

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated July 14, 2017 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Selbert Perkins Design, a California corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City desires to utilize the services of Contractor as an independent contractor to provide Phase III design services for the Manhattan Beach Community Identification and Wayfinding Signage Program.

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 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 City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Clifford Selbert, Partner (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 in conformance with the project timeline, set forth in **Exhibit A**.

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.

Rev'd 2/20/17

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 June 30, 2018, unless sooner terminated as provided in Section 12 of this Agreement or extended.

**3. Compensation.**

A. Compensation. As full compensation for Contractor's Services provided under this Agreement, City shall pay Contractor the total sum of \$40,000 (the "Maximum Compensation"), as set forth in the Approved Fee Schedule attached hereto as **Exhibit A**.

B. Expenses. City shall only reimburse Contractor for those expenses expressly set forth in **Exhibit A**. In no event shall reimbursable expenses collectively exceed the total sum of \$4,000.00.

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 A**, 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. Indemnity for Design Professional Services. To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, protect, indemnify, and hold harmless 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, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Contractor, its officers, agents, servants, employees, subcontractors, material men, 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 design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Contractor shall, at its sole cost and expense,

defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, 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 "Claims"), 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 Claims 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 Claim 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 the 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 B.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 indemnities, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims 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'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 Claims 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.

C. Workers' Compensation Acts not Limiting. Contractor's 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.

D. 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 hold harmless and indemnification provisions in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in 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:

B. Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If 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.

C. 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.

D. 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.

E. Professional Liability Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

F. 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.

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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 five 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 60 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: Edward Kao  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5358  
Email: ekao@citymb.info

If to Contractor:  
Clifford Selbert  
Selbert Perkins Design  
432 Culver Boulevard  
Playa del Rey, California 90293  
(310) 822-5223

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.** Exhibit A constitutes a part of this Agreement and is 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.

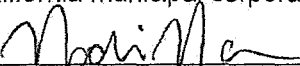
**33. Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

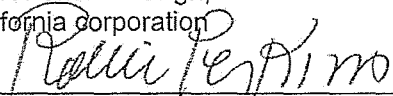
City:

City of Manhattan Beach,  
a California municipal corporation

By:   
Name: Nadine Nader  
Title: Asst. City Manager

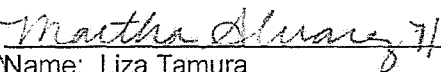
Contractor:

Selbert Perkins Design,  
a California corporation

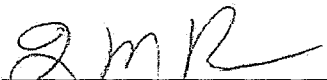
By:   
Name: Robin Perkins  
Title: Partner

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:  7/14/17 **PROOF OF AUTHORITY TO BIND CONTRACTING PARTY REQUIRED**  
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 AND FEE SCHEDULE**

16 June 2017

Edward Kao  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach  
CA 90266



re: City of Manhattan Beach Community Identification and Wayfinding Signage Program

Dear Ed:

Thank you for the opportunity to submit our revised proposal for the next phase of the City of Manhattan Beach Community Identification and Wayfinding Signage Program.

We look forward to continuing our collaboration with the City of Manhattan Beach to create a meaningful and appropriate sign program to reinforce and enhance the character of Manhattan Beach.

Sincerely,

A handwritten signature in black ink, appearing to read "Clifford Selbert".

Clifford Selbert  
Partner

\* Please note that our overall insurance coverage (page 7) is \$12,000,000.

**PHASE III A: DESIGN DEVELOPMENT**

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**(2) Meetings/Presentations with City team in Manhattan Beach**

**(1) Presentation to City Council**

**Teleconferences, as needed**

**Schedule: 4 weeks**

1. Confirm approved design approach and Master Plan elements based on previous comments and direction received from City Council.
2. Review precedent studies for similar communities.
3. Refine the design and renderings for review and approval by the Manhattan Beach City team.
4. Review and update proposed sign location plans and quantities.
5. Develop preliminary message schedule to ensure revised designs reflect existing and future city needs.
6. Prepare preliminary wayfinding map.
7. Prepare and present the updated Master Plan to City Council.

**Phase III A deliverables: hard copy and uploaded digital file:**

- Design Development package with general specifications for approved elements
- Updated Master Plan
- Precedent studies
- Updated location plans
- Preliminary message schedule
- Updated quantities and cost estimates
- Preliminary wayfinding map
- Minutes from meetings and teleconferences



**PHASE III B: DESIGN INTENT**

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**(2) Meetings/Presentations with City team in Manhattan Beach**

**(1) Final Presentation to City Council**

**Teleconferences, as needed**

**Schedule: 4 weeks**

1. Based on City Council review and approval, develop the following items:
  - a. Final Design Development of Community Identity & Wayfinding elements for cost estimates
  - b. Revised location plans, quantities, & cost estimates for Community Identity & Wayfinding elements, specs
  - c. Final design for city wayfinding map
  - d. Phasing plan for project implementation
  - e. Final design of approved project elements
2. Review the schedule of planned City construction and development projects, to identify the best opportunities for implementation within existing projects.
3. Confirm Master Plan components for implementation.

**Phase III B deliverables: hard copy and uploaded digital file:**

- Final Master Plan
- Final design of approved elements
- Revised location plans
- Revised quantities and cost estimates
- Final map
- Phasing plan for implementation
- Minutes from meetings and teleconferences

# fee proposal

PHASE	SCHEDULE	FEE
Phase III A: Design Development	4 weeks	\$20,000 + \$2,000 (expenses)
Phase III B: Design Intent	4 weeks	\$20,000 + \$2,000 (expenses)
Phase IV: Implementation		TBD

## PROJECT EXPENSES

Project expenses are additional and may include models, color copies, color print-outs, plots, materials, deliveries, etc. and are estimated at 10% of the total fee (\$4,000).

## HOURLY RATES

Partner	\$250
Principal	\$200
Design Director	\$175
Project Manager	\$160
Production Manager	\$160
Senior CAD Designer/Designer	\$150
CAD Specialist/Designer	\$135
Designer	\$135
Design Assistant	\$100
Administrative	\$100

## PAYMENT SCHEDULE

Payment will be billed in monthly increments. Payment is due upon receipt.

## AUTHORIZATION AND ACCEPTANCE

We require your signature and in order to begin work. To expedite internal processing, please complete and return the following:

For Selbert Perkins Design Inc.

For The City of Manhattan Beach

by.....

by.....

date.....

date.....

#### **ADDITIONAL PROJECT SERVICES**

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The following will be considered additional services. If additional services are required during the project they will be billed at a negotiated fee or at standard hourly rates. Additional services will not be incurred without written client approval.

1. Phase IV Construction Services.
2. GIS-based map denoting locations of each respective sign type
3. Engineering services.
4. Photography, illustration, naming, copywriting/editing, printing, sign fabrication and installation, video production and post-production, additional market research beyond SPD's defined scope of services, focus group coordination, trade mark research, etc.
5. Significant changes and/or revisions in approved design or scope of services.
6. Change orders to any project component(s) after client approval. Preparation of drawings, mechanicals, specifications, addenda, and any other services provided in connection with change orders.
7. Art direction of photography or illustration.
8. Shop visit inspection and review of on-site installation.
9. Production of models or prototypes.
10. Consultants or sub-consultants.
11. Professional Cost Estimating Services.
12. Acquisition of permits and permit documents and any meetings and presentations related to acquisitions of permits.
13. Presentations, interviews, meetings, reviews with governing agencies, local authorities or neighborhood groups related to the project, in addition to any specified in this Scope of Services.
14. More than (3) concept alternatives.
15. More than (1) round of revisions to the chosen design concept. SPD will inform client of each round of design revisions
16. More than (1) final design of all design elements.
17. More than (3) perspective renderings including computer renderings and virtual walk-throughs.
18. Additional meetings beyond what is outlined.
19. Converting/formatting electronic files to conform to client standards.
20. Creation of evacuation maps.
21. Creation of any phone apps, electronic or mobile communications.

## terms and conditions

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### PAYMENT/BILLING

Invoices for services rendered will be submitted in accordance with the project payment schedule, previously outlined. Payment is due upon receipt, unless otherwise agreed to in advance by SPD. If the Client disputes any charges, written notice of such disputed charges must be submitted to SPD within 10 days of receipt of invoice. SPD reserves the right to stop project work, and withhold presentation materials if payments are not received when due. There is a finance charge of 2% a month for overdue invoices.

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### CANCELLATION/POSTPONEMENT

In the event of the Client's cancellation or postponement of the project while it is in progress, all fees and expenses, incurred in the interest of the project to date of postponement or cancellation shall be paid by the Client within 10 days of the date that notice is given to SPD, unless otherwise agreed to in advance by SPD.

SPD may withdraw from the project at any time for good cause which includes the Client's breach of this agreement, refusal to cooperate with SPD, or failure to pay SPD's fees or expenses according to agreed upon payment terms.

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### RELEASES

For editorial copy, artwork (including illustration and photography), etc. provided by the Client, and for use rights negotiated by the Client for editorial copy, artwork, talent etc., the Client will indemnify SPD against all claims and expenses, including reasonable attorneys' fees and costs, due to uses for which no release was requested of SPD in writing by the Client or for uses by the Client which exceed the authority granted by a release.

Conversely, for editorial copy, artwork (including illustration and photography), talent etc. provided by SPD, and for use rights negotiated by SPD for editorial copy, artwork, etc., SPD will indemnify the Client against all claims and expenses, including reasonable attorneys' fees and costs, due to uses for which no release was requested of the Client in writing or for uses which exceed the authority granted by a release.

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### APPROVALS

SPD requires written documentation of ALL requests for changes, including to designs and copy. Documentation may be in the form of a facsimile or an e-mail. The Client will proofread and approve all final typeset copy before production of mechanicals; review and approve finished mechanicals and artwork before release to printers; and review and approve all design intent and/or construction documents and related sign schedules prior to release to qualified fabricators. The signature of the Client's authorized representative will be conclusive as to the Client's approval of all the above items prior to their release for printing, fabrication or installation.

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### THIRD PARTY CONTRACTS

When possible, all outside vendors will be contracted directly by the Client and the Client will pay the outside vendor directly for services. When it is not possible for the Client to contract directly with outside vendors, SPD may contract with others to provide creative services such as writing, photography, illustration, media placement, print and audio/video production, and fabrication. The Client agrees to be bound by any terms and conditions, including required credits, with respect to reproduction of such materials as may be imposed on SPD by such third parties and shall pay for the outside vendors' services upon presentation of an invoice. Such payment shall be made by the Client either to the outside vendor or directly to SPD, at SPD's option. Usage rights for photography and illustration will be negotiated with vendors by the Client directly.

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### ESTIMATES

SPD has no direct control over printing and fabrication costs or vendors' prices. Cost estimates are made by SPD on the basis of preliminary specifications and SPD cannot and does not guarantee that vendors' proposals and bids of costs will not vary from those estimates.

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### OWNERSHIP

Upon payment of all amounts owing to SPD, all electronic files generated for the production of this project shall become the property of the Client. SPD retains ownership of all rights, title, and interest, including copyrights, trademarks, and patents related to this project, until all outstanding payments are satisfied in full by the Client. Fees for file copies or additional usages must be negotiated in addition to the above outlined fees.

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### SAMPLES OF WORK

The Client agrees to furnish SPD with 100 samples of all printed materials without charge. These samples will be used by SPD for publication, exhibition and promotional purposes. SPD retains the right to photograph or otherwise document complete signs or other designs on site following installation.

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**PROJECT STORAGE**

Project and electronic files will be stored at SPD for one (1) year at no cost. However, SPD cannot be held responsible for loss or damage of stored files.

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**CREDIT**

SPD has the right to include a credit line on the completed designs or any visual representations such as drawings, models or photographs and the Client agrees to include this same credit in any publication of the design by the Client. SPD maintains the right to use any samples and/or photographs for publication, exhibition and promotional purposes.

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**ENFORCEMENT**

If SPD incurs attorneys' fees or related costs to enforce this agreement or because of a breach of this agreement by the Client, SPD shall be entitled to recover all of its costs and expenses, including but not limited to, its reasonable attorneys' fees and court costs from the Client.

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**INDEMNIFICATION**

The Client will indemnify and hold harmless SPD, its officers, directors, employees, and agents that have contributed information to or provided services for this project, against any and all direct or indirect losses, claims, demands, expenses (including attorneys' fees and court costs) or liabilities of any kind arising in connection thereof, except for claims found to be gross negligence or a breach of this agreement by SPD.

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**STATE OF CALIFORNIA**

This agreement shall be governed by the laws of the State of California. If either party hereto is a corporation, trust, or general or limited partnership, each individual executing agreements on behalf of such entity represents and warrants that he or she is duly authorized to do so on behalf of said entity. All disputes and matters whatsoever arising under, in connection with or incident to this contract, shall be litigated, if at all, in and before the Los Angeles Superior Court, Central District, for the State of California, United States of America, to the exclusion of all other courts, or, as to those lawsuits as to which the State court of California lacks subject matter jurisdiction, in and before the United States District Court for the Central District of California, Western Division. By executing this contract you submit to exclusive jurisdiction in the State of California, Los Angeles Superior Court, Central Division, or, as to those lawsuits as to which the State of California lacks subject matter jurisdiction, you agree to submit to the exclusive jurisdiction of the United States District Court for the Central District of California, Western Division.

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**INSURANCE**

SPD maintains the insurance coverages and limits outlined below. Additional coverages and limits, if required, shall be at the Client's expense.

a. General Liability

Each Occurrence	\$1,000,000
Damage To Rented Premises	\$50,000 (each occurrence)
Medical Expense	\$10,000 (any one person)
Personal & Adv. Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Comp/Op Agg.	\$2,000,000

b. Automobile Liability

Combined Single Limit	\$1,000,000 (each accident)
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c. Umbrella Liability

Each Occurrence	\$10,000,000
Aggregate	\$10,000,000

d. Workers Compensation and Employers' Liability

Workers Compensation	Statutory
Employers' Liability	\$1,000,000 (each accident)
	\$1,000,000 (disease - each employee)
	\$1,000,000 (disease - policy limit)

e. Professional Liability

Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MANHATTAN BEACH AND SELBERT PERKINS  
DESIGN

This First Amendment ("Amendment No. 1") to that certain agreement by and between the City of Manhattan Beach, a California municipal corporation ("City") and Selbert Perkins Design, a California corporation ("Contractor") is hereby entered into as of this March 7, 2018 ("Effective Date").

RECITALS

A. On July 14, 2017, the City and Contractor entered into an agreement for professional services for the Contractor to provide Phase III design services for the Manhattan Beach Community Identification and Wayfinding Signage Program ("Agreement");

B. The Parties now desire to amend the Agreement to allow Contractor to provide additional specified services to the City, and to allow the City to provide compensation for the services provided.

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

Section 1. Exhibit A (Scope of Services) of the Agreement is hereby amended to include the additional services described in the Additional Services Agreement dated 09 February 2018, attached hereto and incorporated herein by this reference. If any inconsistency exists or arises between a provision of the Agreement as amended by this Amendment No. 1 and a provision of the Additional Services Agreement, the provisions of this Agreement shall control.

Section 2. Section 3.A (Compensation) of the Agreement is hereby revised to increase the Maximum Compensation amount by \$8,624, for a new Maximum Compensation of \$48,624.

Section 3. Section 3.B (Expenses) of the Agreement is hereby revised to decrease the amount available for expense reimbursement by \$2,724. The second sentence of Section 3.B is hereby revised to read as follows: "In no event shall reimbursable expenses collectively exceed the total sum of \$1,276."

Section 4. Except as specifically amended by this Amendment No. 1, all other provisions of the Agreement shall remain in full force and effect.

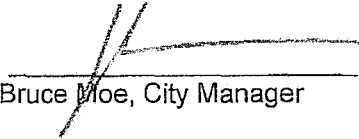
IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 1 on the day and year first shown above.

[signatures begin on next page]

CITY OF MANHATTAN BEACH

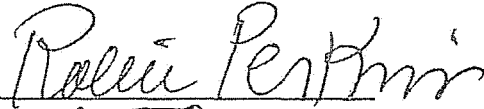
SELBERT PERKINS DESIGN

By:

  
Bruce Moe, City Manager

By:

Its:

  
CEO

ATTEST:

 3-7-18  
Liza Tamura, City Clerk

APPROVED AS TO FORM:

  
Quinn M. Barrow, City Attorney

APPROVED BY FINANCE DEPARTMENT:

By:



Name: ~~Bruce Moe~~  
Title: Finance Director

STEVE S. CHARELIAN

INTERIM

## additional services agreement

09 February 2018

to  
Prem Kumar  
City of Manhattan Beach  
3621 Bell Ave  
Manhattan Beach, CA 90266

project name City of Manhattan Beach,  
CA - Signage and Wayfinding  
from Clifford Selbert  
cc Gretchen Bustillos

### PROJECT ELEMENTS

Selbert Perkins Design has provided the following additional services to the base contract for the City of Manhattan Beach Signage and Wayfinding services.



### SCOPE OF WORK

### FEE

Additional:

- Signage prototype/mock-up
- Future Meetings
  - North End BID
  - Planning Commission
  - Cultural Arts Commission
  - Downtown Business Professional Association
  - 2 additional meetings with Public Works via teleconference
- Design presentations for future meetings
- Extended Schedule

TOTAL:

\$8,624

### PROJECT EXPENSES/PAYMENT SCHEDULE

Reimbursable expenses such as color copies, materials, travel and related expenses, etc. will be billed additional to the project fee and are estimated at 10% of the total fee.

### PAYMENT SCHEDULE

Payment will be billed in monthly increments. Payment is due upon receipt of invoice.

### AUTHORIZATION AND ACCEPTANCE

We require your signature in order to begin work. To expedite internal processing, please complete and return the following:

For Selbert Perkins Design

For City of Manhattan Beach

by

*Clifford Selbert*

by

date

*2/12/18*

date

432 culver blvd.  
playa del rey, ca 90293  
T 310.822.5223 | F 310.822.5203

los angeles  
boston  
chicago  
shanghai



solbert perkins design collaborative