the annual ambulance rate adjustments established by the Los Angeles County Health Services Department. These rate adjustments are published each spring and new rates go into effect on July 1st of each year. The rates can be found on the following website: <https://dhs.lacounty.gov/>. Consultant shall notify the City when the new rates are adopted by the Los Angeles County Health Services Department and shall ensure that the City's ambulance fees are adjusted each July 1st to reflect the County rates.

j. Recurring Meetings with City and Consultant

The Consultant shall meet with the City on a recurring basis (no less than a quarterly basis) to monitor the collection efforts and reporting of ambulance and fire inspection payments.

k. Source Documents

Consultant will retain in electronic format all source documents including attachments for five (5) years from the date of the reported incident. When service contracted is terminated, all source documents are returned to the City in an electronic format at the City's expense.

- 2. FIRE INSPECTION BILLING AND COLLECTION SERVICES.** Consultant shall bill customers according to specific requirements using information provided by the City. The consultant is to send invoices, notices and correspondence to customers

based on the frequency and timeline established by the City during implementation of the contract services, which may be subject to change during the contract period. Wittman Enterprises LLC shall be exclusively responsible for the following:

a. Billing and Collection Efforts

Consultant shall follow the City's existing billing and collection procedures as follows:

- Day 1 – Send original invoice, with Inspection fee and Fire Technology fee as identified in the City's User Fee Schedule
- Day 31 – Send past due notice, including late penalty of 10%
- Day 61 – Send Final Attempt Letter Indicating next steps for collections

These billing and collection procedures may change from time to time by the City.

b. Reports

Operational and financial data reports will be available for the City's review. The format and content of the data will be established and defined by the City and such reports may be added, modified or deleted. Notwithstanding the foregoing, City may request that specific, custom reports be made available.

On a monthly basis, Consultant will provide a revenue report itemizing Inspection Fees, Fire Technology Fees, and Late Penalties collected.

3. CHANGES TO SCOPE OF SERVICES, AS NEEDED. City reserves the right to request changes in the Scope of Services within Wittman Enterprises LLC 's capabilities, which changes shall be implemented upon mutual written agreement of the parties specifying such changes and any change in compensation attributable thereto.

4. ACCESS TO BILLING SYSTEM.

- a. Right to Use.** During the Term of this Agreement, Wittman Enterprises LLC grants to City, access to Wittman Enterprises LLC billing system, solely to view City's accounts, run various reports, said access to all data associated with the billing and collection process which is wholly owned by City ("Billing Service"). During the Term of this Agreement, Wittman Enterprises LLC will not in any way transfer to any third party or use in direct or indirect competition with City any information or data posted by or for the benefit of City on Wittman Enterprises LLC website and acknowledges that all such information is confidential ("Confidential Information"), Wittman Enterprises LLC further acknowledges that its handling of information on behalf of City is or may be subject to federal, state or local laws, rules, regulation and

restrictions regarding the privacy of consumer information. Wittman Enterprises LLC agrees to comply with all of such laws, rules and regulations and restriction, as is commercially reasonably possible, at its sole cost and expense. This Access to Billing System and all obligations contained, therein will survive any termination or expiration of this Agreement.

5. COLLECTION EFFORTS.

- a. Scope of Collection Efforts. If reasonable efforts have been made to collect a patient account of City and such efforts have not been successful, Wittman Enterprises LLC shall have the right to terminate collection efforts and close the account as an unpaid debt. As used herein "reasonable efforts" shall be defined to mean at least but not limited to one hundred twenty (120) calendar days of active collection efforts in the ordinary course of business. Absent contrary instructions from City with respect to any patient encounter, the accounts that Wittman Enterprises LLC has deemed to be uncollectible may be forwarded to a third-party collection agency for further collection effort.
- b. Administrative Fee/Third Party Collection Costs. City will be responsible for engaging any third party collection service for uncollectible accounts after Wittman Enterprises LLC has exhausted its collection efforts. City will be directly liable for all fees of third-party collection agency.

6. SYSTEM SUPPORT.

- a. Support and training of City's Users will be provided subject to and in accordance with the terms of the Scope of Services.

7. INDEPENDENT CONTRACTORS.

- a. Wittman Enterprises LLC is an independent contractor of City and not an employee or agent of City; provided, however, to the extent necessary to fulfill its billing and collection efforts under this Agreement, Wittman Enterprises LLC is authorized to sign in an administrative capacity for City the following types of standard forms and correspondence only: letters to patients or their representatives verifying that an account is paid in full; forms verifying the tax-exempt status of City; and insurance filings and related forms. Wittman Enterprises LLC has no authority to sign any document that imposes any additional liability on City. Wittman Enterprises LLC shall retain full control over the employment, direction, compensation and discharge of all persons assisting in the performance of the Services. Wittman Enterprises LLC shall be fully responsible for all matters relating to payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters.

Each party shall be responsible for its own acts and those of its agents and employees during the Term of this Agreement.

8. CONFIDENTIALITY AND HIPAA BUSINESS ASSOCIATE OBLIGATIONS.

- a. Confidential Information. Each party (the "Discloser") may disclose to the other party (the "Recipient") certain non-public information relating to the Discloser's business, including technical, marketing, financial, personnel, planning, medical records and other information that is marked confidential or which the Recipient should reasonably know how to be confidential given the nature of the information and the circumstance of disclosure ("Confidential Information"). Confidential Information of each party does not include this Agreement. Confidential Information will not include any information: (i) lawfully obtained or created by the Recipient independently of, and without use of, Discloser's Confidential Information and without breach of any obligation of confidence or violation of HIPAA or the HITECH Act; or (ii) that is in or enters the public domain without breach, of any obligation of confidence. City and Consultant shall be responsible for any breach by any of its Users, employees or agents of any of the confidentiality obligations set forth herein.
- b. Use and Disclosure. Except as expressly permitted by this and subject to applicable law, the Recipient will:
 - i. not disclose Discloser's Confidential Information except: (1) to the employees or contractors of the Recipient to the extent that they need to know that Confidential Information for the purpose of performing the Recipient's obligations under this Agreement, and who are bound by confidentiality terms with respect to that Confidential Information no less restrictive than those contained in this Section; or (2) as required to be disclosed by law, to the extent required to comply with that legal obligation, provided that the Recipient will promptly notify the Discloser of such obligation;
 - ii. use the Discloser's Confidential Information only for the purpose of performing Recipient's obligations under this Agreement;
 - iii. use all reasonable care in handling and securing the Discloser's Confidential Information, and employ all reasonable data security measures that the Recipient ordinarily uses with respect to its own proprietary information of similar nature and importance; and
 - iv. use and disclose Confidential Information that contains Protected Health Information in accordance with the terms of the this Agreement.

- c. Return of Confidential Information. Subject to Wittman Enterprises LLC's internal data retention policies and applicable law, the Recipient will return to the Discloser, and destroy or erase all of the Disclosure Confidential Information in tangible form, upon the expiration or termination of this Agreement, and the Recipient will promptly certify in writing to the Discloser that it has done so.
- d. HIPAA Business Associate Exhibit.

- i. **Definitions**

- Catch-all definition:

- The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

- Specific definitions:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Wittman Enterprises LLC.

- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean City of Manhattan Beach.

- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

- ii. **Obligations and Activities of Business Associate**

- Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health

information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Make available protected health information in a designated record set to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;

(h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

iii. Permitted Uses and Disclosures by Business Associate

(a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in this Agreement. The business associate is not authorized to use de-identified protected health information

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.

iv. Permissible Requests by Covered Entity

Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

v. Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate shall return to covered entity or, if agreed to by covered entity, destroy all protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information.

The obligations of business associate under this Section shall survive the termination of this Agreement.

vi. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

9. CONSULTANT'S RESPONSIBILITIES AND OBLIGATIONS:

- a.** Wittman Enterprises LLC shall provide revenue cycle management services for City as described below.
 - i.** Prepare and submit initial claims and bills for City promptly upon receipt thereof, and prepare and submit secondary claims and bills promptly after identification of the need to submit a secondary claim.
 - ii.** Assist City in identifying necessary documentation in order to process said bill the accounts.
 - iii.** Direct payments to a lockbox or bank account designated by City, to which City alone will have signature authority.
 - iv.** Pursue appeals of denials, partial denials and rejections when deemed appropriate by Wittman Enterprises LLC.
 - v.** Respond to and follow up with Payers and respond to messages or inquiries from a Payor.
 - vi.** Provide appropriate storage and data back-up for records pertaining to City's bills and collections hereunder, accessible to City at reasonable times.
 - vii.** Maintain records of services performed and financial transactions.
 - viii.** Meet, as needed, with representatives of City to discuss results, problems and recommendations.
 - ix.** Provide any City-designated collection agency with the data necessary for collection services to be performed when an account is referred to such agency.
 - x.** Wittman Enterprises LLC will support the provider in filing and maintaining required documentation and agreements with commonly-used Payors (e.g. Medicare, Medicaid, Champus, etc.), The Provider will maintain responsibility for enrollment, required documentation, and agreements with Out of State Payers, such as Out of State Medicaid programs, and other payers not commonly billed.
 - xi.** Provide reasonably necessary training periodically, as requested by City, to City's emergency medical personnel regarding the gathering of the necessary information and proper completion of run reports.

- xii.** Utilize up-to-date knowledge and information with regard to coding requirements and standards, to comply with applicable federal, state and local regulations.
- xiii.** Provide a designated liaison for City, patient and other Payor concerns.
- xiv.** Provide a toll free telephone number for patient and other Payors to be answered as designated by City.
- xv.** Facilitate proper security of confidential information and proper shredding of disposed materials containing such information.
- xvi.** Establish arrangements with hospitals to obtain/verify patient insurance and contact information.
- xvii.** Respond to any City, Payor or patient inquiry or questions promptly.
- xviii.** Maintain appropriate accounting procedures for reconciling deposits, receivables, billings, patient accounts, adjustments and refunds.
- xix.** Provide reasonable access to City for requested information in order for City to perform appropriate and periodic audits. Reasonable notice will be given to Wittman Enterprises LLC for any planned audit and will be conducted during normal business hours of Wittman Enterprises LLC, all at the City's expense.
- xx.** Provide timely reports facilitating required aspects of monitoring, evaluating, auditing and managing the Services provided.
- xxi.** Process refund requests and provide City with documentation substantiating each refund requested.
- xxii.** Assign billing to patient account numbers providing cross-reference to City's assigned transport numbers.
- xxiii.** Maintain responsibility for obtaining missing or incomplete insurance information.
- xxiv.** Provide accurate coding of medical claims based on information provided by City.
- xxv.** Negotiate and arrange modified payment schedules for individuals unable to pay full amount when billed.

- xxvi.** Retain accounts for a minimum of twelve (12) months (unless otherwise specified by mutual agreement) and after twelve (12) months turn over accounts for which no collection has been made (unless insurance payment is pending) to an agency designated by City.
- xxvii.** Permit real-time read only electronic look-up access by City to Wittman Enterprises LLC's Billing Service to obtain patient data and billing information.
- xxviii.** Maintain records in an electronic format that is readily accessible by City personnel and that meets federal and state requirements for maintaining patient medical records.
- xxix.** Create, implement and comply with a Compliance Plan consistent with the Compliance Program Guidance for Third Party Medical Billing Companies 63 FR 70138; (December 18, 1998) promulgated by the Office of Inspector General of the Department of Health and Human Services (OIG).

10. CITY'S RESPONSIBILITIES AND OBLIGATIONS

- a.** The City and its ambulance service provider shall use its best efforts to obtain and forward the following information ("Patient Information") to Wittman Enterprises LLC:
 - i.** the Patient's full name and date of birth;
 - ii.** the mailing address (including zip code) and telephone number of the Patient or other party responsible for payment ("Guarantor");
 - iii.** the Patient's social security number;
 - iv.** the name and address of the Patient's health insurance carrier, name of policyholder or primary covered party, and any applicable group and identification numbers;
 - v.** the auto insurance carrier address and/or agent's name and phone number if an automobile is involved;
 - vi.** the employer's name, address and Workers Compensation Insurance information if the incident is work related;
 - vii.** the Patient's Medicare or Medicaid HIC numbers;

**EXHIBIT B
APPROVED FEE SCHEDULE**

Contract Term: August 8, 2022 – June 30, 2026

- Ambulance Billing and Collection Services 4.25% of net collections
- Fire Inspection Billing and Collection Services....\$17.00 per processed inspection
- Wittman Enterprises, LLC provides complementary annual revenue enhancement training for EMS and financial staff upon request. This includes four (4) hours of teleconference, webinar, or ZOOM- facilitated training for Manhattan Beach general staff, and six (6) hours for EMS/EMS management.
 - Additional and/or onsite training as requested by the City of Manhattan Beach will be at the contracted rate of \$100 per hour (personnel rate) plus associated travel expenses.

Contract Term Option Year 1: July 1, 2026 – June 30, 2027

- Ambulance Billing and Collection Services 4.25% of net collections
- Fire Inspection Billing and Collection Services....\$17.00 + 3% CPI per processed inspection

Contract Term Option Year 2: July 1, 2027– June 30, 2028

- Ambulance Billing and Collection Services 4.25% of net collections
- Fire Inspection Billing and Collection Services....\$17.51 + 3% CPI per processed inspection

Method of Payment:

Wittman Enterprises LLC shall submit monthly invoices for the Services to City of Manhattan Beach **ATTN:** Fire Department, Fire Chief. The Services shall be billed to the City in two (2) separate invoices for 1) Ambulance Billing and Collection Services and 2) Fire Inspection Billing and Collection Services, in accordance with the Approved Fee Schedule (Exhibit B) of this Agreement.

Bank Accounts:

City agrees that it will be solely responsible for the cost and maintenance of any and all of City's bank accounts, lock-box and/or remote deposit services. City, should it elect to participate in any credit card acceptance program, agrees to assume and be responsible for all costs associated with such program.