



City of Manhattan Beach

General Services

Phone: (310) 802-5568

FAX: (310) 802-5590

TDD: (310) 546-3501

REQUEST FOR PROPOSAL

BID NUMBER:

BID TITLE:

POLICY GOVERNANCE

REQUESTING DEPARTMENT:

Management Services

RELEASE DATE:

February 20, 2014

DUE DATE:

March 13, 2013 @ 5:00 P.M. PST

Notice is hereby given that the Office of the City Clerk of the City of Manhattan Beach will receive proposals for Policy Governance Consulting Services. Each proposal must be submitted in a sealed envelope and clearly marked:

“RFP # XXX-XX, Policy Governance”

Failure to identify the proposal on the envelope may result in disqualification of the proposal.

Sealed proposals must be submitted to the office of the City Clerk at 1400 Highland Avenue, Manhattan Beach, CA 90266. **Proposals will be received until 5:00 PM PST, Thursday, March 13, 2014.**

Proposals will be reviewed for verification and compliance with Specifications and subsequent recommendation to City Council for award of a contract or rejection of the responses, as deemed appropriate. The City reserves the right to make no award.

Proposals received after the deadline will be considered late. Such proposals may be returned unopened. Faxed and/or emailed proposals are not acceptable.

Please direct any inquiries regarding this RFP to Gwen Eng, geng@citymb.info, by no later than 5:00 PM PST, Thursday, March 8, 2014.

Dated: This 20th Day of February, 2014

Gwen Eng
General Services Manager

Instructions to Bidders/Definitions

The following meanings are attached to the following defined words when used in these specifications and the contract: The word "City" means the City of Manhattan Beach, California. The word "Bidder" "Vendor," "Supplier," or "Contractor" means the person, firm, or corporation submitting a bid on these specifications or any part thereof.

Filing Date

All bids must be received at or before the time indicated above. Copies of all forms, specifications, and exhibits are available from the office of the Purchasing Agent for the City of Manhattan Beach (310) 802-5567.

Reservations

The City Council reserves the right to reject any and all bids received; to take all bids under advisement for up to 90 days after opening; to waive any informality on any bid; and to be the sole judges of the relative merits of the material mentioned in the respective bids received. The Council also reserves the right to reject any item(s), award more than one contract for each of the items, and reject bids that are not accompanied by the requested information.

Bid Form

- **No telephone, facsimile or email bids will be accepted.**
- If the bid is made by an individual, it must be signed by the full name of the Bidder and include the Bidder's complete address. If it is made by a firm, it must be signed with the co-partnership name by a member of the firm, and the name and full address of each member must be given. If it is made by a corporation, it must be signed by the proper officer in the corporate name, and the corporate seal must be attached to such signature.
- Blank spaces in the Bid must be properly filled in using ink or typewriter.
- The phraseology of the bid must not be altered in any way.
- Unless otherwise stated, bids will be received on one or more or all items. Bidders must specifically quote on UNITS as shown on the Bid sheet. In the case of error in extension of prices, the unit price will govern.
- Bids are subject to acceptance by the City for a period of 90 days, unless a different period is prescribed in the Bid by the bidder.
- Bidders are invited to attend the bid opening at the date and time stated above.
- Bid results are available by calling the office of the Purchasing Agent at (310) 802-5569.

Electronic Format

Vendor to supply a copy of the bid response on CD in searchable PDF format as a single document (optimized and compressed).

The Contract

The Bidder to whom the award is made will be required to enter into a written contract with the City. The contract may be in the form of a purchase order. A copy of the Notice Inviting Bids, the vendor Bid, and the contract specifications may be attached to, and will form a part of the contract. All materials, supplies, equipment, and services supplied by the vendor shall conform to the applicable requirements of State and Federal Laws covering Labor and Wages, as well as conforming to the specifications herein. In case of default by the vendor, the City reserves the right to procure the articles from other sources and to hold the vendor responsible for any excess costs incurred by the City.

Warranties

Bidder shall provide copies of all warranties applicable to the proposed materials. Warranties shall be a definite consideration in establishing the relative merits of the Bids.

Patent Rights

The vendor agrees to save, keep, bear harmless, and fully indemnify the City, its officers, or agents, from all damages, costs, or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights or any person or persons in consequence of the use by the City, or any of their officers and agents, or articles supplies under any resulting contract, and of which the vendor is not the patentee or assignee, or which the vendor is not lawfully entitled to sell.

Taxes

The City of Manhattan Beach is exempt from paying Federal Excise Taxes. These taxes are not to be included.

Delivery

All deliveries of such items to be furnished must be made to job sites or City warehouse within the boundaries of the City of Manhattan Beach. Where a specific delivery schedule is required, proximity to that schedule will be a consideration.

Payments

Complete payment on the contract will be made in approximately 30 days from the complete delivery and acceptance of the merchandise or service, unless alternate terms are proposed and accepted by the City. **The City may consider prompt payment discounts when calculating the lowest bid if the end result benefits the City.**

Errors/Omissions

The vendor shall not be allowed to take advantage of any errors and/or omissions in these specifications or in the vendor's specifications submitted with the Bid. Full instructions will be given if such errors/omissions are discovered, and vendor agrees to abide by said instructions.

Force Majeure

The vendor will be excused from the performance of the contract, in whole or in part, only by reason of the following causes:

- a) When such performance is prevented by operation of law.
- b) When such performance is prevented by an irresistible superhuman cause.
- c) When such performance is prevented by an act of the public enemies of the United States of America, or the State of California, or by strike, mob violence, fire, delay in transportation beyond the control of the vendor, or unavoidable casualty.
- d) When such performance is prevented by the inability of the vendor to secure necessary materials, supplies, or equipment by reason of:
 - 1) Appropriation of use thereof by the Federal Government or,
 - 2) Regulations imposed by the Federal Government.

No other Force Majeure clauses or conditions may be inserted in this bid and any changes in the conditions stated herein will cause the bid to be rejected.

Default

If the vendor fails in any manner to fully perform and carry out each and all of the terms, covenants, and conditions of the award, then the vendor is in default of the contract. The vendor shall be notified in writing of the default status, and will be given a time frame in which to comply. If the vendor fails to comply within the time frame given, the City, at its option, may terminate or cancel the contract, and at the expense of the Contractor, complete the contract with an alternate Contractor. Such termination shall not affect or terminate any of the rights of the City against the vendor, or which may thereafter accrue because of such default. The foregoing provision shall be in addition to all other rights and remedies available to the City under law. The

waiver of a breach of any term, covenant, or a condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

Business License

The successful Contractor () will (X) will not be required to procure a City of Manhattan Beach Business License prior to commencing work. Call Business Licensing at (310) 802-5558 for rate information or to apply for a license.

Contract Extension to Other Cities/Agencies

Other Cities/Agencies may be interested in purchasing against an awarded contract, subject to the same price, terms and conditions offered to the City of Manhattan Beach, and by mutual agreement by the City and the vendor. The City does not warrant any additional use of the contract by such agencies. All requirements of the specifications, purchase orders, invoices and payments with the other agencies will be handled by the successful Bidder and the piggybacking agency.

Department Policy for Grant Funded Purchases

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.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

- 1) The prospective lower tier participant certifies, by submission of this bid, that neither it nor its Principals [as defined at 49 C.F.R. section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid.

City of Manhattan Beach

Request for Proposal #XXX-XX



***Policy Governance Consulting
Services***

Submittal Deadline: March 13, 2014 - 5:00 p.m.

CITY OF MANHATTAN BEACH
REQUEST FOR PROPOSAL #XXX-XX
POLICY GOVERNANCE CONSULTING SERVICES

SECTION I - INTRODUCTION

A: Background

The City of Manhattan Beach is seeking professional assistance to implement the Policy Governance model in the City. The Policy Governance efforts will set the stage for the next generation of the City's on-going strategic planning process which is in hiatus pending the transition to the Policy Governance model.

The City of Manhattan Beach located 19 miles southwest of Downtown Los Angeles on the southerly end of Santa Monica Bay, and 3 miles from LAX airport. It is a beach city with 2.1 miles of beachfront and 40 acres of recreational beach area. Manhattan Beach is home to 35,000 people with nearly 14,000 households. According to the Census Bureau, 70% of the housing is single family detached residences, 15% are 2-4 units and 8% are single family attached. The median household income is \$132,752 and the median home sales price is \$1,250,000 (February 2013). For more information on the City, please visit the City website at www.cityymb.info.

B: Tentative Time Schedule

Action	Date
Distribution of RFP	February 20, 2014
Questions deadline	March 5, 2014 – 5 p.m.
Responses to questions issued by City	March 8, 2014
Submittal deadline	March 13, 2014 - 5 p.m.
Proposals evaluated by Staff	March 14 – March 21, 2014
Interviews of finalist firms by Council Subcommittee and Staff	March 25, 2013
Tentative selection of recommended proposer	April 1, 2014
Finalize agreement with proposer	April 8, 2014
City Council consideration of agreement	April 15, 2014
Consultant commences work on Policy Governance initiative	May 1, 2014

C: Instructions to Proposers and Procedures for Submittal

One original, three (3) copies and a CD in searchable PDF format as a single document (optimized and compressed) of the proposal must be submitted in a sealed envelope and submitted to the following address:

**City of Manhattan Beach
Attn: Gwen Eng, Purchasing Agent
1400 Highland Avenue
Manhattan Beach CA 90266**

Proposers are solely responsible for ensuring their proposal is received by the City in accordance with the solicitation requirements, before Submittal Deadline, and at the place specified. Postmarks will not be accepted in lieu of actual delivery. No oral, telegraphic, electronic, facsimile, or telephonic proposals or modifications will be considered unless specified herein. The City shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of proposals shall be made at the office specified in this REQUEST FOR PROPOSAL. All proposals shall become the property of the City. Late proposals will not be accepted and will be returned to the Proposer unopened.

SECTION II - SCOPE OF SERVICES

The City of Manhattan Beach operates under the Council/Manager form of government with five elected City Councilmembers serving as the legislative body. The Council appoints a City Manager to serve as the Chief Administrative Officer. The City of Manhattan Beach is desirous of adopting a Policy Governance model as a means to establish the long term sustainability of a framework and tool to ensure the city produces and is accountable for producing value for its owners, constant with owner interest.

The City is soliciting proposals from firms interested in

- Guiding the City Council and the city organization in implementing a Policy Governance model;
- Assisting in the education process of developing a shared understanding of Policy Governance for City Council, city staff and the public;
- Assisting in developing methodologies to institutionalize Policy Governance in the city's organizational culture to ensure its sustainability;
- Providing on-going assistance as needed.

While not a part of this RFP, the City will also be engaging in a strategic planning exercise in the near future. The City believes that having certain Policy Governance tools and associated framework in place will help facilitate this upcoming strategic planning effort. One goal of the strategic plan, which will have a long term horizon, is to establish strong linkages between the City's vision and its capital improvement plan,

budget process, policy issues, and the City's General Plan. The City Council is also desirous of better defining and enhancing the public engagement component of the strategic planning process to help ensure its vision and priorities are representative of the will of the people. This information pertaining to the strategic planning effort is provided to allow the successful Policy Governance consultant help lay the necessary foundation.

The Policy Governance consultant is anticipated to be retained for an initial two year term to provide the following services to the City, at minimum:

- Educate the City Council, City Manager, senior staff and the community on the values of Policy Governance and associated model;
- Assist in the definition of roles, responsibilities, and expectations among and between the City Council, its members, the City Manager and staff;
- Encourage and foster substantial and quality public engagement throughout policy governance.
- Facilitate development of the Council Governance Policies, Council/Management Delegation, Executive Limitations, and Ends;
- Assist in the development of agreed upon measures and metrics for success;
- Provide technical assistance to management in developing the Means and Monitoring reports or other mechanisms to provide regular feedback to the Council and community;
- Provide on-going facilitation and coaching to ensure Policy Governance becomes part of the organizational culture.

The selected consultant is expected to not just be a subject matter expert with significant experience with local government implementation of the Policy Governance model, but also well versed and experienced in taking an organization through the transition and ensuring it is embraced. Policy Governance is a registered service mark of John Carver. While certain of the language in this RFP refers specifically to the Carver Policy Governance Model, the City is open to responses that employ the Carver model approach as well as any and all alternative approaches that will result in the desired end product(s) as outlines within this RFP.

SECTION III - PROPOSAL RESPONSE REQUIREMENTS

Proposers shall submit one (1) original proposal marked "ORIGINAL", three (3) copies and a CD in searchable PDF format as a single document (optimized and compressed) on or before the Submittal Deadline. If discrepancies are found between the copies, or between the original and copy or copies, the "ORIGINAL" will provide the basis for resolving such discrepancies. If no document can be identified as an original bearing original signatures, Proposer's proposal may be rejected at the discretion of the City.

It is imperative that all Proposers responding to the RFP comply exactly and completely with the instructions set forth herein. Proposals must be concise but with sufficient detail to allow accurate evaluation and comparative analysis. Proposals should be straightforward and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer.

All proposals shall include the following information:

A: Letter of Transmittal

Please include a brief introduction and history of your firm. Be sure to state why you believe that your firm is the best qualified to provide assistance to the City in implementing Policy Governance and indicate if the assigned personnel have completed the Policy Governance Academy and if the firm or principals are members of the International Policy Governance Association.

B: Table of Contents

Include clear identification of the material by section and page number.

C: Qualifications:

Please include the following components in your firm's proposal:

1. Description of your firm and current number of employees.
2. Description of your experience conducting similar Policy Governance initiatives highlighting local government experience, if any.
3. Resumes of professionals who will be assigned to the project.
4. Any additional information that the Proposer deems appropriate.

D: Project Approach and Methodology:

1. Description of project approach and methodology proposed to be used in launching the Policy Governance model including the education component, facilitation of the process, and on-going reporting and coaching;
2. Recommendations on the following issues:
 - Educational component;
 - Appropriate measures of success;
 - Format for establishing and defining Means;
 - Optimal or desired schedule for regular review and updates;
 - Composition and content of reports;
 - Providing for public participation in the Policy Governance process.
3. A project schedule identifying the beginning and end dates for each phase of work.

E: References:

List at least five (5) references for similar surveys that have been conducted by your firm in the past three years. Include name of city, name of contact person, address, telephone number, and a brief description of the project.

F: Compensation/Payment Schedule:

A total cost for providing the requested services as reflected in your proposal, as well as an itemized breakdown of the compensation required to accomplish each phase outlined in the proposal.

Please be advised that the City will enter into an agreement with the selected Consultant with compensation based on a “not-to-exceed” amount.

SECTION IV - PROPOSAL EVALUATION AND SELECTION

All proposals received will be evaluated in accordance with the evaluation criteria set forth herein. The criteria are listed in random sequence and are not considered in any rank or order of importance. The City reserves the right, at its sole discretion, to establish weighting factors that may be applied to the criteria depending upon order of importance.

1. Qualifications, background and prior experience of the Consultant in the development of a strategic plan.
2. Overall project proposal and methodology.
3. Proposed cost as compared with the level of effort to be expended.
4. Quality of references.

The City may, at its option, conduct interviews with the most qualified respondents. The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City after all factors have been evaluated. Upon completion of the evaluation process, the most qualified Consultant will be contacted to finalize the Scope of Work and related terms of an Agreement. The City shall enter into a Professional Services Agreement with the selected Consultant. A sample of the Agreement is attached. The City of Manhattan Beach reserves the right to reject any and all proposals should it be deemed in its best interest to do so.

AGREEMENT FOR PROFESSIONAL SERVICES

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

RECITALS

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

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

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

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

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

Section 4. **Compensation.**

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

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

(c) The City Manager may authorize cumulative increases for additional work up to the lesser of \$20,000 or 10% of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

Section 5. **Method of Payment.** City shall pay Contractor said consideration in accordance with the method and schedule of payment set forth in Exhibit B, attached hereto and incorporated herein. Unless otherwise specified in Exhibit B, Contractor shall submit to City a detailed invoice on a monthly basis for the services performed pursuant

to this Agreement. Each invoice shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period, as applicable. Within 45 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice.

Section 6. **Independent Contractor.** The Parties agree, understand, and acknowledge that Contractor is not an employee of the City, but is solely an independent contractor. Contractor expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Contractor shall not be in any way an employee of the City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers' compensation and unemployment insurance and that of his/her employees or subcontractors. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Contractor shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Contractor's personnel practices. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

Section 7. **Assignment.** This Agreement shall not be assigned, in whole or in part, by Contractor without the prior written approval of City. Any attempt by Contractor to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

Section 8. **Responsible Principals.**

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

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

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

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

Section 11. **Interests of Contractor.**

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

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

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

Section 12. **Insurance.** [Check if Applicable]

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

1. **[X] A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Contractor.**

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

3. **[X] Workers' compensation insurance as required by the State of California.**

4. **[X] A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of \$2,000,000 per claim and in the aggregate. Any**

deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by City. Further, Contractor agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

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

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

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

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

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

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

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

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

(d) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide, unless waved in writing by City's Risk Manager.

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

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

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

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

Section 13. Indemnification. Contractor shall defend, indemnify, and hold harmless the City, its officials, and every officer, employee and agent of City (collectively "City") from any claim, liability or financial loss (including, without limitation, attorneys fees and costs), injuries to property or persons (including without limitation, attorneys fees and costs) arising out of any acts or omissions of Contractor, its officials, officers, employees or agents in connection with the performance of this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend City, with counsel of City's choice, at Contractor's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Contractor shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or City. All duties of Contractor under this Section shall survive termination of this Agreement.

Section 14. Termination.

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

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

(c) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Contractor, Contractor shall be paid based on the

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

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

Section 16. Information and Documents.

(a) Contractor covenants that all data, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors, shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, the City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) All Data required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the Services shall become the sole property of the City and may be used, reused or otherwise disposed of by City without Contractor's permission.

(d) Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and

representatives at reasonable times, and shall allow City to examine and audit said books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of 3 years after receipt of final payment.

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

Section 17. Default

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

(b) If the City Manager or his delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

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

Section 19. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to this section.

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

If to Contractor: _____

Attn: _____

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

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

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

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

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

Section 25. **Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

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

Section 27. **Severability.** Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

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

CITY OF MANHATTAN BEACH

CONTRACTOR:

JOHN JALILI
Interim City Manager

ATTEST:

LIZA TAMURA

City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
CONSIDERATION AND METHOD OF PAYMENT