

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into on this 5th day of June, 2012, by and between the City of Manhattan Beach, a municipal corporation ("City") and Mike Messina and Associates, Inc. ("Contractor").

RECITALS

A. City desires to obtain services of Mike Messina and Associates, Inc. for succession planning and executive coaching.

B. Contractor represents that it is qualified and able to perform the Scope of Work.

NOW, THEREFORE, the parties agree as follows:

Section 1. **Contractor's Scope of Work.** Contractor shall perform the Scope of Work described in Exhibit A in a manner satisfactory to City and consistent with that 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 April 27, 2012, 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.

Section 4. Compensation.

(a) City agrees to compensate Contractor, and Contractor agrees to accept in full satisfaction for the services required by this Agreement the consideration set forth in Exhibit B ("Consideration"). Said Consideration shall constitute reimbursement of Contractor's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). In no event shall the Contractor be paid more than \$19,900 during the term of this Agreement.

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

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. If no method and schedule of payment is provided, then Contractor shall submit to City a detailed invoice on a monthly basis for the services performed pursuant to this Agreement. 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.

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 Principal(s)

(a) Contractor's responsible principal, Mike Messina, 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 Cathy Hanson, Human Resources Director 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 Contractor's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

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

Section 11. Interests of Contractor. Contractor affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Contractor.

Section 12. Insurance. [Check if Applicable]

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

☒ (1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Contractor.

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

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

☐ (4) A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of Two Million Dollars (\$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) Contractor shall require each of its sub-contractors (if any) to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The City's Risk Manager may, in writing, amend and/or waive the insurance provisions set forth in paragraph (a) 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.

(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) At all times during the term of this Agreement, Contractor shall maintain on file with the City Clerk a certificate or certificates of insurance on the form approved by the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Contractor shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance and vehicle insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(g) The insurance provided by Contractor shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(h) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Contractor shall either reduce or eliminate the deductibles or self-

insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

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) claims, liability or financial loss, 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. 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) 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 Scope of Work.

Section 16. Information and Documents. All data, information, documents and drawings prepared for City and 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 work submitted by Contractor and compensated by City pursuant to this Agreement as City deems appropriate.

Section 17. Changes in the Scope of Work. City shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by Contractor must be made in writing and approved by both parties.

Section 18. 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: Cathy Hanson, Director of

Human Resources, 1400 Highland Avenue, Manhattan Beach, California 90266. If to Contractor: Mike Messina and Associates, Inc., 814 Forbes Drive, Brea, California 92821.

Section 19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 20. 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 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 22. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Contractor.

Section 23. Exhibits: Precedence. 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.

Section 24. 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 this 7 day of June 2012, at Manhattan Beach, California.

CITY OF MANHATTAN BEACH



David N. Carmany

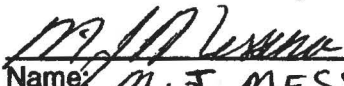
ATTEST:



~~LIZA TAMURA~~ TERRI ALIABADI
City Clerk

Sr. Deputy

CONTRACTOR:


Name: M. J. MESSINA
Title: CONSULTANT

Name:
Title:

APPROVED AS TO FORM

A handwritten signature in black ink, appearing to be "M. J. [unclear]", followed by a horizontal line.

City Attorney

EXHIBIT A
SCOPE OF WORK

Per the written direction of the Director of Human Resources:

- Provide succession & development planning for the City of Manhattan Beach.
 - Provide leadership and management training for the City of Manhattan Beach.
 - Provide executive coaching for the City of Manhattan Beach.
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EXHIBIT B

CONSIDERATION AND METHOD OF PAYMENT

Payment shall be made per monthly detailed invoice. For extra work not part of this Agreement, written authorization by City will be required.

Hourly Rate for Consultant

\$150.00
