

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (this "Agreement") is entered into by and between the City of Manhattan Beach ("City") and Willdan Engineering ("Willdan"), (collectively referred to as the "Parties" or singularly referred to as a "Party").

RECITALS

A. City entered in to a contract with Willdan dated February 15, 2011 to perform design services and construction services relating to the 2011-2012 Water Main Replacement Project (the "Project"). Said contract and all amendments and extensions thereto relating to Willdan's services shall be collectively referred to herein as the "Willdan Contract."

B. City entered into a written contract with John T. Malloy, Inc., ("Malloy") dated on or about February 21, 2012 to construct the Project.

C. Malloy made a claim for additional compensation asserting that Malloy performed extra work on the Project. City executed a change order dated April 26, 2013, pursuant to which City agreed to pay Malloy an additional sum in the amount of \$150,790.50, and a Settlement and Release dated February 19, 2014, agreeing to pay an additional amount of \$7,500.00 to resolve all of Malloy's claims relating to the Project.

D. There remains unpaid outstanding invoices from Willdan to City for services performed by Willdan relating to the Willdan Contract relative to the Project in the amount of \$3,320.00. In order to resolve Willdan's claim for such fees and any other fees that Willdan may assert relating to the Project, City has agreed to pay Willdan the sum of \$3,320.00, as further specified in Section 1.B. hereof.

E. City asked Willdan to contribute \$75,000.00 to the City's settlement with Malloy in order to resolve all claims that City may have against Willdan relating to the City's additional payments made to Malloy, further described in Recital C hereof.

F. The Parties hereto now desire to resolve the foregoing dispute, including all past and existing disputes between them relating to facts and circumstances which were alleged, or could have been alleged relating to the City's claims against Willdan for contribution and indemnity for the City's payments made to Malloy described in Recital C hereof (the "Claims"); to buy their peace; and to avoid the attendant costs and expenses associated with litigation and/or arbitration with each other.

SETTLEMENT AND RELEASE

In consideration of the Recitals and of the covenants contained herein, the Parties hereto agree as follows:

1. Payment.

A. Within ten (10) days of the effective date of this Agreement, Willdan shall pay

City the sum of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) in full settlement of the Claims (defined above).

B. Within fifteen (15) days of the effective date of this Agreement, City shall pay Willdan the sum of \$3,320.00, representing a full settlement of all payment claims Willdan has against the City for Willdan's services performed on the Project and under the Willdan Contract.

2. Effective Date. This Agreement shall become effective when it has been executed by both the Parties, and the Effective Date shall be the last date which the Parties signed this Agreement.

3. Attorney's Fees. Except as provided to the contrary in this Agreement, each of the Parties to this Agreement shall bear its own attorney's fees and costs incurred in connection with the Claims.

4. Releases. City and Willdan hereby release and discharge each other, and their respective officers, employees, agents and assigns, predecessors and successors (collectively "Released Parties") from and against any and all rights, claims, causes of action, liability, damages, attorney's fees and costs of any kind or nature, whether known or unknown, which the Parties have, or may have, against each of the Released Parties, relating to the Claims. However, nothing in this Agreement shall have any effect on any indemnity provisions contained in the Willdan Contract. Further, the releases contained in this Agreement, and solely with respect to the Claims, extend to and include a waiver of the provisions of California Civil Code section 1542, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

5. As of the date of each of the Party's execution of this Agreement, City and Willdan each represents to the other Party that it has no present knowledge of any claims that it may have against the other party other than the Claims that are released pursuant to this Agreement.

6. Representation by Counsel. Each Party has been represented by legal counsel and has been advised by its counsel of the effect of the releases herein given and understand that the facts with respect to which the releases are given may be different from the facts now known or believed by the Parties to be true. The Parties accept and assume the risk that such facts may turn out to be different from the facts now known or believed to be true by the Parties and agree that the releases herein given shall remain in all respects effective and shall not be subject to termination or rescission by virtue of any such difference in fact.

7. No Admission of Liability. This Agreement is entered into in compromise of the above-described Claims, and it shall never be treated as an admission of liability on the part of either Party for any purpose.

8. Binding Effect. This Agreement shall be binding upon the Parties' assigns and shall

inure to the benefit of their respective successors and assigns.

9. Enforcement of Agreement. Should any action, arbitration or other proceeding be commenced to enforce the terms of this Agreement, the Party prevailing therein shall be entitled to recover its reasonable attorney's fees and costs.

10. Construction of Agreement. The agreements contained herein shall not be construed in favor of or against any Party hereto, but shall be construed as if all Parties prepared this Agreement.

11. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties hereto concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, terms, conditions and representations, written or oral, made by any of the Parties hereto or their agents, concerning the matters covered by this Agreement.

12. Modification and/or Amendment. This Agreement may be amended and modified only by a written agreement signed by both Parties specifically acknowledging and approving of the modification.

13. Execution of Documents. Each Party agrees to execute all documents necessary to carry out the purpose of this Agreement and to cooperate with the other in the expeditious filing of any and all documents (if any) and the fulfillment of the terms of this Agreement.

14. Controlling Law. This Agreement, including any rights, remedies, or obligations provided for thereunder, shall be construed and enforced in accordance with the laws of the State of California.

15. Severability. If any provision of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining portions of this Agreement and shall not affect the validity and enforceability of such remaining provisions.

16. Effect of Headings. The titles and headings of this Agreement are for convenience and identification only, and shall not be deemed to limit, amplify, or define the contents of the respective sections or paragraphs to which they pertain.

17. Gender. Whenever in this document the context may so require, the masculine gender shall be deemed to include the feminine and neuter genders, and vice-versa.

18. Terms. Each term of this Agreement is contractual and not merely a recital.

19. Assignment of Claims and Authority. The Parties warrant and represent that they have the full and complete right to release one another as specified herein, and that they have not theretofore assigned or transferred, or purported to assign or transfer, to any other person any matter, or portion of any matter, released by them herein. Each person signing this Agreement on behalf of a Party hereto warrants and represents that he or she has the authority to sign on behalf of a Party

hereto and further warrants that this Agreement has been validly authorized and constitutes a legally binding and enforceable obligation of said Party.

20. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. A facsimile or an electronically transmitted copy of a signature (e.g., a pdf) to this Agreement shall be treated the same as an original signature.

Dated: March 17th, 2015

Willdan Engineering

By: 
Daniel Chow, President/CEO

Dated: _____, 2015

City of Manhattan Beach

By: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney