



# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**THROUGH:**  David N. Carmany, City Manager

**FROM:** Bruce Moe, Finance Director  
Henry Mitzner, Controller 

**DATE:** February 7, 2012

**SUBJECT:** Two Year Contract Extension with Lance, Soll & Lunghard, LLP to Provide Professional Audit Services (\$80,256)

### RECOMMENDATION:

The Finance Subcommittee and City staff recommend that the City Council approve a contract extension with Lance, Soll & Lunghard, LLP, Certified Public Accountants, to provide financial audit services for two additional fiscal years. If approved, services will be extended to include audits for the fiscal year (FY) ending June 30, 2012 and June 30, 2013.

### FISCAL IMPLICATION:

The proposed contract extension covers a two year audit period (FY 2012 and FY 2013). Services are provided on a fixed fee basis as follows:

<u>Fiscal Year</u>	<u>Not-to-Exceed</u>
2011-2012	\$ 40,128
2012-2013	\$ 40,128

The fee for this most recent audit year (FY 2010-2011) was \$38,958. The extension fee is an increase of \$1,170 (3%).

### BACKGROUND:

The State of California requires an annual audit of the City's finances. Such audits are to be conducted in conformance with generally accepted auditing standards by a licensed independent public accounting firm. The City's financial policies also require the performance of an annual audit and establish a three year contract term as a standard (two optional years may be awarded).

In 2009, and in accordance with policy, the City solicited proposals from qualified firms known to specialize in governmental auditing and also posted the Request for Proposal (RFP) on the City's website. A total of six firms responded:

- Brown Armstrong CPA's
- Caporicci & Larson, CPA's
- Diehl, Evans & Company, LLP
- Lance, Soll & Lunghard, LLP
- Mayer Hoffman McCann P.C.
- Vavrinek, Trine, Day & Company, LLP

At that time, members of the Finance Subcommittee, as well as staff, served as a selection team. The evaluation process involved a review of the proposals, an evaluation of the qualifications of each firm's audit team, and interviews with a final selection of three firms. Based on those factors, the Finance Subcommittee recommended, and City Council approved, a three year contract for audit services with Lance, Soll & Lunghard (LSL). The Subcommittee's recommendation was based upon the LSL's excellent technical qualifications; strong experience in local government auditing; personalized service; and seasoned audit team.

**DISCUSSION:**

The original three year contract approved by the City Council in 2009 provides for two additional one-year extensions subject to Finance Subcommittee and City Council approval. The firm has completed the initial three year contract and is interested in extending the contract for the two optional years. The Finance Subcommittee discussed an extension at their January 17<sup>th</sup> meeting, and approved the optional years for the following reasons:

1. LSL has provided excellent, objective and professional service
2. The Finance Subcommittee and City Council have been pleased with their performance
3. LSL routinely inserts new audit staff during each audit period to put a "fresh set of eyes" on the City's books
4. There is a learning curve with any audit firm when first auditing a new entity which infringes on staff time during the audit process. The extension leverages the time, effort and experience for both the audit firm and City staff.
5. LSL fees are reasonable with only a modest increase for the additional two year period.

The Finance Subcommittee and staff recommend extending the contract with LSL. Further, the Finance Subcommittee recommended, and LSL concurred, that a new audit manager be appointed by LSL for the contract extension period. While the current manager has done a remarkable job managing the audits, this will provide the "fresh eyes" approach concept while retaining the experience the firm has developed with the City's financials. At the end of the contract extension, the City will solicit proposals as was done in 2009 to select a firm for a new contract.

Attachments:           A.     Lance, Soll, Lunghard Contract

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into on this 8th day of February, 2012, by and between the City of Manhattan Beach, a municipal corporation ("City") and Lance, Soll & Lunghard, LLP ("Consultant").

### **RECITALS**

A. CITY desires to obtain services necessary to perform financial auditing for the City for fiscal years 2011-2012 and 2012-2013, as further described in the Scope of Work, attached hereto as Exhibit A.

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

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Term of Agreement. This Agreement shall commence on February 8, 2012 and shall continue until the services are completed.

Section 3. Time of Performance. CONSULTANT shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY in the manner. CONSULTANT shall complete the services according to the timeline set forth in Exhibit A.

Section 4. Compensation.

(a) CITY agrees to compensate CONSULTANT, and CONSULTANT agrees to accept in full satisfaction for the services required by this Agreement an annual audit fee of \$40,128 for each year audited. Said Consideration shall constitute reimbursement of CONSULTANT's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). In no event shall the CONSULTANT be paid more than \$80,256 during the term of this Agreement.

(b) CONSULTANT shall not be entitled to any reimbursement for expenses.

Section 5. Method of Payment. CONSULTANT shall submit to CITY a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice.

Section 6. Independent Contractor. The Parties intend and agree that at all times during the performance of services under this Agreement, CONSULTANT shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, CONSULTANT shall have the sole legal responsibility to remit all federal and state income and

social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her employees or subcontractors. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 7. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 8. Responsible Principal(s)

(a) CONSULTANT's responsible principal, Richard Kukuchi, shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible Principal by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be Bruce Moe, Finance Director, or his designee who shall administer the terms of the Agreement on behalf of CITY.

Section 9. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

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

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

Section 12. Insurance.

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

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Personal Automobile Liability ("PAL") Insurance with minimum limits as required by State law covering all vehicles used in connection with the performance of work under this Agreement. CONSULTANT shall accurately report or otherwise assure the accurate reporting of all use, including business/commercial use, and other circumstances involving such vehicles to the appropriate insurance agent or broker and insurance carrier(s) and shall assure that the required insurance endorsements are secured, if

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any. In the event any policy providing umbrella or excess liability insurance applies to any vehicle used in the performance of work under this Agreement, such insurance shall apply as a supplement to these limits and shall conform to the requirements of this Agreement. Except as expressly provided under this PAL option, Consultant shall provide proof of coverage in compliance with this Agreement in the manner specified below.

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

(4) A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by CITY. Further, CONSULTANT agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) CONSULTANT shall require each of its subcontractors, if any, to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

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

Section 13. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, its officials, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

**Section 14. Termination.**

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five (5) calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

**Section 15. City's Responsibility.** CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

**Section 16. Information and Documents.** All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

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

**Section 18. Notice.** Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

If to CITY:

Bruce Moe, Finance Director  
1400 Highland Avenue  
Manhattan Beach, California 90266

If to CONSULTANT:

Richard Kikuchi, Partner  
Lance, Soll & Lunghard, LLP  
203 North Brea Blvd.  
Suite 203  
Brea, CA 92821

**Section 19. Attorney's Fees.** In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party

in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 20. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

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

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

Section 23. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the 8th day of February 2012, at Manhattan Beach, California.

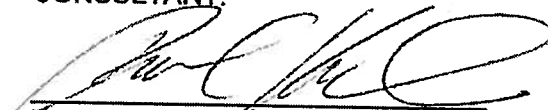
CITY OF MANHATTAN BEACH

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DAVID N. CARMANY  
City Manager

ATTEST:

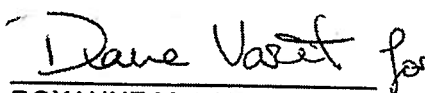
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LIZA TAMURA  
City Clerk

CONSULTANT:

  
\_\_\_\_\_  
Lance, Soll & Lurighard, LLP

Name: Richard Kikuchi  
Title: Partner

APPROVED AS TO FORM

  
\_\_\_\_\_  
ROXANNE M. DIAZ  
City Attorney

**EXHIBIT A**

**SCOPE OF WORK**

**City of Manhattan Beach Audit Contract – Fiscal Years 2011-2012 & 2012-2013**

**Lance, Soll & Lunghard, LLP**

Pursuant to this Agreement, Consultant agrees to:

1. Perform a financial audit of the Basic Financial Statements of the City of Manhattan Beach. Consultant shall be responsible for preparing financial statements which will be included within the City's Comprehensive Annual Financial Report (CAFR). It is the City's intent to submit the CAFR for California and National awards programs. In its report, Consultant shall express an opinion as to whether the financial statements and associated notes conform to accounting principles generally accepted in the United States of America.
2. Perform a Single Audit, if applicable, of all federal grants received by the City of Manhattan Beach utilizing auditing standards generally accepted in the United States of America. This audit shall be performed according to the requirements of OMB Circular A-133, Government Auditing Standards issued by the GAO, and the AICPA Industry Audit Guide.
3. Review and issue a report on the calculation of the City's Appropriations Limit (GANN), as required by Article XIII B Section 1.5 of the California Constitution.
4. Perform a review and make recommendations on the internal control structure, which consists of the Control Environment, Accounting System, and Control Procedures. Annually, Consultant shall prepare and issue the SAS 115 management letter. Consultant shall make a written report of any irregularities and illegal acts, or indication of illegal acts, immediately upon coming to Consultant's attention.
5. Timelines and milestones for each audit year shall be established at the beginning of each audit by the City and Consultant.