

City of Manhattan Beach

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MANHATTAN BEACH AND
CITY CLERK MANAGEMENT SERVICES, INC. TO PROVIDE
INDEPENDENT CITY CLERK SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into on this 23rd day of July, 2013, by and between the City of Manhattan Beach, a California municipal corporation ("City") and City Clerk Management Services, Inc., a California corporation ("Consultant"). Vida P. Barone, President, will serve as principal consultant.

RECITALS

- A. City has determined that it requires the following professional services from a Consultant: to provide meeting minutes and meeting recaps as more specifically outlined in Exhibit A, attached to this Agreement.
- B. Consultant represents that she is fully qualified to perform such professional services by virtue of her experience, training, education, and expertise. Consultant further represents that she is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, City and Consultant agree as follows:

1. DEFINITIONS

- 1.1 "Scope of Services": Such professional services as are set forth in Exhibit A and incorporated herein by this reference.
- 1.2 "Proposed Fees": Such compensation rate is set forth Exhibit A.
- 1.3 "Commencement Date": June 18, 2013.
- 1.4 "Expiration Date": June 31, 2014, or sooner if terminated pursuant to the terms of this Agreement.

2. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date, unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 below.

3. CONSULTANT'S SERVICES

3.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes

mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

3.2 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state, and local laws and regulations (including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*)). During the term of this Agreement, Consultant shall retain the right to perform any work for another person or entity provide that such work would not require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

3.3 All such services shall be performed by Consultant or under her supervision, and all personnel engaged in the work shall be qualified to perform such services. Vida Barone shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

3.4 In performing the services set forth under this Agreement, the Parties understand and agree that the Consultant shall be permitted to perform such services from location(s) other than City Hall. As an independent contractor, the Consultant is not expected to maintain regular hours at City Hall and shall be permitted to perform the services via telephone, facsimile, e-mail or other forms of communication. In order to facilitate the performance of the Consultant's duties from remote location(s) away from City Hall, the City shall provide the Consultant e-mail, e-fax and other essential electronic communication methods consistent with the intent of this Agreement. Consultant shall be provided access to City Hall (including access on evenings and weekends when necessary) and shall be permitted to use equipment and materials essential to her duties set forth herein.

4. COMPENSATION

4.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the terms of this Agreement and the hourly rates set forth in Exhibit A. Consultant shall not be entitled to reimbursement for any expenses. Any expenses incurred by Consultant that are not expressly authorized by this Agreement will not be reimbursed by City. Consultant shall submit to City a monthly itemized statement, indicating the work completed and hours of services rendered by Consultant. City shall, within 30 days of receiving such statement, review and pay all approved charges thereon.

4.2 City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

4.3 Payments for any services requested in writing by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall submit to City an itemized statement for any such additional services, indicating the work completed and hours of services rendered by

Consultant. City shall, within 30 days of receiving such statement, review and pay all approved charges thereon.

5. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products") developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

6. RELATIONSHIP OF PARTIES

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 or otherwise to act on behalf of City as an agent. Neither City nor any of its officers, employees or 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 represent that she is, or that any of her agents or employees are, in any manner employees of City. Consultant 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 Consultant shall not be in any way an employee of the City. As such, Consultant 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. Consultant 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 Consultant's personnel practices. City shall have the right to 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 section.

7. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data and any copies thereof shall be returned to City upon the termination or expiration of this Agreement.

8. INDEMNIFICATION

Consultant 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 Consultant, 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. Consultant shall defend City, with counsel of City's choice, at Consultant's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Consultant 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. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant or City. All duties of Consultant under this section shall survive termination of this Agreement.

9. INSURANCE

9.1 Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

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

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

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

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

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

9.2.1 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 Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. 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.

9.2.2 For any claims related to this Agreement, Consultant'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 Consultant's insurance and shall not contribute with it.

9.2.3 Consultant'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.

9.2.4 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.

9.2.5 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.

9.2.6 If insurance coverage is canceled or reduced in coverage or in limits, Consultant 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.

9.3 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, Consultant shall comply with the insurance provisions required by the City's Risk Manager.

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

9.5 Consultant 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 Consultant's expense, the premium thereon.

9.6 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, Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

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

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

10. MUTUAL COOPERATION

10.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

10.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require.

11. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of two (2) years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

12. PERMITS AND APPROVALS

Consultant shall obtain, at her sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement.

13. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

Liza Tamura, City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

With a courtesy copy to:

Quinn M. Barrow, City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to Consultant:

City Clerk Management Services, Inc.
Vida P. Barone, President
~~1642 Nelson Avenue~~
~~Manhattan Beach, CA 90266~~

P.O. Box 30448
Long Beach, CA 90853

14. TERMINATION

14.1 City shall have the right to terminate this Agreement for any reason on 7 calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on 7 calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

14.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time 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.

15. GENERAL PROVISIONS

15.1 Consultant shall not delegate, transfer, subcontract or assign her duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

15.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. 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, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

15.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

15.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

15.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

15.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.

15.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.

15.9 All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

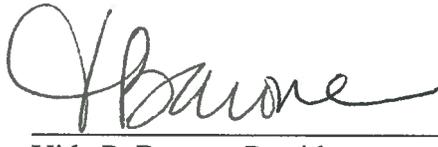
[Signatures begin next page]

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the date written in the introductory paragraph of this Agreement.

“City”
City of Manhattan Beach

“Consultant”
City Clerk Management Services, Inc.

By: 
David N. Carmany, City Manager

By: 
Vida P. Barone, President

Attest:

By:  7-23-13
Liza Tamura, City Clerk

Approved as to form:

By: 
Quinn M. Barrow, City Attorney

EXHIBIT A
SCOPE OF SERVICES AND HOURLY RATES

**Proposal for Professional City Clerk Project Management Services
between the City of Manhattan Beach and City Clerk Management Services, Inc.**

Executive Summary

The City of Manhattan Beach (City) seeks to engage the services of City Clerk Management Services, Inc. (CCMS, Inc.) to provide professional City Clerk project management services primarily related the utilization of the City's purchased Granicus software for the purpose of: **providing meeting minutes and Meeting Recaps.**

Qualifications

CCMS, Inc. provides professional services to increase the productivity, reliability, and legal compliance of City Clerk Office operations. CCMS has direct management experience in the full complement of City Clerk professional functions including: *Elections*, Records management, Legislative Agenda, Public Records Act processing, Political Reform Act Compliance, Conflict of Interest Code filings, Minutes, Notary Public, Contract/Agreement compliance, Bid Openings, AB 1234 Tracking, Public notifications, and development/mentoring of staff.*

CCMS, Inc. is a California Corporation and is owned and operated by Vida P. Barone, MPA, CMC, a Certified Municipal Clerk. CCMS, Inc. provides City Clerk Consultant services throughout the United States.

Project Scope

CCMS, Inc. will provide off-site project management and completion of the following:

Date-forward Minutes (June 18th, 2013 – forward):

1. Using the recordings in the City's Granicus system and other materials provided by the City Clerk's Office, create a draft Meeting Recap and a set of legislative body meeting minutes in Microsoft Word utilizing the City of Manhattan Beach minutes template.
2. Complete and return the draft Meeting Recap via electronic mail **one (1) business day** after CCMS, Inc. receives the video/audio recording and meeting documentation from the City of Manhattan Beach.
3. Complete and return the draft minutes via electronic mail **five (5) business days** after CCMS, Inc. receives the video/audio recording and meeting documentation from the City of Manhattan Beach.
4. Occasional attendance at City Council meetings, arranged and confirmed in advance with CCMS President.

Minutes backlog (meetings prior to June 18th, 2013):

1. Using the recordings in the City's Granicus system and other materials provided by the City Clerk's Office, create a set of legislative body meeting minutes in Microsoft Word utilizing the City of Manhattan Beach minutes template. Does not include preparation of Meeting Recap.
2. Complete and return the draft minutes via electronic mail **as agreed upon by the City and CCMS** after CCMS, Inc. receives the video/audio recording and meeting documentation from the City of Manhattan Beach.

Project Consideration - Minutes

In order to ensure a uniform method for the cost of services, Meeting recap and minutes transcription by CCMS, Inc. will be invoiced per **legislative body meeting hour**, as determined by your meeting audio/video recording length. *There are no additional costs for preparation or editing time – a benefit to you in projecting your exact vendor costs.*

Date forward Minutes: The **legislative body meeting hour rate is \$175.00.** Recorded time will be rounded up to the nearest quarter hour (15 minutes) and pro-rated under the meeting hour rate.

Minutes backlog: The **legislative body meeting hour rate is \$150.00.** Recorded time will be rounded up to the nearest quarter hour (15 minutes) and pro-rated under the meeting hour rate. Does not include preparation of Meeting Recap.

City Clerk Management Services, Inc. · P.O. Box 30448, Long Beach, CA 90853
(818) 632-5372 · www.cityclerkservices.com · info@cityclerkservices.com