

PROFESSIONAL SERVICES AGREEMENT

Project Management, Mitigation and Compliance Monitoring, Plan Check and Inspection Services

This Professional Services Agreement ("Agreement") is dated January 15, 2019 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Willdan Engineering, a California corporation, ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City and Consultant previously entered into two Professional Services Agreements dated September 29, 2016 and February 22, 2017, pursuant to which Consultant provided contract Planning Services and Plan Check and Inspections Services, respectively, related to the proposed remodeling and expansion of the Manhattan Village Shopping Center ("Mall Project").

B. City desires to continue to utilize the services of Consultant as an independent contractor to provide Project Management, Mitigation and Compliance Monitoring, Plan Check and Inspection Services related to the Mall Project.

C. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

D. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") for Project Management, Mitigation and Compliance Monitoring, Plan Check and Inspection Services for the Manhattan Village Mall Renovation Project, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by

Approved for Use 09/25/18

the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Daniel Chow, President/CEO (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. 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.

2. **Term of Agreement**. The term of this Agreement shall be from the Effective Date through December 31, 2023, unless sooner terminated as provided in Section 12 of this Agreement or extended.

3. **Compensation**.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant as follows:

- Principal Project Management, Mitigation and Compliance Monitoring Services - \$125.00 per hour; Deputy Project Manager- \$138.00 per hour
- Plan Check and Inspection Services, and other related support services, - in accordance with the Schedule of Hourly Rates attached hereto as **Exhibit B**.

On February 1, 2020, and annually thereafter, the hourly rate for Project Management, Mitigation and Compliance Monitoring Services and the rates set forth in the Schedule of Hourly Rates shall be increased by the percentage change in the Consumer Price Index for all Urban Consumers (Los Angeles area CPI-U,

unadjusted for seasonal changes) for the most recent twelve (12) month period for which data is available. The price adjustment will be limited to a maximum of three percent (3.0%) per year. In no event shall the Consultant be paid more than the funds available in the Developer's Account.

B. Expenses. City shall only reimburse Consultant for those actual and necessary expenses authorized by the City Representative and as expressly set forth in **Exhibit B**. Reimbursement for expenses is included within these actual and necessary expenses.

C. Unauthorized Services and Expenses. City will not pay for any services performed by Consultant not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council or (where authorized) by the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, plan check number, brief description and address for each project, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt as specified in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Payment Subject to Developer Reimbursement Agreement. Consultant acknowledges that, on or about the date of this Agreement, the City will have entered into a Reimbursement Agreement with RREEF America REIT Corp BBB II ("Developer"). The proponent of the Mall Project. Pursuant to the Reimbursement Agreement, the Developer is required to maintain an account ("Developer's Account") with City, with sufficient funds to pay various City costs relating to the Mall Project, including the Services of Consultant. Consultant acknowledges and agrees that City's obligation to pay invoices submitted by Consultant is subject to there being sufficient funds available in Developer's Account to

pay the invoice(s). City shall have no obligation to pay Consultant from any source of funds other than funds in Developer's Account.

D. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

5. Independent contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes,

and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

D. Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

8. Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection

with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

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

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two Business Days of notice from the insurer, notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

11. Records and Inspections. Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date 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.

13. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain

labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

14. Default.

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: Ryan Heise
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5525
Email: rheise@citymb.info

If to Consultant:

Attn: Salvador Lopez, Jr.
Willdan Engineering
13191 Crossroads Parkway North, #405
City of Industry, CA 91746
(562) 364-7600
slopez@willdan.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: gbarrow@rwqlaw.com
gbarrow@citymb.info

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed

to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

21. Corrections. In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

22. NOT USED

23. Exhibits. Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

24. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

25. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

26. Word Usage. Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Business Days. “Business days” means days Manhattan Beach City Hall is open for business.

29. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

30. Attorneys’ Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys’ fees, experts’ fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

31. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

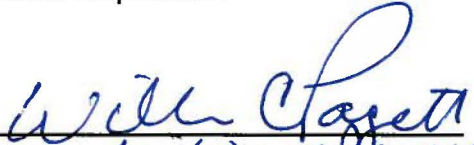
City:

City of Manhattan Beach,
a California municipal corporation

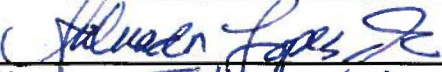
Consultant:

Willdan Engineering,
a California corporation

By: _____
Name: Bruce Moe
Title: City Manager

By: 
Name: William Chappell
Title: SR. Vice Pres


ATTEST:

By: 
Name: Salvador Lopez Jr
Title: Director of Planning

By: _____
Name: Liza Tamura
Title: City Clerk

PROOF OF AUTHORITY TO BIND CONTRACTING PARTY REQUIRED

APPROVED AS TO FORM:

By: 
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: 
Name: Steve Charelian
Title: Finance Director

EXHIBIT A
SCOPE OF SERVICES

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SCOPE OF SERVICES



December 12, 2018

Ann McIntosh, Community Development Director
City of Manhattan Beach
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266

Subject: Proposal for On-Call Contract Management, Professional Engineering and Plan Check Services

Dear Ms. McIntosh:

The City of Manhattan Beach is seeking to continue utilization of a consulting team to assist, as needed, with contract management services for the Manhattan Village Mall Expansion Project. Work will consist of project management, mitigation and compliance monitoring, full plan check, inspection services, peer review of technical studies/reports, and permitting. Willdan is fully committed to continuing to successfully provide the requested plan review services and provide a valuable resource to augment City staff in accomplishing the City's goals and needs.

Our efforts will maintain a level of high quality and cost effectiveness to be performed in the manner and timeframe specified in this proposal.

The following strengths are a recap of what Willdan brings to assist the City with delivery of public services:

- **In-House Capability.** Willdan has experienced staff available in-house to successfully and timely complete requested tasks as they arise, as evidenced in the staff qualifications section of this proposal.
- **Team Track Record.** Willdan's staff continue to provide as-needed plan review services to the local Cities of San Bernardino, Lake Elsinore, Brea, Rolling Hills Estates, Cerritos, South Gate, El Monte and Rosemead – among others.
- **Public Sector Experience.** Our staff understands the uniqueness of public agency concerns and challenges. Some of our staff have served as municipal agency permit clerks, field inspectors, plan reviewers, code enforcers, planners, city and traffic engineers, department director's, and other agency roles. The diversity of this experience and the depth of this in-house consulting resource is an added value of our services.
- **No Learning Curve.** Willdan personnel have been providing plan check and construction management services to local agencies throughout Southern California for over 52 years. Our staff have hands-on working knowledge and experience implementing agency standards and procedures. We have developed well-coordinated plan review processes, including a plan and permit tracking and reporting system and specific discipline review checklists, to provide timely, cost-effective service. This tradition of hands-on experience including design enhances our plan check processes and results in quality, relevant service.
- **On-Call Service Expertise.** Willdan has an extensive history providing on-call services to municipalities throughout Southern California. We have broad expertise and experience with large and small development projects involving a myriad of construction improvements such as mass grading, finish grading, street construction and rehabilitation, roadway widening, sewers, waterlines, drainage, stormwater BMP's, utility relocation, traffic signal, street lighting, parks, water conserving landscaping, ADA accessibility reviews, and other related improvements.

- **City of Manhattan Beach Experience.** Willdan has provided construction management, city engineering, and traffic engineering services to the City's Public Works Department on several projects. As a compliment to this project, Willdan is also providing a Project Manager for project conditions and mitigation measures compliance.

Willdan is proposing Ms. Tonya Pace as our Principal Project Manager and Christopher Kelley, PE, QSD as our Deputy Project Manager. Ms. Tonya Pace is an experienced Principal Planner with 21 years of experience. Ms. Pace provides project management and planning services to both public and private sector clients. Ms. Pace also acted as Lead Project Manager for the Montebello Mall Expansion Project and facilitates efficient and effective entitlement processes. Mr. Kelley is a California-registered civil engineer with over 10 years of experience in municipal civil engineering, including all phases of public works and customer service. Mr. Kelley is responsible for providing plan checking services; reviewing improvement plans; managing projects; designing various public infrastructure improvements; providing NPDES Support Services; making public presentations; and coordinating with regulatory and permitting agencies, and utility entities. Ms. Pace and Mr. Kelley's experience and leadership roles are also more specifically described in this proposal. Serving the City as Principal-in-Charge of the contract and as Quality Assurance Manager will be Mr. Salvador Lopez Jr. Mr. Lopez can be reached by mail at Willdan Engineering, 13191 Crossroads Parkway, Suite 405, Industry, CA 91746; by phone at (562) 364-7600; or by email at slopez@willdan.com.

Willdan understands that our proposal submittal constitutes certification, under penalty of perjury, that Willdan complies with nondiscrimination requirements of the state and federal governments. Willdan's proposal will remain valid for a period of 90 days from the above date of submittal. Willdan acknowledges that the composition of our proposed consulting staff may not be altered without prior written consent of the City.

Willdan is the right team with the right experience for this assignment. We appreciate the opportunity to submit this proposal and look forward to discussing our proposal with you and your staff.

Respectfully submitted,
WILLDAN ENGINEERING



Salvador Lopez Jr.
Director of Planning Services



Project Understanding

Simply stated, our understanding of the city's focused request is to identify a qualified municipal engineering firm having effective experience in supporting the City's Community Development Department relative to the review of the Manhattan Village Mall Expansion project. When the project workload exceeds the city staff's availability to efficiently and timely address the needs, then the selected consulting firm will be brought in to help.

Scope of Work

In addition to project management, including mitigation monitoring and conditions of approval compliance, Willdan will also assist the City with a range of engineering and plan check support services including but not limited to the following:

Building and Safety

- Energy
- Structural
- MEP
- ADA
- Permit Technician
- Inspection Services
- Fire Protection
- Emergency Response
- Landscape and Irrigation

Civil Engineering

- On and Off Site Utilities
- Grading
- Drainage
- Erosion Control
- Right-of-Way Improvements
- Review of:
 - Surveys
 - Lot line Adjustments
 - IOD's
 - Temporary Construction Easements
 - Dedications
 - Cost estimates
- On and Off Site Inspections Services
- NPDES/Stormwater/SUSMP/BMP/LID

Peer Review of Reports

- NPDES/Stormwater/SUSMP/BMP/LID
- Traffic Control Plan
- Circulation and Parking Plan
- Parking Management Plan
- Noise Report
- Soils Management Plan
- Soils Re-Use Plan
- Hazardous Soils Report
- Geotechnical Reports
- Lighting Plans
- Photometric Studies
- Security/Camera Plan
- Traffic Studies
- Geotechnical Reports

Traffic Engineering

- On and Off Site Improvements
- Traffic Signals
- Right-of-way
- Striping
- Signage
- Traffic
- Circulation and Parking
- Street Improvement Plans
- Storm Drain Plans
- Sewer Improvement Plans

Noise Monitoring

- Noise Monitoring
- Ongoing Compliance

Geotechnical

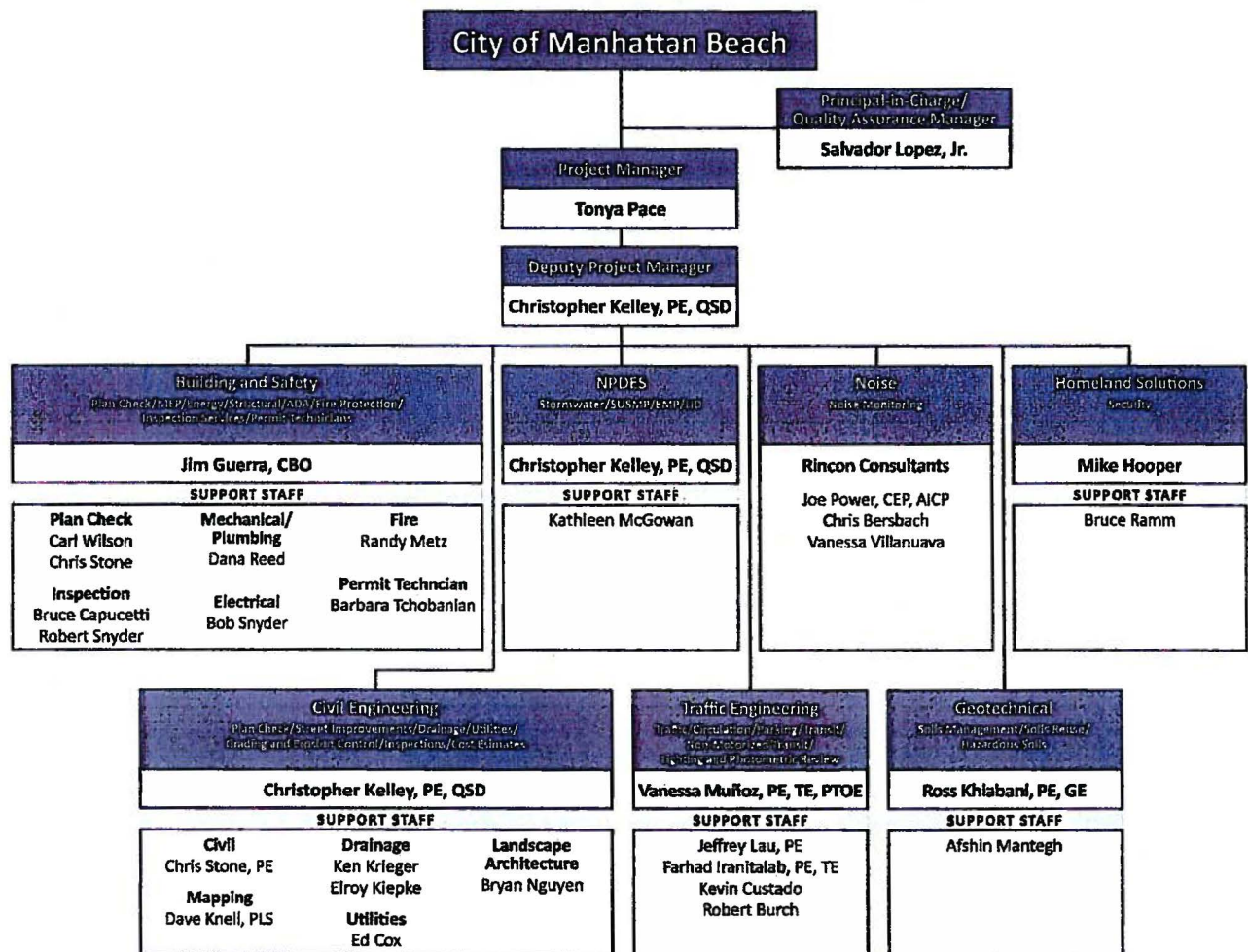
- Plan Check
- Sub-stab barrier and venting systems
- Traffic Studies
- Geotechnical Reports
- Stormwater H&H and NPDES related compliance documents
- Water Quality Management Plans (WQMP's)

Key Staff/Team Members

Key Personnel Team

Willdan has selected individuals with extensive expertise and directly related experience to serve as task leaders at the project level. They are supported by a talented team of drainage, utility, roadway, traffic, structural, geotechnical, landscape, mapping staff that are ready to implement successful project delivery. Detailed resumes of key personnel identifying their credentials and qualifications are provided within this section.

Organizational Chart



Sub Consultants

McGowan Consulting, LLC

At the request of the City, Kathleen McGowan will be included as a sub-consultant on this project. Because of Ms. McGowan's history of assistance to Manhattan Beach City staff in reviewing previous stormwater quality related aspects of the Manhattan Village Mall redevelopment, as well as her ongoing stormwater consulting support to the City for the past ten years, Ms. McGowan will serve in a support role in providing stormwater quality review for the mall redevelopment project.

Rincon Consulting, LLC

Rincon Consulting will provide a peer review of the Noise Reports as well as noise monitoring for the project solely on an as-needed basis.

Key Team Resumes

Willdan's team resumes are available upon request.

Project Fees

Project Management

Principal Project Manager, Tonya Pace will be billed at an hourly rate of \$125.00/hour.

Deputy Project Manager Christopher Kelley will be billed at an hourly rate of \$138.00/hour.

Building and Safety Plan Review

Building and Safety Plan Review fees will be based on a percentage of the fees collected by the City and by the reviewer's hourly rate.

Civil Plan Review and General Engineering Services

Civil Plan reviews and General Engineering Services provided to the City by Willdan staff will be calculated on an hourly basis for each review, see the attached Willdan Engineering Schedule of Hourly Rates.

Building and Safety Inspection Services

Because of the on-call nature of the Building and Safety Inspections, Willdan staff will be calculated on an hourly basis per the attached Willdan Engineering Schedule of Hourly Rates.

Special Fee Arrangements

Peer review of reports will be treated as an individual task order and a "not to exceed" fee based on an agreed upon number of hours.

At the City's request, Willdan's sub consultant fee of 15% will be reduced to 10% and added to the direct cost of all sub consultant services to provide for the cost of administration, consultation, and coordination.

Administration

All administrative costs will be billed for time and materials.

EXHIBIT B
APPROVED FEE SCHEDULE

EXHIBIT B
APPROVED FEE SCHEDULE



WILLDAN ENGINEERING
Schedule of Hourly Rates

Effective July 1, 2018 to June 30, 2019

ENGINEERING		CONSTRUCTION MANAGEMENT		BUILDING AND SAFETY (continued)	
Technical Aide I	\$84	Labor Compliance Specialist	\$115	Supervising Building Inspector	\$153
Technical Aide II	\$83	Labor Compliance Manager	\$145	Inspector of Record	\$167
Technical Aide III	\$103	Utility Coordinator	\$153	Deputy Building Official	\$167
Drafter I	\$104	Assistant Construction Manager	\$145	Building Official	\$173
Drafter II	\$121	Construction Manager	\$169	Plan Check Engineer	\$167
Senior Drafter	\$134	Senior Construction Manager	\$175	Supervising Plan Check Engineer	\$173
GIS Analyst I	\$139	Project Manager IV	\$199	Principal Project Manager	\$199
GIS Analyst II	\$158	Deputy Director	\$207	Deputy Director	\$207
GIS Analyst III	\$173	Director	\$212	Director	\$212
Designer I	\$139	INSPECTOR SERVICES		PLANNING	
Designer II	\$145	Public Works Observer I***	\$89	Community Development Technician	\$103
Traffic Engineer I	\$185	Public Works Observer II***	\$99	Assistant Community Development Planner	\$128
Traffic Engineer II	\$189	Senior Public Works Observer I***	\$107	Associate Community Development Planner	\$139
Senior Designer I	\$153	Senior Public Works Observer II***	\$119	Senior Community Development Planner	\$158
Senior Designer II	\$160	Senior Public Works Observer III***	\$129	Principal Community Development Planner	\$173
Assistant Engineer I	\$116	Senior Public Works Observer IV***	\$136	Planning Technician	\$103
Assistant Engineer II	\$132	Senior Public Works Observer V***	\$145	Assistant Planner	\$128
Assistant Engineer III	\$138	MAPPING AND EXPERT SERVICES		Associate Planner	\$139
Assistant Engineer IV	\$143	Survey Analyst I	\$121	Senior Planner	\$158
Associate Engineer I	\$149	Survey Analyst II	\$139	Principal Planner	\$173
Associate Engineer II	\$155	Calculator I	\$121	Planning Manager	\$189
Associate Engineer III	\$161	Calculator II	\$134	Deputy Director	\$207
Design Manager	\$163	Calculator III	\$146	Director	\$212
Senior Design Manager	\$169	Senior Survey Analyst	\$158	LANDSCAPE ARCHITECTURE	
Senior Engineer I	\$164	Supervisor - Survey & Mapping	\$175	Assistant Landscape Architect	\$121
Senior Engineer II	\$167	Principal Project Manager	\$199	Associate Landscape Architect	\$139
Senior Engineer III	\$171	BUILDING AND SAFETY		Senior Landscape Architect	\$153
Senior Engineer IV	\$181	Assistant Code Enforcement Officer	\$85	Principal Landscape Architect	\$173
Supervising Engineer	\$187	Code Enforcement Officer	\$98	Principal Project Manager	\$199
Project Manager I	\$150	Senior Code Enforcement Officer	\$115	ADMINISTRATIVE	
Project Manager II	\$171	Supervisor Code Enforcement	\$139	Administrative Assistant I	\$76
Project Manager III	\$183	Plans Examiner Aide	\$91	Administrative Assistant II	\$91
Project Manager IV	\$199	Plans Examiner	\$139	Administrative Assistant III	\$107
Program Manager I	\$167	Senior Plans Examiner	\$153	Project Accountant I	\$86
Program Manager II	\$185	Assistant Construction Permit Specialist	\$98	Project Accountant II	\$101
Program Manager III	\$204	Construction Permit Specialist	\$103	Project Controller I	\$107
City Engineer I	\$199	Senior Construction Permit Specialist***	\$121	Project Controller II	\$121
City Engineer II	\$209	Supervising Construction Permit Specialist	\$128		
Principal Project Manager	\$199	Assistant Building Inspector	\$115		
Deputy Director	\$207	Building Inspector***	\$128		
Director	\$212	Senior Building Inspector	\$139		
Principal Engineer	\$230				

***\$169/hour for Prevailing Wage Project
Mileage/Field Vehicle usage will be charged at the rate in accordance with the current FTR mileage reimbursement rate, subject to negotiation.

Additional billing classifications may be added to the above listing during the year as new positions are created. Consultation in connection with litigation and court appearances will be quoted separately. The above schedule is for straight time. Overtime will be charged at 1.5 times, and Sundays and holidays, 2.0 times the standard rates. Blueprinting, reproduction, messenger services, and printing will be invoiced at cost plus fifteen percent (15%). A sub consultant management fee of fifteen percent (15%) will be added to the direct cost of all sub consultant services to provide for the cost of administration, consultation, and coordination. Valid July 1, 2018 thru June 30, 2019, thereafter, the rates may be raised once per year to the value between the 12-month % change of the Consumer Price Index for the Los Angeles/Orange County/Sacramento/San Francisco/San Jose area and five percent.

Rev. 8/1/10





WILLDAN GEOTECHNICAL / MATERIALS TESTING
Schedule of Hourly Rates
Effective July 1, 2018 to June 30, 2019

GEOTECHNICAL

Soil Technician (Non-prevailing Wages)	\$88
Soil Technician (Prevailing Wages)	\$169
Sr. Soil Technician (Non-prevailing Wages)	\$100
Sr. Soil Technician (Prevailing Wages)	\$169
Assistant Engineer III/Geologist III	\$126
Associate Engineer II/Geologist II	\$154
Senior Engineer III/Geologist III	\$168
Supervising Engineer/Geotechnical Engineer/Geologist	\$183
Principal Engineer/Geologist	\$228

SPECIAL INSPECTION

Special Inspector (Non-Prevailing Wages)	\$82
Special Inspector (Prevailing Wages)	\$169
Supervisor	\$137
Construction Material Engineer	\$168

ADMINISTRATIVE

Computer Data Entry/Administrative Assistant I	\$75
Clerical/Administrative Assistant II	\$91
Word Processing/Administrative Assistant III	\$107
CAD Operator	\$133

EXPERT WITNESS

Principal Engineer/Geologist	\$361
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**WILLDAN GEOTECHNICAL
Laboratory Fees**

Effective July 1, 2016 to June 30, 2017

IDENTIFICATION AND INDEX PROPERTIES		CONSOLIDATION/COLLAPSE AND SWELL TESTS	
In-Situ Moisture and Density (ASTM D2937)	20.00	Additional load increment	25.00
Grain Size Analysis (ASTM D422) Sieve Only (3" to #200)	70.00	Additional Time rate per load increment	50.00
One Point	75.00	Single point (collapse test)	50.00
Specific Gravity (ASTM D854)	75.00	Remolded sample per specimen	50.00
Sand Equivalent (ASTM D2419)	75.00	Single Load Swell (ASTM D4546)	70.00
Percent Passing #200 Sieve (ASTM D1140)	50.00	Ring sample, field moisture	
Atterberg Limits (ASTM D4318) Multi Point Sieve and Hydrometer	120.00	Ring sample, air dried	70.00
COMPACTION AND BEARING STRENGTH		Expansion Index (ASTM D4829/UBC 29-2)	125.00
Modified Proctor Compaction (ASTM D1557) Method A or B (4" Mold)	165.00	Consolidation (ASTM D2435) 8 load increments w/one time-rate	160.00
Method A or B (6" Mold)	175.00	LABORATORY PERMEABILITY	
Compaction, California 216	180.00	Constant Head (ASTM D2434)	235.00
R-Value	250.00	Falling Head Flexible Wall (ASTM D5084)	285.00
California Bearing Ratio CBR (ASTM D1883) 3 points	450.00	Triaxial Permeability (EPA 9100)	330.00
SHEAR STRENGTH		CHEMICAL TESTS	
Torvane/Pocket Penetrometer	15.00	Organic content (ASTM D2974)	70.00
Direct Shear - per point	85.00	Corrosivity (pH, resistivity, sulfates, chlorides)	165.00
Consolidated-Drained per pt. (ASTM D3080)	120.00	CONSTRUCTION MATERIAL TESTING	
Residual per pt	120.00	Concrete Test Report	12.00
Unconfined Compression (ASTM D2166)	120.00	6 X12 Concrete Cylinder (C39)	25.00
Unconsolidated-Undrained (UU)	150.00	2", 4", 6" Diameter Concrete Cores (Test Only)	25.00
ASPHALT TESTS		Mortar and Grout, Cylinder and Cubes	25.00
Wash Gradation	100.00	Cylinders Pick-up	45.00
Extraction/Asphalt	185.00	Reinforcing Steel, Tensile and Bend Tests	60.00
Hveem/Marshall Maximum Density	220.00		