



City of Manhattan Beach

Finance Department – General Services Division

3621 Bell Avenue, Manhattan Beach, CA 90266-3459

Phone: (310) 802-5568 Fax: (310) 802-5590

---DRAFT---

REQUEST FOR PROPOSAL

BID NUMBER: 8__-11
 BID TITLE: CITY ATTORNEY SERVICES
 REQUESTING DEPARTMENT: MANAGEMENT SERVICES
 RELEASE DATE: June 8, 2011
 DUE DATE: **July 1, 2011 @ 12:00PM (Noon) PST**
 CONTACT PERSON: David N. Carmany at (310) 802-5053
 E-mail: dcarmany@citymb.info

Notice is hereby given that the Office of the City Clerk of the City of Manhattan Beach will receive proposals for City Attorney Services. Each proposal must be submitted in a sealed envelope and clearly marked:

“RFP #8__-11 City Attorney Services”

Failure to identify the proposal on the envelope may result in disqualification of the proposal.

Sealed proposals must be submitted to the office of the City Clerk at 1400 Highland Avenue, Manhattan Beach, CA 90266. **Proposals will be received until 12:00 PM (Noon) PST, Friday, July 1, 2011.**

Proposals will not be opened at that time, but will be submitted to the Ad Hoc City Attorney Selection Subcommittee for verification and compliance with Specifications and subsequent recommendation to City Council for award of a contract or rejection of the responses, as deemed appropriate. The City reserves the right to make no award.

Proposals received after the deadline will be considered late. Such proposals may be returned unopened. Fax proposals are not acceptable.

Dated: This 8th Day of June, 2011

Gwen Eng
 General Services Manager

Instructions to Bidders/Definitions

The following meanings are attached to the following defined words when used in these specifications and the contract: The word "City" means the City of Manhattan Beach, California. The word "Bidder" "Vendor," "Supplier," or "Contractor" means the person, firm, or corporation submitting a bid on these specifications or any part thereof.

Filing Date

All bids must be received at or before the time indicated above. Copies of all forms, specifications, and exhibits are available from the office of the Purchasing Agent for the City of Manhattan Beach (310) 802-5569.

Reservations

The City Council reserves the right to reject any and all bids received; to take all bids under advisement for up to 90 days after opening; to waive any informality on any bid; and to be the sole judges of the relative merits of the material mentioned in the respective bids received. The City Council also reserves the right to reject any item(s), award more than one contract for each of the items, and reject bids that are not accompanied by the requested information.

Bid Form

- The Bid must be submitted, **one original and eight (8) copies**, enclosed in an envelope, and marked "RFP #8 -11 – City Attorney Services", showing the bid number and addressed to the City Clerk, City Hall, Manhattan Beach, California.
- **No telephone or facsimile bids will be accepted.**
- If an individual makes the bid, it must be signed by the full name of the Bidder and include the Bidder's complete address. If it is made by a firm, it must be signed with the co-partnership name by a member of the firm, and the name and full address of each member must be given. If it is made by a corporation, it must be signed by the proper officer in the corporate name, and the corporate seal must be attached to such signature.
- Bids are subject to acceptance by the City for a period of 90 days, unless a different period is prescribed in the Bid by the bidder.
- Bidders are invited to attend the bid opening at the date and time stated above.
- Bid results are available by calling the office of the Purchasing Agent at (310) 802-5569.

Electronic Format

Vendor to supply a copy of the bid response on CD in searchable PDF format as a single document (optimized and compressed).

The Contract

The Bidder to whom the award is made will be required to enter into a written contract with the City. The contract may be in the form of a purchase order. A copy of the Notice Inviting Bids, the vendor Bid, and the contract specifications may be attached to, and will form a part of the contract. All materials, supplies, equipment, and services supplied by the vendor shall conform to the applicable requirements of State and Federal Laws covering Labor and Wages, as well as conforming to the specifications herein. In case of default by the vendor, the City reserves the right to procure the articles from other sources and to hold the vendor responsible for any excess costs incurred by the City.

Patent Rights

The vendor agrees to save, keep, bear harmless, and fully indemnify the City, its officers, or agents, from all damages, costs, or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights or any person or persons in consequence of the use by the City, or any of their officers and agents, or articles supplies under any resulting contract, and of which the vendor is not the patentee or assignee, or which the vendor is not lawfully entitled to sell.

Taxes

The City of Manhattan Beach is exempt from paying Federal Excise Taxes. These taxes are not to be included.

Delivery

All deliveries of such items to be furnished must be made to job sites or City warehouse within the boundaries of the City of Manhattan Beach. Where a specific delivery schedule is required, proximity to that schedule will be a consideration.

Payments

Complete payment on the contract will be made in approximately 30 days from the complete delivery and acceptance of the merchandise or service, unless alternate terms are proposed and accepted by the City. **The City may consider prompt payment discounts when calculating the lowest bid if the end result benefits the City.**

Errors/Omissions

The vendor shall not be allowed to take advantage of any errors and/or omissions in these specifications or in the vendor's specifications submitted with the Bid. Full instructions will be given if such errors/omissions are discovered, and vendor agrees to abide by said instructions.

Insurance

The following items checked are required of the successful bidder only:

- Insurance Endorsement Form #1 (attachment "A") in the amount of \$1,000,000 with certificate of insurance.
- Insurance Endorsement Form #2 (attachment "B") in the amount of \$1,000,000 with certificate of insurance.
- Insurance Endorsement Form #3 (attachment "C") in the amount of \$_____ with certificate of insurance.
- Proof of Workers' Compensation Insurance.
- City of Manhattan Beach Indemnification & Hold Harmless Agreement (attachment "D") (this is to be signed by an authorized official of the bidding company or firm - not by the insurance carrier).
- Professional Liability Insurance

Please note that Insurance Endorsement Forms 1, 2 & 3 require the signature of an authorized representative of your insurance carrier. Please review the forms requested with your insurance carrier prior to bidding the job to verify your ability to comply. Please contact the Purchasing Agent if there are any questions or problems.

Force Majeure

The vendor will be excused from the performance of the contract, in whole or in part, only by reason of the following causes:

- a) When such performance is prevented by operation of law.
- b) When such performance is prevented by an irresistible superhuman cause.
- c) When such performance is prevented by an act of the public enemies of the United States of America, or the State of California, or by strike, mob violence, fire, delay in transportation beyond the control of the vendor, or unavoidable casualty.
- d) When such performance is prevented by the inability of the vendor to secure necessary materials, supplies, or equipment by reason of:
 - 1) Appropriation of use thereof by the Federal Government or,
 - 2) Regulations imposed by the Federal Government.

No other Force Majeure clauses or conditions may be inserted in this bid and any changes in the conditions stated herein will cause the bid to be rejected.

Default

If the vendor fails in any manner to fully perform and carry out each and all of the terms, covenants, and conditions of the award, then the vendor is in default of the contract. The vendor shall be notified in writing of the default status, and will be given a time frame in which to comply. If the vendor fails to comply within the time frame given, the city, at its option, may terminate or cancel the contract, and at the expense of the contractor, complete the contract with an alternate contractor. Such termination shall not affect or terminate any of the rights of the City against the vendor, or which may thereafter accrue because of such default. The foregoing provision shall be in addition to all other rights and remedies available to the city under law. The waiver of a breach of any term, covenant, or a condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

Business License

The successful contractor (X) will () will not be required to procure a City of Manhattan Beach Business License prior to commencing work. Call Business Licensing at (310) 802-5557 for rate information or to apply for a license. Failure to obtain or maintain a valid City Business License may result in Agreement termination.

Contract Extension to Other Cities/Agencies

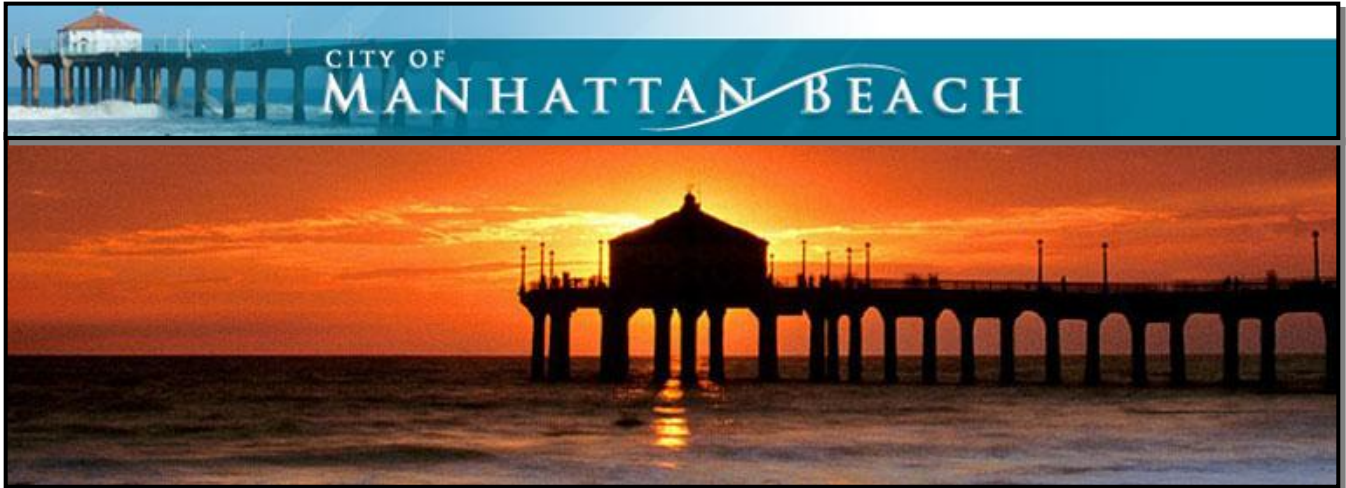
Other Cities/Agencies may be interested in purchasing against an awarded contract, subject to the same price, terms and conditions offered to the City of Manhattan Beach, and by mutual agreement by the City and the vendor. The City does not warrant any additional use of the contract by such agencies. All requirements of the specifications, purchase orders, invoices and payments with other agencies will be directly handled by the successful Bidder and the piggybacking agency.

Debarment Policy for Grant Funded Purchases

Contractor guarantees that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, MediCal or any other federal or state funded health care program, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the City if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, MediCal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend, and hold the City harmless for any loss or damage resulting from the conviction, debarment, exclusion, or ineligibility of the Contractor.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

- 1) The prospective lower tier participant certifies, by submission of this bid, that neither it nor its Principals [as defined at 49 C.F.R. section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid.



**REQUEST FOR PROPOSALS
CITY ATTORNEY SERVICES**



**Proposals Due
July 1, 2011 – 5:00 PM**

**City Clerk's Office
1400 Highland Avenue
Manhattan Beach, CA 90266**

City of Manhattan Beach
Request for Proposal for City Attorney Services

Introduction

The City of Manhattan Beach invites interested legal firms and individuals to submit proposals for City Attorney Services as described in the scope of work set forth in this request for proposal (RFP). The City would seek a City Attorney who will provide clear, understandable, and independent legal advice. The firm/individual must be qualified to provide expertise in the areas of general municipal law, land use, personnel and labor relations, open meeting and conflict of interest laws.

About the Community

Incorporated on December 7, 1912, the City of Manhattan Beach encompasses 3.89 square miles, with 2.1 miles of beachfront and 40 acres of total recreational beach area. This community of “Sun, Sand, and Sea,” is located in the South Bay area of Los Angeles County, nineteen miles from downtown Los Angeles, and is one of Southern California’s most desirable communities in which to work and live. Manhattan Beach is home to approximately 35,135 residents and 14,929 housing units according to the State of California Department of Finance (2010 Census figures).

The City offers residents a pleasant, peaceful, coastal living environment with easy access to all Los Angeles-area amenities. Manhattan Beach is truly cosmopolitan, but maintains the warmth of a quaint small City, far removed from the stress of typical urban life. The vibrant downtown area houses some of the South Bay’s best restaurants and upscale shopping venues. In addition to its popular coastline, the community offers a large number of tourist and family oriented events. The award-winning Manhattan Beach Unified School District is nationally known with *Forbes* magazine recently ranking the District sixth among school systems in 17,589 cities in 49 states as part of its annual “Best Schools for Your Real Estate Buck” list.

Manhattan Beach is a full-service General Law City operating under a council-manager form of government. The City Council is comprised of five (5) members elected at large, each serving a nine (9) month mayoral tenure during their four (4) year term. The City of Manhattan Beach has a variety of boards, commissions, and committees appointed by the City Council. The City Council meets on the first and third Tuesdays of the month at 6:30 PM. Additional information about the City can be found on the City’s website at www.citymb.info.

The City operates with eight (8) departments, 265 full-time employees, and approximately 140 part-time employees. The City’s operating and capital budget totals \$94.9 million for Fiscal Year 2011-2012. The prides itself in offering the highest level of services to its residents and is one of only a few cities in California with a AAA/Aaa bond rating. The City Attorney is appointed by and serves at the pleasure of the City Council. The City Manager, who is also appointed by the City Council, is responsible for day-to-day operations. Establishing and maintaining an effective and successful working relationship with the City Manager and Department Heads is critical.

The City’s Executive Management Team is characterized by its strong team and customer service orientation, highly cooperative nature, and a mutual commitment to individual and collective success. The Mid-Management Team, consisting of managers, analysts, and supervisors, meets regularly to further strengthen relationships and cooperation between departments. Our workforce is caring, compassionate, and ethical.

Priorities

The City of Manhattan Beach is facing the same issues as other California municipalities and wants to protect the community's high quality of life. The City Council is especially interested in positioning Manhattan Beach for continued long-term success by:

- Doing the right things and also doing things right
- Following the spirit and the letter of the Ralph M. Brown Act
- Emphasizing energetic civic engagement and effective democratic local government
- Maintaining a constructive, creative, ethical and practical attitude toward municipal affairs
- Taking a rational and impersonal viewpoint based on facts and qualified opinions
- Managing legal expenses through avoidance and transference of risk; minimizing litigation
- Handling personnel matters on the basis of merit so that fairness and impartiality govern decisions
- Handling problems without discrimination on the basis of principle and justice
- Communication with the media and public to achieve the highest degree of transparency
- Working with the City Manager, Committees, Boards and Commissions to achieve the highest professional levels in the processes followed
- Properly conveying the policies and programs of the City
- Working effectively with federal, state, and other local government representatives
- Reviewing and recommending sound written policies, and helping to train all employees so they are knowledgeable about city policies and current laws concerning public records requests, open meetings, workplace violence, sexual harassment, family and medical leave, conflicts of interest and records retention

Scope of Work

The City Attorney is appointed by and reports to the City Council. The City Attorney is the chief legal counsel for the City of Manhattan Beach and, as such, is responsible for advising on all legal matters.

The following are the primary responsibilities for the legal services the City will require in a City Attorney:

- Advise the Council, City Boards and Commissions, and all City officials on municipal government legal matters including the Brown Act and parliamentary procedures for running meetings.
- Attend all City Council meetings unless excused by the Mayor or City Manager. Attend other meetings as requested by the Mayor or City Manager.
- Coordinate and manage the services and costs of all outside legal counsel within budgetary limits as approved by the City Council.
- On a monthly basis, provide a written status report of assigned projects, requests, and litigation in order to keep the City Council informed of important legal issues and to facilitate the City Council's periodic evaluation of the City Attorney.
- Provide legal advice to staff upon request of the City Manager.

- Prepare and/or review all ordinances, resolutions, municipal contracts, joint powers agreements, and other agreements and contracts entered into by the City.
- Research and submit legal opinions on municipal or other legal matters as requested by the City Council or City Manager.
- Alert the City in a timely manner on new State or Federal legislation or judicial decisions that may impact the City and propose appropriate action(s) to assure compliance.
- Provide guidance on personnel matters, including policy and procedures affecting employees.
- Provide legal work pertaining to land use issues including but not limited to property acquisitions, property disposals, public improvements, easements, dedications and right-of-way vacations.
- Enforce City codes, zoning regulations, and building standards through administrative and judicial actions.
- Assist in the preparation of Environmental Impact Reports.
- Attend staff meetings at the request of the City Manager (currently held weekly).
- Provide designated office hours or times of availability at City Hall as requested by the City.
- Communicate with the press, when authorized to do so by the Mayor or City Manager regarding City legal matters.
- Prompt response to calls and e-mails from the City Council and staff.
- Review current documents, policies, and forms to ensure compliance to current laws.

In addition, the individual or firm selected will also be required to furnish extraordinary legal services on an as needed basis when directed by the City Council or City Manager. These special services may include research, preparation, and follow-through in matters involving litigation affecting the City. Excluded from special legal services would be litigation or defenses when it is furnished by a self-insured program (workers' compensation, liability coverage, etc.) or other litigation where the City Council decides to retain specialized counsel (including bond counsel).

The Process

All proposals received in response to this request for proposals will be reviewed by the Ad Hoc City Attorney Selection Subcommittee for verification and compliance with Specifications and subsequent recommendation to full City Council. The selection process may include interviews where the firm/individual may be asked to formally present the proposal and respond to questions. The most qualified firm/individuals may then be invited to negotiate a retainer agreement, including scope of service, retention rates, etc. to become the City Attorney of Manhattan Beach.

The Proposal

Proposals shall utilize the bid **Response Forms** (where provided in this RFP) which should be completed in their entirety. Proposals should provide specific and succinct answers to all questions and requests for information contained herein. Indirect, imprecise, or incomplete responses can serve only to the disadvantage of the proposer. Submissions of individual resumes are optional, but alone will not be considered responsive to specific questions and shall not replace the Attorney Profile form.

Proposal Evaluation

Selection of Contractor for interview with the City will be based in the contents of the written proposal. The proposal will be rated according to the following selection criteria (in no particular order):

1. Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government operations;

2. Capability to perform legal services promptly and in a manner that permits the City Council and staff to meet established deadlines and to operate in an effective and efficient manner;
3. Degree to which the firm/business and individual attorneys stay current through continued professional development and active communication with practitioners in the municipal law field;
4. Communication skills;
5. Cost of services;
6. Other qualifications/criteria as deemed appropriate by the City Council.

Proposal Requirements

Proposals shall specify each item as set forth in this Request for Proposal (RFP). Failure to comply with all requirements and conditions set forth by these specifications and RFP instructions will be the cause for the rejection of the proposal(s). No exceptions or deviations from these specifications will be considered unless each exception or deviation is specifically identified with a detailed statement fully defining the exception(s). All exception(s) must be fully supported by detailed specification regarding the deviated item and shall accompany the proposal for evaluation by the City. If no exceptions are identified, the Proposer shall be required to furnish the service exactly as specified herein. The burden of proof of compliance with these specifications is the responsibility of the Proposer. Acceptance or rejection of the changes is the sole prerogative of the City. The City reserves the right to reject any and all proposals or to make no award.

Bidder Must Make Thorough Investigation

It is the bidder's responsibility to examine the scope and location of the proposed work to fully acquaint themselves with the specifications and the nature of the work to be accomplished. Proposers shall have no claim against the City based upon ignorance of the nature and requirements of the project, misapprehension of the site conditions, or misunderstanding of the specifications or contract provisions.

Acceptance of Conditions

By submitting a bid proposal, each bidder expressly agrees to and accepts the following conditions:

- a. All parts of the Instructions to Bidders and Specifications will become part of the contract between the selected bidder and the City.
- b. The City may require whatever evidence is deemed necessary relative to the bidder's financial stability and ability to perform this project.
- c. The City reserves the right to request further information from the bidder, either in writing or orally, to establish any stated qualifications.
- d. The City reserves the right to solely judge the bidder's representations, and to solely determine whether the bidder is qualified to undertake the project pursuant to the criteria set forth herein. The bidder, by submitting a bid or proposal, expressly acknowledges and agrees that the judgment of the City as to whether or not the bidder is qualified to perform the project shall be final, binding, and conclusive.

General Conditions

The City will not reimburse respondents to this RFP for any costs incurred in the preparation and submittal of the proposals. Further, the request does not obligate the City of Manhattan Beach to accept or contract for any expressed or implied services. The City reserves the right to:

- Request any firm/person submitting a proposal to clarify its proposals during the selection phase;
- Negotiate the project schedule and reasonable costs with the selected vendor;
- Modify or alter any requirements herein, and;
- Identify additional tasks to be accomplished prior to establishing a formal contractual agreement.

Equal Opportunity

The City of Manhattan Beach requires all proposers to comply with equal opportunity policies. The City of Manhattan Beach's programs, services, employment opportunities, and volunteer positions and contracts are open to all persons.

Independent Contractor

The City Attorney will be an independent contractor. All persons employed by a firm in accordance with a contract resulting from this RFP will be employees of the firm and not of the City of Manhattan Beach.

Licenses

Contractor shall be responsible for all licenses and permits required to perform this work in accordance with Federal, State and local requirements and shall be responsible for all fees resulting there from.

Payment and Invoicing

Contractor shall submit a monthly invoice in duplicate to City Manager's Office, City of Manhattan Beach, 1400 Highland Ave., Manhattan Beach, CA 90266. Invoice shall be submitted on standard company forms and shall state (1) invoice number, (2) invoice date, (3) invoice period, (4) a brief description of work including location, (5) the purchase order number, (6) total amount requested, and (7) contractors tax ID number. Payment will be made after approval of the invoices by Contract Administrator, subject to the routine processing requirements of the City.

Insurance Requirement

The Contractor shall, at its own expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultants, its agent, representatives, employees, or subcontractors. Contractor shall also require all of its subcontractors assigned to the project to procure and maintain the same insurance requirement for the duration of the Agreement. Specific insurance requirements are outlined in the Sample Professional Services Agreement attached as Exhibit A.

Professional Services Agreement and Term of Contract

No agreement shall be binding upon the City until a Professional Services Agreement is completely executed by the Contractor and the City Council. Failure to execute and return the contact agreement and acceptable insurance documentations in a timely manner may be just cause for the City to rescind the contact offer. The Agreement shall remain in full force and effect through June 30, 2016, or until terminated by either party. The City may terminate without cause at any time. The Contractor shall have no right to hearing or notice, and may be discharged with or without notice. The Contractor may withdraw from the City's representation at any time, to the extent permitted by law, and the rules of Professional Conduct, upon at least sixty (60) calendar days advance written notice, delivered as certified mail by the United States Postal Service.

Response Form – Business Information

Please provide sufficient detail and scope to provide a meaningful evaluation, comparison, and assessment.

Business contact information:

Name of Firm/Business: _____

Firm/Business Address: _____

City / State / Zip Code: _____

Firm/Business Telephone: _____

Firm/Business Fax Number: _____

Firm/Business Email: _____

Firm/Business Website: _____

Firm/Business Classification: Corporation Partnership Individual

If a corporation:

Date of incorporation: _____

State of incorporation: _____

President's Name: _____

Vice-President's Name: _____

Secretary or Clerk's Name: _____

Treasurer's Name: _____

If a partnership:

Date of organization: _____

Name and address of all partners:

Federal Tax No. (SSN or Federal Tax Number): _____

Number of years in business: _____

Number of employees: _____ F/T _____ P/T _____ Total

Response Form – Business Information (continued)

Please provide sufficient detail and scope to provide a meaningful evaluation, comparison, and assessment.

1. Does the firm/business maintain insurance amounts specified by the City? Yes No

General Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate liability; Automobile Liability Insurance of at least \$1,000,000 per accident Combined Single Limit (CSL); Workers' Compensation Insurance of at least \$1,000,000 per claim; Professional Errors & Omissions Insurance of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate liability.

If no, describe the differences:

2. Are there claims that are pending against this insurance policy? Yes No

If yes, describe:

3. During the past five (5) years, has the firm, business, or any attorney in the firm or business, been involved in any (a) bond forfeiture, (b) litigation personally involving the firm, business, or any attorney in the firm or business (other than dissolution of marriage), or (c) claims filed with any insurance carrier concerning firm, business, or any attorney in the firm or business, and/or (d) Bar Association complaints? If yes, attach an explanation. Yes No

4. Has the firm/business been in bankruptcy, reorganization, or receivership in the last five years? Yes No

5. Has the firm/business been disqualified or terminated by any public agency? Yes No

6. Has the proposed designated City Attorney practiced municipal law a minimum of five (5) years? Yes No

7. Have you and/or your firm/business ever been successfully sued for fraud or malpractice, been subject of complaints filed with the State Bar of California or had discipline imposed upon you in the past? If yes, attach an explanation. Yes No

8. Is each proposed attorney accredited and in good standing with the State Bar of California? Yes No

9. Describe the intended office location and accessibility to staff. Describe the staffing of your office, including your employees and their general duties and work schedules. Include any staffing changes you would propose should you be awarded the contract to provide City Attorney services for the City.

Response Form – Business Information (continued)

Please provide sufficient detail and scope to provide a meaningful evaluation, comparison, and assessment.

10. Describe the methods and types of communications devices that would be used by the firm in communicating with the City (e.g. email, telephone, cell phones, voicemail, conference call numbers, websites, etc.), and the types of computer and computer software utilized to perform the required legal services.

11. Describe the standard time frames for response by the City Attorney to direction and/or inquiry from the City Council or City Manager.

12. Describe how your firm protects client confidentiality while at the same time benefiting from the in-house store of knowledge and experience gained by from representing other local agencies?

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Response Form – Proposed Service Rates

The selected City Attorney will be required to provide services under a monthly retainer fee format for regular City Council meetings, special City Council meetings, weekly staff meetings, office hours on site at the City of Manhattan Beach, communications with the City, and legal work provided under the retainer. Routine travel expenses would be the responsibility of the firm/business.

Basic Services

The first _____ hours of Basic Services per month would be billed at rate of \$_____ per hour for a total monthly retainer of \$_____. If the City does not require this amount of service in a given month, then the City shall only be charged for the hours used. The City expects time to be billed in 0.10 hour increments.

Please define what your proposal for Basic Services refers to and includes (reference the estimated number of on-site office hours to be served at the City):

The rate for Basic Services above the number of hours set forth above would be \$_____ per hour.

Extra Services

Please define what services are NOT included in Basic Services, which you would consider to be Extra Services or specialized work which would be billed in addition to basic services (this would include a definition of legal services that would require the involvement of outside counsel):

The rate for Extra Services would be \$_____ per hour.

Response Form – Proposed Service Rates (continued)

The selected City Attorney will be required to provide services under a monthly retainer fee format for regular City Council meetings, special City Council meetings, weekly staff meetings, office hours on site at the City of Manhattan Beach, communications with the City, and legal work provided under the retainer. Routine travel expenses would be the responsibility of the firm/business.

Reimbursable and/or Other Costs

Please define the type and unit rates for reimbursement for expenses such as mileage, reproduction of documents, faxed documents, processing charges, etc. if any.

If you prefer to bill all services on an hourly basis, please state the hourly rates for the designated City Attorney and associates for general Basic Services work and for Extra Services or special work such as litigation, if such services will be billed at a different hourly rate.

Response Form – Proposer Acknowledgement

The undersigned has checked carefully the entire Request for Proposal (RFP) #8__-11 – City Attorney Services. By signing this document, I (we) attest that I (we) am authorized to contractually bind the company listed, and will meet the Proposal requirements if awarded a contract.

I (we) the undersigned submit this proposal this _____day of _____, 2011, subject to all the terms, conditions, and requirements set forth in the Specifications and other Bid Documents.

I (we) understand that in presenting this bid that we are offering to enter into a contract subject to the conditions of the Specifications and that the City has ninety (90) days in which to accept or reject this offer.

Name Printed: _____

Signature: _____

Title: _____

Company Name: _____

Business Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-mail: _____

Statement of Qualifications and Proposal

The Proposer's entire response to the request for proposals should be prepared on standard 8 ½ x 11" letter size paper. The use of expensive papers and bindings is unnecessary and is discouraged.

In addition to the previously outlined mandatory *Response Forms*, the Proposer is asked to produce a *Statement of Qualifications and Proposal*. All pages of this Statement of Qualifications and Proposal must be numbered consecutively. **This portion of the response to the RFP shall not exceed fifteen (15) pages in length.** The Statement must be organized in accordance with the below list of proposal contents.

Proposers must include the following items in their Statement of Qualifications and Proposal addressing the scope of work. All items must fall within the maximum page count. Proposals and cost schedules shall be valid and binding for ninety (90) days following the proposal due date and will become part of the contract that is negotiated with the City.

Proposals must be effective, clear, and concise. The proposal shall include, at a minimum, the information listed below, in the same order as listed, and shall be sufficient to allow the City to evaluate the firm/individuals capabilities providing a full range of legal services to the City of Manhattan Beach. Please provide sufficient detail and scope to provide a meaningful evaluation, comparison, and assessment.

1. **Description of Firm/Business** – Describe the nature of your law firm's practice and your qualifications for providing City legal services. Provide a chronology of relevant experience, including a list of other cities that you have provided relevant legal services for and each individual who will be designated to serve as well as others who might be involved in providing legal services.
2. **Training and Experience** – For the person whom you propose to designate as City Attorney and for each person or firm you propose to designate as a deputy, supporting counsel for, include the following:
 - Years of municipal (general law or charter city) or other local public sector law practice as a full-time local government attorney and/or in a private law office specializing in the representation of general law cities.
 - Describe your practices regarding professional development, training, and keeping current with the legal field and legal matters affecting your clients.
 - Types of clientele represented and years representing each.
 - Litigation experience and demonstration of a good court track record. Cite examples of municipal (general law city) litigation experience.
 - Experience with and knowledge and practice of law representing general law cities relating to land use and planning, environmental law including the California Environmental Quality Act (CEQA), redevelopment law, general plans, real estate, code enforcement, hazardous waste and other related law.
 - Experience in the area of contracts and franchises.
 - Experience in the preparation and review of ordinances and resolutions for general law cities.

- Experience in public sector personnel and labor negotiations.
 - Experience in municipal Water, Wastewater, and Refuse enterprises.
 - Experiences in the area of the California Public Records Act, the Ralph M. Brown Act, Conflict of Interest (AB 1234) Ethics Training, the Political Reform Act, the California Elections Code, and Proposition 218 issues.
 - If the firm/individual, or any of the attorneys employed by the firm, have ever been sued by cities or other clients for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar, please provide information on the nature of the incident, the dates of which the matter began and was concluded, and the results of the situation.
3. **Working Hours, Location, and Relationships** –
- Describe the regular hours that service will be available; include availability on site and off site, via telephone and other technology/electronic tools, and how your proposal will ensure timely response to City Council and staff needs.
 - Describe the standard time frames for response by the City Attorney to direction and/or inquiry from the City Council or City Manager.
 - Describe how you would structure the working relationship between the City Attorney and the City Council, City Manager, Department Heads, and other members of staff.
4. **Conflict of Interest** –
- List all public clients for whom your firm currently provides services under a fee for services basis or on a retainer basis. Indicate the services provided (e.g. City Attorney services, special legal expertise in specific disciplines, etc.) Identify any foreseeable or potential conflicts of interest that could result from such representation and the manner in which you would propose to resolve such conflicts.
 - For the person to be designated as the City Attorney, list all public clients that person presently represents as City Attorney or General Counsel, along with the meeting dates and times for each governing body.
 - List all current or former public or private clients residing in Manhattan Beach or having an interest in a business or owning an interest in property within the City's sphere of influence within the past three (3) years.
 - Identify all situations in the last five (5) years in which you have been adverse as an attorney to public entities, either in litigation or administrative matters.
5. **Compensation** –
- Describe how you will track and manage legal costs so that the City's legal expenses are held to a minimum and within budget. Please provide examples.
 - Identify any foreseeable or potential conflicts of interest, which would result from such representation and the manner in which you would propose to resolve such conflicts.
6. **References** – Please provide a list of references where similar work of similar size and nature is currently in process or recently completed. Include name of firm, telephone, and name of contact person. These references will be checked and may affect the award of the contract. The City of Manhattan Beach reserves the right to contact any of the organizations or individuals listed or any others that may stem from the inquiry.

Do Not Submit With Proposal

**Only the Successful Bidder Will Be Required
to Complete the Following Forms:**

- **City Business License Application (if new vendor)**
- **IRS Form W-9: Request for Taxpayer Identification Number and Certification**
- **Insurance Endorsement Forms**

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City of Manhattan Beach

1400 Highland Avenue • Manhattan Beach, CA 90266 • (310) 802-5557 • www.citymb.info

BUSINESS LICENSE APPLICATION

PRINT LEGIBLY OR TYPE IN BLUE OR BLACK INK

Expiration Date: 3/01/____ License #: _____

Business Name (DBA): _____

Business Street Address: City Zip: _____

Business Mailing Address: City Zip: _____

Business Telephone: () _____ State License #: _____ Class: _____

State Resale Number: _____ Tax ID #: _____ Social Security #: _____

State fully the exact nature of business for which license is required: _____

Type of business (check one): _____ Sole Ownership _____ Partnership _____ Corporation

Corporate Name: _____

OWNERSHIP OF BUSINESS (List all principals):

1. Name: _____ Title: _____ Telephone Number () _____

Residence Address City Zip: _____ CDL #: _____

2. Name: _____ Title: _____ Telephone Number () _____

Residence Address City Zip: _____ CDL #: _____

3. Name: _____ Title: _____ Telephone Number () _____

Residence Address City Zip: _____ CDL #: _____

4. Name: _____ Title: _____ Telephone Number () _____

Residence Address City Zip: _____ CDL #: _____

ALL APPLICABLE CITY REQUIREMENTS MUST BE MET BEFORE THE APPLICATION IS APPROVED

I hereby certify under penalty of perjury that the information above is true and correct:

Signature: _____ Name printed: _____ Date: _____

Please contact the Finance department at (310) 802-5557 if you have any questions. If you intended to mail your application, please contact the Finance Department to determine the appropriate application fee.

**** FOR OFFICE USE ONLY-DO NOT WRITE BELOW THIS LINE ****

_____ New _____ Transfer _____ Name Change _____ Address Change

Business Type: _____ Text Code: _____ Area Code: _____ S.I.C. _____

Revenue Signature: _____ Prorated: @ _____ 75% _____ 50% _____ 25%

Basic Fee \$ _____ G/R Fee \$ _____ Decal Fee \$ _____ Total Fee \$ _____

Community Development Notes _____

Zoning: _____ Community Development Approval Signature: _____

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	City of Manhattan Beach - Public Works Fax: (310) 802-5301
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
: : : : : :
or
Employer identification number
: : : :

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

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CITY OF MANHATTAN BEACH
1400 HIGHLAND AVENUE
MANHATTAN BEACH, CA 90266
(310) 802-5061

INSURANCE ENDORSEMENT FORM #1
(GENERAL)
Attachment "A"

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. **Additional Insured.** With respect to such insurance as is afforded by this policy, the City of Manhattan Beach and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be named as additional insured. This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).
2. **Cross Liability Clause.** The insurance afforded - applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.
3. **Occurrence Based Policy.** This policy shall be an "occurrence based policy."
4. **Primary Insurance.** For the risks covered by this endorsement this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.
5. **Indemnification Clause.** The underwriters acknowledge that the named insured shall indemnify and save harmless the City of Manhattan Beach against any and all claims resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and dates(s) or event to include set-up and cleanup dates):

Investigation and Defense Costs. Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.
6. **Reporting Provisions.** Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.
7. **Cancellation.** This policy shall not be canceled except by written notice to the Risk Manager at: City of Manhattan Beach, 1400 Highland Avenue, Manhattan Beach, CA. 90266, at least thirty (30) days prior to the date of such cancellation.
8. **Limits of Liability.** This policy shall provide minimum limits of liability of \$ 1,000,000 , combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the named insured.
10. **Comprehensive Coverage.** This policy shall afford coverage at least as broad as Commercial General Liability "Occurrences" Form CG0001 and shall include the following:

A. General Liability

- (1) Comprehensive Form
- (2) Premises/Operations
- (3) Independent Contractors Liability
- (4) Broad Form Property Damage
- (5) Personal Injury
- (6) Products, Completed Operations
- (7) Contractual
- (8) Explosions, collapse, or underground property damage.

NOTE: If this is a Homeowner's Policy in lieu of Commercial General Liability, it shall afford coverage at least as broad as Homeowners ISO Form HO II (Ed 9-70) California and shall include comprehensive personal liability.

This policy shall provide the dollar limit specified in paragraph 9 with the following additional coverage where boxes below are checked:

- _____ 11. Host Liquor Liability
- _____ 12. Liquor Law Liability
- _____ 13. Other _____

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

Name Insured _____

Name of Insurance Company _____

I, _____ (print/type name) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
Signature of Authorized Representative

Approved _____
City Risk Manager Date

CITY OF MANHATTAN BEACH
1400 HIGHLAND AVENUE
MANHATTAN BEACH, CA 90266
(310) 802-5061

INSURANCE ENDORSEMENT FORM #2
(AUTO)
Attachment "B"

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. **Additional Insured.** With respect to such insurance as is afforded by this policy, the City of Manhattan Beach and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be named as additional insured. This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).
2. **Cross Liability Clause.** The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.
3. **Occurrence Based Policy.** This policy shall be an "occurrence based policy."
4. **Primary Insurance.** For the risks covered by this endorsement this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.

Indemnification Clause. The underwriters acknowledge that the named insured shall indemnify and save harmless the City of Manhattan Beach against any and all claims resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and dates(s) of event to include set-up and cleanup dates):

5. **Investigation and Defense Costs.** Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.
6. **Reporting Provisions.** Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.
7. **Cancellation.** This policy shall not be canceled except by written notice to the Risk Manager at: City of Manhattan Beach, 1400 Highland Avenue, Manhattan Beach, CA 90266, at least thirty (30) days prior to the date of such cancellation.
8. **Limits of Liability.** This policy shall provide minimum limits of liability of \$ 1,000,000, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the named insured.

9. **Scope of Coverage.** This policy shall afford coverage at least as broad as Insurance Services Office Form No. CA0001 (Ed 1/78), Cod 1 ("any auto") and shall include the following:

A. Auto Liability

- (1) Any auto
- (2) All owned autos (Private Passengers)
- (3) All owned autos (other than Private Passengers)
- (4) Hired autos
- (5) Non-owned autos (for business purposes)
- (6) Other _____

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

Named Insured _____

Name of Insurance Company _____

I, _____ (print/type name), warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
Signature of Authorized Representative

Approved _____
City Risk Manager Date

CITY OF MANHATTAN BEACH
1400 HIGHLAND AVENUE
MANHATTAN BEACH, CA 90266
(310) 802-5061

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT
Attachment "D"

This agreement is issued in consideration of the City approval of the sponsor's application. The named insured must still provide a Certificate of Insurance, naming the City as an additional insured and meet the City's required minimum limits of insurance. An additional insured endorsement shall also be provided and signed by the insurance carrier.

The named insured agrees to the following:

1. **Indemnification Clause.** The named insured shall indemnify and save harmless the City of Manhattan Beach including its elected officials, officers agents and employees against any and all claims, liability, judgments, costs or expense resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and date(s) of event to include set-up and clean-up dates):
2. **Investigation and Defense Costs.** Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters and other reasonable costs of investigation and defense.

This agreement is effective _____ at 12:01 a.m.

Named Insured _____

I, _____ (print/type name), warrant that I have authority to bind the above listed sponsor and by my signature hereon do so bind this sponsor.

By _____
Signature of Authorized Representative

Approved _____
City Risk Manager Date

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SAMPLE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2011, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("CITY"), and _____, a CALIFORNIA Corporation, ("CONTRACTOR").

RECITALS

The following recitals are a substantive part of this Agreement:

1. City is desirous of obtaining the services of a qualified, experienced City Attorney;
2. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall commence on _____, 2011 and terminate on June 30, 2016, unless earlier terminated as provided below.
 - 1.1 Termination CITY shall have the right to terminate this Agreement, without cause and without notice. The CONTRACTOR shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice. Upon receipt of a termination notice, CONTRACTOR shall:
 - (A) promptly discontinue all services affected (unless the notice directs otherwise); and
 - (B) promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in performing the Agreement to CITY, whether completed or in progress. CONTRACTOR shall be entitled to reasonable compensation for the services it performs up to the date of termination.
 - 2.0 Extension of Term. The parties hereto may by mutual written agreement extend the term of this Agreement by up to two (2) years additional years, in one (1) year increments.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of the following:

CONTRACTOR shall serve as the City Attorney providing an average of _____ (__) hours of services per week, said hours to generally coincide with the normal working hours of City employees.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **Amount.** Compensation under this Agreement shall be as follows:

For the period beginning _____, 2011 and ending _____, 2011, compensation shall not exceed _____ per hour.

3.2 Payment. For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required.

3.3 Expenses. CONTRACTOR shall not be entitled to any additional compensation for expenses.

4. Professional Standards. CONTRACTOR shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. Time of Performance. CONTRACTOR shall complete all services required hereunder as and when directed by CITY. However, CITY in its sole discretion may extend the time for performance of any service.

6. Employees and Subcontractors. The experience, knowledge, capability and reputation of CONTRACTOR, its partners, associates, and employees, was a substantial inducement for the City to enter into this Agreement. Therefore, CONTRACTOR shall not contract with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of the City. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of the creditors, or otherwise, without the prior written approval of the City. Adding attorneys to CONTRACTOR, changes in the partnership, name changes, and similar changes shall not be deemed a transfer or assignment requiring approval of the City or amendment hereof.

7. Insurance Requirements.

7.1 Commencement of Work. CONTRACTOR shall not commence work under this Agreement until it has obtained CITY approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, CONTRACTOR must have and maintain in place, all of the insurance coverages required in this Section 7. CONTRACTOR'S insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section 7 and CONTRACTOR shall be responsible to obtain evidence of insurance from each subcontractor and provide it to CITY before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

7.2 Coverages, Limits, and Policy Requirements. CONTRACTOR shall maintain the types of coverages and limits indicated below:

(A) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) aggregate.

CITY, its employees, officials and agents, shall be added as additional insured by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, ten (10) days notice if cancellation is due. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

- (B) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the CITY. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. CITY, its employees, officials and agents, shall be added as additional insured by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, ten (10) days notice if cancellation is due. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.
- (C) **WORKERS' COMPENSATION INSURANCE** - a policy that meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of CITY.
- (D) **PROFESSIONAL ERRORS & OMISSIONS** - a policy with minimum limits of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. This policy shall be issued by an insurance company, which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to CITY, ten (10) days notice if cancellation is due to nonpayment of premium.

7.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit CONTRACTOR'S liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto. CITY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, CONTRACTOR shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by CITY. Except for Professional Liability Insurance, any deductible exceeding an amount acceptable to CITY shall be subject to the following changes:

- (A) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to CITY and its officials, employees and agents (with additional premium, if any, to be paid by CONTRACTOR) ; or
- (B) CONTRACTOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

CONTRACTOR's Professional Liability Policy may include a deductible up to \$200,000.

7.4 Verification of Compliance. CONTRACTOR shall furnish CITY with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, CONTRACTOR shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to CITY.

- 8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
- 9. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
- 10. **Independent Contractor.** It is agreed that CONTRACTOR shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
- 11. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
- 12. **Ownership of Work Product.** All documents or other information created, developed or received by CONTRACTOR shall, for purposes of copyright law, be deemed works made for hire for CITY by CONTRACTOR as CITY'S employee(s) for hire and shall be the sole property of CITY. CONTRACTOR shall provide CITY with copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement. CITY's reuse of such materials on a project other than the project which is the subject of this agreement shall be at the CITY's sole risk.
- 13. **Conflict of Interest and Reporting.** CONTRACTOR shall at all times avoid conflict of interest, or appearance of conflict of interest, in performance of this Agreement.
- 14. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

a. Address of CONTRACTOR is as follows:

b. Address of CITY is as follows:

Mayor
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

(with a copy to):

City Manager
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

- 15. **Contractor's Proposal.** This Agreement shall include CONTRACTOR'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
- 16. **Licenses, Permits, and Fees.** CONTRACTOR shall obtain a Manhattan Beach Business License, all permits, and licenses as may be required by this Agreement.
- 17. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that:
 - (A) it has investigated the work to be performed;
 - (B) it has investigated the site of the work and is aware of all conditions there; and
 - (C) it understands the difficulties and restrictions of the work under this Agreement. Should CONTRACTOR discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONTRACTOR's risk, until written instructions are received from CITY.
- 18. **Time of Essence.** Time is of the essence in the performance of this Agreement.
- 19. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
- 20. **Indemnification.**
 - (A) CONTRACTOR agrees to indemnify the City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out

of or in connection with the work, operations or activities of CONTRACTOR, its agents, employees, subcontractors, or invitees, provided for herein or arising from acts or omission of CONTRACTOR hereunder, or arising from CONTRACTOR's performance of or failure to perform any term, provision, covenant or condition of this Agreement, except to the extent such claims or liabilities arises from the negligence or willful misconduct of the City, its officers, agents, or employees.

(B) City acknowledges CONTRACTOR is being appointed as City Attorney pursuant to the authority of Government Code Section 36505, and has the authority of that office. Accordingly, the City is responsible pursuant to Government Code Section 825 for providing a defense for the City Attorney for actions within the scope of its engagement hereunder. Therefore, City agrees to undertake its statutory duty and indemnify CONTRACTOR, its officers, employees and agents against and will hold and save each of them harmless from, any and all claims or liabilities that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of CONTRACTOR within the course and scope of its employment hereunder, but nothing herein shall require City to indemnify CONTRACTOR for liability arising from its own negligence. In connection herewith:

(i) City will promptly provide a defense and pay any judgment rendered against the City, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of City hereunder;

(ii) In the event CONTRACTOR, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims solely arising out of or in connection with the work operation or activities of City hereunder, City agrees to pay to CONTRACTOR, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

21. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by CITY and CONTRACTOR.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
25. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the

interpretation or construction of this Agreement are to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

- 26. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover attorneys' fees and court costs from the opposing party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

CONTRACTOR

By _____

CITY OF MANHATTAN BEACH

By _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney