

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated August 7, 2017 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and All-City Management Services, Inc., a California corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City issued Request for Proposals No. 1127-17 on May 4, 2017 seeking proposals for the provision of Crossing Guard Services. Contractor submitted a proposal dated May 23, 2017 in response to the RFP.

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

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

The Parties therefore agree as follows:

#### 1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), 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 Chief of Police, or such other person designated in writing by the Chief of Police (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Baron Farwell, General Manager (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

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

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

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

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

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

**2. Term of Agreement.** The term of this Agreement shall be from the Effective Date through August 7, 2020, unless sooner terminated as provided in Section 12 of this Agreement or extended. This Agreement may be renewed by the Parties for up to two additional one year terms; any such renewal requires the written agreement of both Parties.

### **3. Compensation.**

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Contractor at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Contractor be paid more than \$818,175 (the "Maximum Compensation").

The City Manager shall have authority to increase the Maximum Compensation by up to 6%; any further increase requires City Council approval.

B. Expenses. The amount set forth in paragraph 3.A. above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

### **4. Method of Payment.**

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

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

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

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

**6. Information and Documents.**

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

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

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings,

maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

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

**8. Indemnification.**

A. Indemnities for Third Party Claims.

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

Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

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

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

## **9. Insurance.**

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

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

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section 9.

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

B. Acceptability of Insurers. The insurance policies required under this Section 9 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 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 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 officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall

either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 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 9 is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

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

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

## **10. Mutual Cooperation.**

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

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

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

**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 Contractor at least ten calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 90 calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

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

**14. Default.**

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms



of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

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

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

If to City:

Attn: Chief Eve R. Irvine  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: 310-802-5103  
Email: mbpolice@citymb.info

If to Contractor:

Attn: Baron Farwell, General Manager  
All-City Management Services, Inc.  
10440 Pioneer Blvd., Suite 5  
Santa Fe Springs, CA 90670

With a courtesy copy to:

Quinn M. Barrow, City Attorney  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5061  
Email: qbarrow@citymb.info

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

**17. Prohibition of Assignment and Delegation.** Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "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 Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, sub-contractors and agents.

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

**22. Non-Appropriation of Funds.** Payments to be made to Contractor by City for services performed within the current fiscal year are within the current fiscal budget and

within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

**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 Contractor'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 or federal 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 actual attorneys' fees, experts' fees, and other costs, 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

Contractor:

All-City Management Services, Inc.,  
a California corporation

By: \_\_\_\_\_

Name: Mark Danaj  
Title: City Manager

By: \_\_\_\_\_

Name: Baron Farwell  
Title: General Manager

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 CONTENT:

By: \_\_\_\_\_

Name: Bruce Moe  
Title: Finance Director

## **EXHIBIT A SCOPE OF SERVICES**

### **Scope of Work**

The City of Manhattan Beach is seeking the services of a qualified and highly motivated firm to provide Crossing Guard services in the City for a three-year contract with two one-year renewals.

Contractor will provide fully trained Crossing Guards at twenty-three (23) or more designated locations throughout the City of Manhattan Beach Monday through Friday, excluding days when the schools are not in session. The total hours for Crossing Guard services being sought is a bi-weekly average of approximately 800 hours, with service decreasing or increasing contingent upon school schedules and City desires. Contractor will be able to fully manage Crossing Guard services within the City of Manhattan Beach in coordination with the Police Department.

City shall determine the hours and locations when and where the Crossing Guards shall be furnished by Contractor. City further has the power to add to, delete from, or revise the work schedule/locations at any time.

Contractor shall manage Crossing Guard personnel to see that the Crossing Guard activities are taking place at the required places and times, and in accordance with all items of the agreement.

Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location.

Contractor shall provide personnel proper training for the performance of Crossing Guards duties. In the performance of their duties, Contractor and employees of Contractor shall conduct themselves in accordance with the conditions of this Agreement and the laws and codes of the State of California, and shall maintain familiarity with laws and codes regarding general pedestrian safety and school crossing areas.

Contractor shall furnish all uniforms and equipment for Crossing Guards assigned to work in the City of Manhattan Beach. Uniforms shall be properly fitting with no rips or tears, and must be clean and present a neat appearance. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. Apparel must be appropriate for the weather conditions (i.e. rain gear). Contractor shall also provide all Crossing Guards with hand held Stop signs and any other safety equipment which may be necessary, including whistle and raingear. Reflective vest must be worn at all times and be readily visible, making the personnel easily recognized as Crossing Guards; vests must comply with all applicable Federal, State, and City laws and regulations. Contractor shall be responsible for making sure uniforms are complete, clean, in good repair and worn by all Crossing Guards while on duty.

Crossing Guards involve a high degree of public contact. Discourtesy, rudeness, use of profanity, or physical contact by Contractor's employees is unacceptable. Such unacceptable behavior may result in the immediate removal of the offending Crossing Guard from performance of duties. Staff must act in a diplomatic manner as they are the liaison between the community and the Manhattan Beach Police Department.

### **Scope of Services**

All Crossing Guards are to be properly trained, fingerprinted, background checked, issued appropriate Crossing Guard equipment, and dressed in appropriate uniforms.

City shall determine the hours of work. All changes to the hours of work require the prior written approval of the City. City shall have the right to contract for additional Crossing Guard personnel at the same rates found in the Contractor's proposal, and to modify the required levels of service.

All hours worked shall be worked by 21 Crossing Guards, working split shifts for no more than 5.5 hours per day, 5 days per week, Monday through Friday. Hours of work shall be assigned by City. The schedule for the first shift may vary between 7:00 a.m. and 9:00 a.m., and the second shift may vary between 11:30 a.m. to 4:30 p.m.

The current designated locations in the City of Manhattan Beach are as follows:

1. Intersection of Laurel Avenue and 18<sup>th</sup> Street
2. Intersection of Laurel Avenue and 15<sup>th</sup> Street
3. Intersection of 24<sup>th</sup> Street and Blanche Road
4. Intersection of 24<sup>th</sup> Place and Manor Drive
5. Intersection of 27<sup>th</sup> Street and Bell Avenue
6. Intersection of 26<sup>th</sup> Street and Highland Avenue
7. Intersection of 15<sup>th</sup> Street and Redondo Avenue
8. Intersection of Redondo Avenue and Manhattan Beach Blvd. (Northwest Corner)
9. Intersection of Redondo Avenue and Manhattan Beach Blvd. (Southwest Corner)
10. Intersection of Manhattan Beach Blvd. and Peck Avenue
11. Intersection of Meadows Avenue and 12<sup>th</sup> Street (Northeast Corner)
12. Intersection of Manhattan Beach Blvd. and Meadows Avenue
13. Intersection of Pacific Avenue and Valley Drive/Ardmore Avenue
14. Intersection of Manhattan Beach Blvd. and Pacific Avenue
15. Pacific Avenue in front of Pacific School (Southwest side of the street)
16. Intersection of 17<sup>th</sup> Street and Poinsettia Avenue
17. Intersection of Peck Avenue and Second Street
18. Intersection of Peck Avenue and First Street
19. Intersection of First Street and Valley Drive
20. Intersection of Second Street and Ardmore Avenue
21. Intersection of Francisco Street and South Valley Drive
22. Intersection of Pacific Avenue and 17<sup>th</sup> Street
23. Intersection of Rowell Avenue and Gates Avenue

Personnel providing services shall be direct employees of Contractor, fully trained, and a minimum of 21 years of age, and capable of performing assigned duties. Contractor's personnel shall not have been convicted of any crimes other than minor traffic violations. All Crossing Guard personnel assigned to City must receive training on pedestrian and traffic safety.

Contractor will be required to secure at its own expense, all personnel required to perform the services. All of the required services performed by Contractor or under its supervision, and all personnel engaged in the work, shall be qualified to perform such services. Crossing Guards assigned to work under this contract must have at least one year of experience in similar work, be a person of mature judgment, and mentally alert and capable of exercising good judgment, implementing instructions, and assimilating necessary specialized training.

In the event Contractor must use substitute personnel, this personnel shall be equal in ability, skill, and knowledge to the employees they are replacing. Substitute personnel will be billed to City at same base Crossing Guard rate as regular employees.

Poor performance will not be tolerated. City reserves the right to refuse or reject any assigned Crossing Guard without cause.

Contractor and assigned Crossing Guard personnel will be required to cooperate with the Manhattan Beach Police Department at all times. Contractor shall meet with the Manhattan Beach Police Department quarterly to review the program.

### **Personnel Selection**

Contractor shall be responsible for providing competent and trained personnel to assist the Manhattan Beach Police Department with realizing a safe and secure environment. Within Federal, State, and Municipal guidelines, Contractor shall provide personnel who meet the following criteria:

#### **1. Skills**

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

#### **2. Other Qualifications**

Each Crossing Guard:

- a. Shall be at least twenty-one years of age.
- b. Shall be physically and mentally capable of performing Crossing Guard services.
- c. Shall have the ability to give and follow oral and written instructions in English.
- d. Shall have the ability to establish and maintain effective working relationships with the public and Police Department.



- e. Shall have the ability to remain calm and use good judgment and initiative in a confrontational or emergency situation.
- f. Shall be in possession of valid credentials and/or certificates required by the State of California for the performance of the designated duties.
- g. Shall have passed developed reference check and background check, a drug screening test and undergone a medical examination to determine fitness to perform assigned duties. All Crossing Guards are to be fingerprinted. Contractor shall certify that such checks have been performed.

### **Training**

All Crossing Guards shall meet any and all applicable training or licensing standards set forth by the State of California and the City of Manhattan Beach. Contractor shall provide training for all Crossing Guards. Training shall be comprehensive and include information on, but not limited to, traffic control techniques, incident reporting procedures, conflict avoidance, conflict resolution, and mitigation techniques and legal responsibilities, and liabilities associated with providing Crossing Guard services. Additionally, Contractor shall provide instruction on the proper and acceptable use of equipment (e.g. hand held stop sign), customer service and public relations. Contractor shall provide a copy of the training manual for review by the Manhattan Beach Police Department.

### **Employee Replacement**

The City retains the right to require Contractor to replace any Crossing Guard for, but not limited to, the following reasons:

- 1) Failure to meet minimum requirements
- 2) Unlawful or improper conduct including, but not limited to, verbally or physically assaulting a member of the public, co-worker or any other individual, theft and misuse or attempted misuse of authority or equipment for personal benefit.
- 3) Conduct detrimental to the best interest of the Manhattan Beach Police Department or the general public.
- 4) Being under the influence, being in possession of or using alcohol, illegal, or non-prescribed drugs while in the workplace or on duty.

### **The City retains the following rights:**

- The right to set all hours of Crossing Guards operation, locations of deployment, and number of personnel assigned.
- The right to modify, alter, and/or delete instructions, procedures and requirements during the event.
- The right to approve or disapprove any invoice and to adjust any invoice with the knowledge of Contractor and the right to adjust items or services discovered after an invoice has been submitted and approved for payment and, within a reasonable period of time, after an invoice has been paid. Adjustments include, but are not limited to, miscalculations of price or number of personnel, hours on duty and items or services delivered with no prior authorization from the City.

**Licenses**

The Contractor must hold all required local, state and federal licenses.

**Safety**

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

**EXHIBIT B  
APPROVED FEE SCHEDULE**

**Hourly Rate:**

August 1, 2017 – December 31, 2017	\$16.78
January 1, 2018 – December 31, 2018	\$17.43*
January 1, 2019 – December 31, 2019	\$18.72*
January 1, 2020 – December 31, 2020	\$20.01*

\* These hourly rates include increases due to anticipated Minimum Wage increases, plus 28.5% vendor incurred wage-connected costs (employee payroll taxes, workers compensation, California sick time). Should the anticipated minimum wage costs not take effect, the hourly rates will not go up.

Contractor shall notify City of any increase in writing thirty days prior to the rate change. No increase in pricing shall take effect without written consent by City.