

**AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH  
AND VIGILANT SOLUTIONS, LLC**

**PURCHASE AND INSTALLATION OF  
LICENSE PLATE READER CAMERAS**

The following contract ("Contract") is made and entered into as of the last date of full execution ("Effective Date") by and between the City of Manhattan Beach, a California municipal corporation ("City") and Vigilant Solutions, LLC, a limited liability corporation ("Contractor"). City and Contractor are referred to herein as the "parties."

WHEREAS, City desires to purchase the equipment listed in **Exhibit A**, Scope of Work and Fee Schedule, and cause the installation thereof;

WHEREAS, City and Contractor now desire to memorialize the terms and conditions of the purchase and installation of such license plate reader cameras; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. **GENERAL SCOPE OF WORK; TERM; TERMINATION:** Contractor shall procure and furnish all necessary labor, tools, materials, and expertise for installation of the new cameras at City's Police Department facility consistent with the Scope of Work and Fee Schedule attached hereto as **Exhibit A**. The installation is to be performed in good and workmanlike manner and in accordance with any further written instructions, if any, of the City Manager or his designated representative, and which is agreed to by Contractor. The term of this Contract shall commence upon the Effective Date and, unless terminated as provided herein; shall continue until all required work is completed; fully executed releases as to any and all lien rights of any and all subcontractors have been received by City; and the time within which any liens, stop notices or other claims for payment by subcontractors, laborers, and/or materialmen can be asserted against City has expired.  
  
City may terminate this Contract, without cause, at any time by providing Contractor with not less than 30 days' prior written notice. Provided Contractor is not then in breach, Contractor will be paid for work satisfactorily completed, for all deliverables received, and any costs incurred up to the time of notice.
2. **TIME OF COMPLETION.** Notwithstanding any other provision of this Contract, the completion date for this installation shall be on or before December 31, 2021 ("Completion Date").
3. **INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY:** All Exhibits attached hereto are incorporated herein by reference. The documents, payment bond, City insurance requirements, together with this written contract (and all Exhibits, documents and laws referenced therein), shall constitute the entire agreement between the parties as to the subject matter of this Contract. In the event of any conflict between this Contract and any Exhibit hereto, the provisions of this Contract shall control.

4. FEE SCHEDULE: Terms of payment and other applicable terms and conditions are in **Exhibit A**. City shall pay to Contractor for furnishing the material and doing the prescribed work according to the unit prices and/or lump sum set forth in **Exhibit A**. In no event shall Contractor be paid more than \$280,000 (the "Maximum Compensation") for such Services. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Contractor Representative authorize such services in writing prior to Contractor's performance of those services or incurrence of additional expenses. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.
5. INSURANCE: Contractor shall not commence work under this Contract until it has obtained insurance with the minimum required limits and coverage as specified in **Exhibit B – City Insurance Requirements**, in a company or companies acceptable to City. Contractor shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. Contractor shall provide evidence of the required insurance to City's Risk Manager as specified in **Exhibit B**.
6. NOT USED
7. RESOLUTION OF DISPUTES: In the event that a dispute arises between City and Contractor regarding whether the conditions materially differ, or cause a decrease or increase in Contractor's cost of or time required for performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all work to be performed under this Contract. Contractor shall retain any and all rights that pertain to the resolution of disputes and protests between the parties. In the event of any dispute or controversy with City over any matter whatsoever, Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. This includes disputed time extension requests and prices for changes. The disputed work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. Contractor will keep accurate, detailed records of all disputed work, claims and other disputed matters. For purposes of this section, a "claim" means a separate demand by Contractor for a time extension, payment of money or damages arising from work done by or on behalf of Contractor pursuant to this Contract which is not otherwise expressly provided for, or an amount which is disputed by City. Manhattan Beach Municipal Code Chapter 2.56, governing claims and actions against City, shall govern the procedures of the claim process, and the provisions of Manhattan Beach Municipal Code Chapter 2.56 are hereby incorporated herein.
8. INDEMNIFICATION, HOLD HARMLESS, AND DUTY TO DEFEND.
  - a. Indemnities.
    - 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, employees, successors, assigns (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 (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 judicial decision or by the agreement of the Parties. Contractor shall defend and indemnify upon City promptly notifying Contractor in writing, Contractor shall have sole control of the defense of the suit and all negotiations for its settlement or compromise. City shall provide cooperation. 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).

- b. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of this Contract, 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 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. LIMITATION OF LIABILITY. Except for personal injury, death or damage to tangible property, Contractor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE;**

LOSS OF USE; TIME DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANYWAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY CONTRACTOR. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

9. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.
10. NON-DISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of age, disability, race, color, religion, sex, sexual orientation or national origin of such persons, and every Contractor for public works violating this Section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of Section 1735 of that Code.
11. LICENSES: Contractor is aware of California Labor Code Sections 1777.1 and 1777.7, which prohibit Contractor or any subcontractors who have been found by the Labor Commissioner or the Director of Industrial Relations to be in violation of certain provisions of the Labor Code, from bidding on, being awarded, or performing work as a contractor or subcontractor on a public works project for specified periods of time.  
  
Contractor has investigated and will ensure that any subcontractor possesses a valid specialty trade license in its trade as required by law.
12. WARRANTY. The warranty applicable to the equipment and materials purchased by City pursuant to this Contract shall be as specified in **Exhibit A**.
13. ANTITRUST CLAIMS: Pursuant to Public Contract Code Section 7103.5, Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code) arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time City tenders final payment to Contractor without further acknowledgment by the parties.



14. **THIRD-PARTY CLAIM:** Pursuant to Public Contract Code Section 9201, City has full authority to compromise or otherwise settle any claim relating to this Contract at any time. City shall timely notify Contractor of the receipt of any third-party claim relating to this Contract. City shall be entitled to recover its reasonable costs incurred in providing the notification required by Public Contract Code Section 9201(b).
15. **INDEPENDENT CONTRACTOR:** Contractor is and shall at all times remain, as to City, a wholly independent contractor. The personnel performing the Services under this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, officials, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's employees except as set forth in this Contract, and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to City in such a manner and to such persons, firms, or corporations as Contractor wishes except as expressly provided in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent.

Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to 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 Contract. Contractor shall fully comply with the workers' compensation law regarding Contractor and its employees, and Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Contract any amount due to City from Contractor as a result of its failure to promptly pay to City any reimbursement or indemnification arising under this Section.

16. **ASSIGNMENT:** Contractor shall not assign or transfer any interest in this Contract or any part thereof, whether by assignment or novation, without City's prior written consent. Any purported assignment without written consent shall be null and void, and Contractor shall hold harmless, defend and indemnify City and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from any unauthorized assignment.
17. **GOVERNING LAW AND VENUE:** Should either party to this Contract bring legal action against the other, the validity, interpretation, and performance of this Contract shall be controlled by and construed under the laws of the State, excluding California's choice of law rules. Venue for any such action relating to this Contract shall be in the Los Angeles County Superior Court.
18. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time Contractor provides the services pursuant to this Agreement.

19. NOTICES: Except as otherwise required by law, any notice, request, direction, demand, payment, consent, waiver, approval or other communication required or permitted to be given hereunder to City shall not be effective unless it is given in writing and shall be delivered (a) in person or (b) by certified mail, postage prepaid, and addressed to City at the address stated below, or at such other address as City may hereafter notify Contractor in writing as aforementioned:

To CITY:

Derrick Abell, Chief of Police  
420 15<sup>th</sup> Street  
Manhattan Beach, California 90266  
Telephone number: 310-802-5103  
Email: mbpolice@citymb.info

To CONTRACTOR:

Steve Cintron  
Vigilant Solutions, LLC  
1152 Stealth Street  
Livermore, CA 94551  
925-398-2079  
sales@vigilantsolutions.com

If sent by mail, any notice, tender, demand, delivery or other communication shall be deemed effective three business days after it has been deposited in the United States mail. For purposes of communicating these time frames, weekends and federal, State, religious, County of Los Angeles or City holidays shall be excluded. No communication via facsimile or electronic mail shall be effective to give any such notice or other communication hereunder.

20. ENTIRE AGREEMENT: This Contract, including any other documents incorporated herein by reference, represents the entire integrated agreement between City and Contractor and supersedes all prior or contemporaneous negotiations, representations, agreements, understandings and statements, written or oral. This Contract may only be modified or amended, or provisions or breach may be waived, by written agreement signed by both parties. The provision of this Contract shall govern over any inconsistent provisions contained in any Exhibit.
21. NON-WAIVER OF TERMS, RIGHTS AND REMEDIES: Waiver by either party of any one or more of the conditions of performance under this Contract shall not be a waiver of any other condition of performance under this Contract. In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

22. **SEVERABILITY:** Whenever possible, each provision of this Contract shall be interpreted in such a manner as to be valid under applicable law. If any term or portion of this Contract is determined by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remaining provisions of this Contract shall nevertheless continue in full force and effect and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, the parties hereto have caused these present to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

**CITY OF MANHATTAN BEACH,**  
a California municipal corporation

**CONTRACTOR**  
Vigilant Solutions, LLC,  
a limited liability corporation

By: \_\_\_\_\_  
Bruce Moe, City Manager

By: BA  
Title: \_\_\_\_\_  
Vice President Sales Operations

ATTEST:

\_\_\_\_\_  
Liza Tamura, City Clerk

**PROOF OF AUTHORITY TO BIND  
CONTRACTING PARTY REQUIRED**

APPROVED AS TO FORM:

QMB  
Quinn M. Barrow, City Attorney

APPROVED AS TO FISCAL CONTENT:

By: SSC  
**Steve S. Charelian**  
Finance Director

## **Exhibit A**

### **SCOPE OF WORK AND FEE SCHEDULE**

Total contract amount not to exceed \$280,000.

Vendor shall provide a staggered delivery schedule to meet the City's infrastructure restrictions.

#### **Projected Timeline:**

Five (5) cameras to be ordered upon execution of this contract and installed within 60 days at the intersections of Rosecrans/Sepulveda and Highland/45th.

Six (6) cameras to be ordered once the signal pole replacement project at Valley/Ardmore and Manhattan Beach Boulevard is complete (CITY will instruct when to place order; estimated May 2020) and installed within 60 days.

Three (3) cameras to be ordered once the new pole is complete on Sepulveda (CITY will instruct when to place order; estimated Summer 2020) and installed within 60 days.

Vendor will not invoice for cameras until installation is complete and cameras are operational.



## **Exhibit B**

### **CITY INSURANCE REQUIREMENTS**

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Contract 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 \$2,000,000.00. 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 Contract with a combined single limit of \$2,000,000.00 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 **Exhibit B**.

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 Contract, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this **Exhibit B** 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 Section 6 of the Contract.

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

D. Primary and Non-Contributing. The insurance policies required under this Contract 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 Contract 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. Contractor shall be solely responsible for any deductibles or self-insured retentions under Contractor's policies.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel the insurance policies required by this Contract during the term of this Contract. The commercial general and automobile liability policies required under this Contract 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.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Contract in full force and effect during the term of this Contract, or in the event any of Contractor's policies do not comply with the requirements under **Exhibit B**, City may either immediately terminate this Contract 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** Contract, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and additional insured endorsements evidencing and effecting the coverages required under this Contract. The endorsements are subject to City's approval. 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 Contract 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 10 of this Contract.

L. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Contract to maintain insurance coverage that meets all of the requirements of this **Exhibit B**.