

# **Attachment "D"**

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement"), entered into as of October 9, 2014 ("Execution Date"), by and between the City of Santa Monica ("City") and Management Partners ("Consultant"), is made with reference to the following:

RECITALS:

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. Consultant is qualified to do business, and is doing business, in the State of California. Consultant represents it has the background, knowledge, experience and expertise necessary to provide the services set forth in this Agreement.
- C. The City and Consultant now desire to enter into an agreement for Consultant to provide professional services to the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

TERMS AND CONDITIONS

- 1. **Term.** This Agreement begins on the Execution Date and terminates on December 31, 2015, unless sooner terminated in accordance with Section 14.
- 2. **Consultant Services.** Consultant will perform all of the services ("Services") described in Exhibit A, Scope of Services. Consultant will complete the Services in accordance with Exhibit B, Budget.
- 3. **City Services.** The City agrees to:
  - 3.1 Make available to Consultant any currently existing documents, data or information required for the performance of the Services.
  - 3.2 Designate a representative authorized to act on behalf of City.
  - 3.3 Promptly examine and render findings on all documents submitted for staff review by Consultant.
- 4. **Compensation.** The City will compensate Consultant for the Services performed in an amount not to exceed \$44,900, as set forth in Exhibit B.
- 5. **Invoices.** Consultant will invoice the City for the Services in accordance with Exhibit B and the City will pay any undisputed amount within 30 days of receipt.
- 6. **Notices.** All notices, demands, requests or approvals to be given under this Agreement, must be in writing and will be deemed served when delivered personally,

by email, or on the third business day after deposit in the United States mail, postage prepaid, registered or certified, addressed as follows:

6.1 All notices, demands, requests or approvals to the City:

Planning & Community Development  
City of Santa Monica  
1685 Main Street, Suite 212  
Santa Monica, California 90401  
Attention: Denise Smith  
Re: Contract No. 2940

with a copy to:

Santa Monica City Attorney's Office  
1685 Main Street, Third Floor  
Santa Monica, California 90401  
Attention: City Attorney  
Re: Contract No. 2940

6.2 All notices, demands, requests or approvals to Consultant:

Management Partners  
1730 Madison Road  
Cincinnati, Ohio 45206  
Attention: Andrew Belknap  
Re: Contract No. 2940

7. **Independent Parties.** Both parties to this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another. Neither the City nor its officers or employees will have any control over the conduct of Consultant or any of Consultant's agents, employees, or subconsultants, except as otherwise provided in this Agreement.
8. **Integrated Contract.** This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties. Any preliminary negotiations and agreements of any kind or nature are merged into this Agreement. No oral agreement or implied covenant may be held to vary the provisions of this Agreement. This Agreement may be modified only by written agreement signed by City and Consultant, and approved as to form by the City Attorney.
9. **Insurance.** Prior to commencing work, Consultant must procure, maintain and pay for insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the Services by Consultant or Consultant's agents, representatives, employees or subconsultants for the duration of this Agreement. Consultant must obtain insurance that, at a minimum, meets the

requirements for insurance set forth in Exhibit C, Insurance Requirements and Verifications.

**10. Defense and Indemnification.**

**10.1 Indemnification.** As to Consultant's Services produced under this Agreement, Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, boards and commissions, and employees (collectively, "City") from and against any and all liability, claims, demands, damages, or costs, including but not limited to attorney's fees, or payments for injury to any person or property (collectively, "Losses") caused or claimed to be caused by the acts, errors and/or omissions of Consultant, or Consultant's employees, agents, officers, and subconsultants. Consultant's responsibilities under this Section 10.1 include liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, which may be in combination with the acts or omissions of Consultant, its employees, agents or officers, or subconsultants; provided, however, that Consultant's duty to defend, indemnify, protect and hold harmless shall not include any Losses arising from the sole negligence or willful misconduct of the City. Notwithstanding Consultant's obligation to defend City hereunder, City has the right to conduct its own defense and seek reimbursement for reasonable costs of defense from Consultant, if City chooses to do so.

**10.2 Enforcement Costs.** Consultant agrees to pay any and all costs the City incurs enforcing the indemnity, defense and hold harmless provisions set forth in Section 10.1.

**11. Prohibition Against Transfers.**

**11.1** Consultant may not assign, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any attempt to do so without the City's consent will be null and void, and any assignee, hypothecatee or transferee acquires no right or interest by reason of such attempted assignment, hypothecation or transfer.

**11.2** The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant or of any general partner or joint venturer or syndicate member of Consultant, if a partnership or joint venture or syndicate exists, which results in changing the control of Consultant, will be construed as an assignment of this Agreement. Control means 50% or more of the voting power of the corporation.

12. **Permits and Licenses.** Consultant, at its sole expense, must obtain and maintain during the term of this Agreement all required business and professional permits, licenses and certificates.
13. **Waiver.** A waiver of any breach of this Agreement may not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Agreement.
14. **Default and Termination.**
  - 14.1 If Consultant fails or refuses to perform any of the provisions of this Agreement, and if the default is not cured within a period of five days after the City's written notice of default specifying the nature of the default, City may immediately terminate this Agreement by written notice to Consultant.
  - 14.2 The City has the option, at its sole discretion and without cause, of terminating this Agreement by giving ten days' written notice to Consultant. Upon termination of this Agreement, City will pay Consultant any compensation earned and unpaid up to the effective date of termination.
15. **Compliance with Law.** Consultant must comply with all laws of the State of California and the United States, and all ordinances, rules, and regulations enacted or issued by City.
16. **Discrimination.** Consultant may not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.
17. **Nuisance.** Consultant may not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.
18. **Records.**
  - 18.1 Consultant must maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by the City for any services provided where compensation is on the basis of hourly rates, subconsultant costs, or other direct costs. Consultant must keep the records, together with supporting documents, separate from other documents and records and maintain them for a period of three years after receipt of final payment.
  - 18.2 Consultant must maintain records in sufficient detail to permit an evaluation of the Services and in accordance with generally accepted accounting principles. Consultant must clearly identify all records and make them readily accessible to the City. At the City's request, Consultant must provide records in an electronic format and, if necessary, access to any proprietary software to view such electronic records.

18.3 Consultant must allow the City to have free access to Consultant's books and records and to inspect all work, data, documents, proceedings and activities related to this Agreement. The City has the right to examine or audit Consultant's records, and Consultant agrees to cooperate with any examination or audit of its records. If a City audit discloses an error of 5% or more in information reported by Consultant, Consultant agrees to pay the cost of the City's audit computed on the basis of four times the direct payroll of the audit staff completing the audit and audit report.

**19. Work Product; Reports.**

19.1 Any work product prepared or caused to be prepared by Consultant or any subconsultant for this Agreement will be the exclusive property of City. No work product given to or prepared by Consultant or any subconsultant pursuant to this Agreement may be made available to any individual or organization by Consultant without prior written approval by City.

19.2 At the City's request, Consultant must furnish reports concerning the status of the Services.

20. **Standard of Care.** Consultant agrees to provide all Services, including services performed by any subconsultant, in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same locality under similar conditions.

**21. Subconsultants.**

21.1 If Consultant proposes to have any subconsultant perform any part of the Services, Consultant must submit a request for approval in writing, describing the scope of work to be subcontracted, the name of the proposed subconsultant, and the total price or hourly rates used in preparing an estimated cost for the subconsultant's services. The City, in its sole discretion, may grant or deny the request.

21.2 Consultant will be responsible for the quality of any subconsultant's work. Every subcontract or agreement of any kind entered into between Consultant and any subconsultant (or between any subconsultant and others) must contain the following provision:

This agreement is consistent with all terms and conditions of the Agreement No. 2940 (CCS) entered into between the City of Santa Monica and Consultant on \_\_\_\_\_.

22. **Governing Law.** The laws of the State of California, without regard to any choice of law provisions, will govern this Agreement.

23. **Venue and Jurisdiction.** The City and Consultant agree that the Services will take place in Los Angeles County. Any litigation arising out of this Agreement may only be

brought in either the United States District Court, Central District of California, or the Superior Court of California, County of Los Angeles, West District, as appropriate. The parties agree that venue exists in either court, and each party expressly waives any right to transfer to another venue. The parties further agree that either court will have personal jurisdiction over the parties to this Agreement.

24. **Survival of Provisions and Obligations.** Any provision of this Agreement, which by its nature must be exercised after termination of this Agreement, will survive termination and remain effective for a reasonable time. Any obligation that accrued prior to termination of this Agreement will survive termination of this Agreement.

25. **Exhibits.** The following exhibits are incorporated by reference into this Agreement as though fully set forth herein.

- Exhibit A      Scope of Services
- Exhibit B      Budget
- Exhibit C      Insurance Requirements

In witness whereof, the parties have caused this Agreement to be executed the day and year first above written.

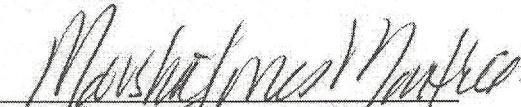
ATTEST:

  
\_\_\_\_\_  
SARAH P. GORMAN  
City Clerk

CITY OF SANTA MONICA,  
a municipal corporation

By:   
\_\_\_\_\_  
ROD GOULD  
City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MARSHA JONES MOUTRIE  
City Attorney

Management Partners

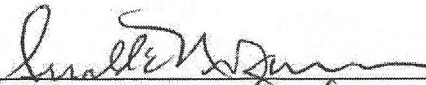
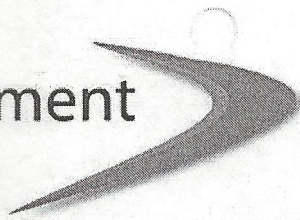
By:   
\_\_\_\_\_  
Name: Gerald E. Newtanner  
Title: President & CEO

Exhibit A  
Scope of Services





## Performance Measurement Development, Plan of Work

### ***Activity 1: Start Project and Define Programs***

When the project commences, Management Partners will begin a careful learning phase. We will begin by meeting with executive management (the Director of Planning and Community Development Department and others you designate), to understand how performance measures and performance management tools are currently used in the City and to clarify the outcomes you are seeking.

The performance management system is based on work done at the program level, so spending time discussing programs is an important foundational component. To learn about programs and discuss the expectations of the performance measurement system, we will interview each of the division managers in the department. This will serve a two-fold purpose: it will enable us to identify the programs of the department and also to tailor the training (described in Activity 2 below) to meet your specific needs.

Deliverable: Project schedule

### ***Activity 2: Conduct Training and Follow-up Consultations***

An important part of the success of a comprehensive performance measurement effort such as this includes ensuring that staff members understand and are committed to implementing the system. We propose conducting a half-day training session for division managers, program managers and other key staff who will be integral to reporting metrics. The training session will focus on performance measurement and the performance management system, including data collection and analysis, reporting tools and benchmarking.

Our training is interactive and highly engaging. We use relevant examples and provide time during the training for individuals to practice what is being taught. A sample training agenda includes the following:

- Overview: Performance Measurement in the Planning and Community Development Department
- Performance Measurement Terminology
- Identifying What to Measure – the Metrics that Link Program Purpose to Program Outcomes
- Creating Meaningful Performance Measures
- Using Performance Information to Improve Service Delivery

The training will focus on performance measurement as well as implementing a performance management system. Management Partners will develop a PowerPoint training program and a training workbook/manual and will provide a manual to each participant.

Management Partners' experience with other jurisdictions has taught us that training is a critical component that can help with buy-in. It is also an excellent opportunity to communicate the importance of measurement and the expectations of management.

Deliverable: Training manual

### **Activity 3: Develop Performance Measures**

Immediately following the training, Management Partners' project team members meet in small group consultations with division managers and other staff to discuss measures currently being used and those that *should* be used, with an emphasis on program outcomes. This helps reinforce the training and enables useful discussion about success factors that will demonstrate the value of the program to policymakers, stakeholders and the general public. We will also discuss how the performance measures will mesh with the department work plans already in place.

After the consultations, Management Partners will work off-site to identify a "family" of effectiveness, efficiency and workload measures for each program. The primary emphasis will be on effectiveness and efficiency measures that can be used to determine the extent to which each program's goals and objectives are being achieved. The family of measures will also take into account industry standards and metrics commonly used as benchmarks, as well as the department work plans.


Management Partners' consultants will return a draft "family of measures" to division managers by email and then schedule on-site meetings. We will then meet with executive management and each division manager (and other staff as desired) to review the suggested measures and collaborate about the final set of measures. During this review, we will also discuss data collection methods as well as reporting methods and frequency.

Following the consultations, Management Partners will prepare the final family of measures for the department, which will be peer reviewed to ensure quality.

Deliverables: Draft performance measures

### **Activity 4: Report Results**

Management Partners will prepare a final report with a set of recommended measures for each divisions program and provide the measures to executive management, together with our comments and suggestions for data collection, implementation and follow-up. Our specific recommendations for final measures will be provided. These will include operational measures as well as "executive level" measures. Fully implementing this performance measurement system will include providing a suggested methodology for tracking and reporting measures on



a regular basis. We will discuss these issues with you and include them as recommendations in our report.

Performance measures will be provided in Excel format. Management Partners will develop the final deliverables and provide both a single hard copy and electronic files for ease of updating in the future.

Deliverables: Project report and final set of performance measures

***Activity 5: Support Implementation***

Once a draft set of measures have been completed, division staff members will then need to collect available data. We often recommend that this activity be initiated as a pilot data collection effort so that staff can learn from the effort. Given the fact that some programs are already collecting data, we will want to discuss whether a pilot data collection period is necessary for all programs. Nevertheless, Management Partners will be available for telephone consultation with division managers during data collection.

Following the pilot period, measures can be assessed and fine-tuned as needed. Then, regular data collection can begin. This will establish a baseline for the department and, when appropriate and comfortable, will enable management to set targets for the future. In this way, the spirit of continuous improvement can be fostered.

Exhibit B  
Budget



Performance Measurement Development, Budget

Activity	Hours	Cost
1: Start Project and Define Programs	24	\$5,465
2: Conduct Training and Follow-up Consultations	42	\$10,220
3: Develop Performance Measures	128	\$20,175
4: Report Results	40	\$6,240
5: Assist with Implementation	16	\$2,800
<b>Total</b>	250	\$44,900

Exhibit C  
Insurance Requirements and Verifications