

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into on this ___ day of ___, 2013, by and between the City of Manhattan Beach, a municipal corporation ("City") and Willdan Engineering, a California Corporation ("Contractor") (collectively, the "Parties").

RECITALS

A. City desires to obtain services of Contractor for Construction Management and Inspection for the Street Resurfacing Project for Ardmore Avenue, Valley Drive and 11th Place.

B. Contractor represents that it is qualified and able to perform the services ("Services") required by this Agreement.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

Section 1. Contractor's Services. Contractor shall perform the Services described in Exhibit A in a manner satisfactory to City and consistent with the 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 apply to services rendered on or after September 17, 2013, and shall terminate when the work is completed, unless sooner terminated by the City.

Section 3. Time of Performance. Contractor shall commence its services under this Agreement upon receipt of a written notice to proceed from City in the manner described in Exhibit A. Contractor shall complete the services in conformance with the timeline set forth in Exhibit A, or as otherwise directed by the City's representative.

Section 4. Compensation.

(a) City agrees to pay Contractor in accordance with the fee schedule attached hereto as Exhibit B. In no event shall the Contractor be paid more than \$43,720.00 during the term of this Agreement. Any terms in Exhibit B, other than the payment rates and schedule of payment, are null and void.

(b) Unless expressly provided for in Exhibit B, Contractor shall not be entitled to reimbursement for any expenses. Any expenses incurred by Contractor that are not expressly authorized by this Agreement will not be reimbursed by City.

(c) The City Manager may authorize cumulative increases for additional work up to the lesser of \$20,000 or 10% of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

Section 5. Method of Payment. City shall pay Contractor said consideration in accordance with the method and schedule of payment set forth in Exhibit B, attached hereto and incorporated herein. Unless otherwise specified in Exhibit B, Contractor shall submit to City a detailed invoice on a monthly basis for the services performed pursuant to this Agreement. Each invoice shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period, as applicable. Within 45 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice.

Section 6. Independent Contractor. The Parties agree, understand, and acknowledge that Contractor is not an employee of the City, but is solely an independent contractor. Contractor expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Contractor shall not be in any way an employee of the City. As such, Contractor 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 Contractor or any of Contractor's employees. Contractor 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. Contractor shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Contractor's personnel practices. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

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

Section 8. Responsible Principals.

(a) Contractor's responsible principal, Mr. Chris Baca, shall be principally responsible for Contractor's obligations under this Agreement and shall serve as principal liaison between City and Contractor. Designation of another Responsible Principal by Contractor shall not be made without prior written consent of City.

(b) City's Responsible Principal shall be the City Manager, who shall administer the terms of the Agreement on behalf of City.

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

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

Section 11. Interests of Contractor.

(a) Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Contractor further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Contractor shall not accept any employment or representation during the term of this Agreement which is or may likely make Contractor "financially interested" (as provided in California Government Code §§ 1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained.

(b) Contractor further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Contractor, to solicit or obtain this Agreement. Nor has Contractor paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Contractor, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Contractor hereunder the full amount or value of any such fee, commission, percentage or gift.

(c) Contractor warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Contractor, and that if any such interest comes to the knowledge of Contractor at any time during the term of this Agreement, Contractor shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

Section 12. Insurance.

(a) Contractor 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 \$2,000,000 for each occurrence and general aggregate, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Contractor.

2. A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the Services required by this Agreement.

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 \$2,000,000 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, Contractor agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.

2. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be excess of Contractor's insurance and shall not contribute with it.

3. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy, except for the professional liability policy, required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials.

5. Each insurance policy required by this Agreement shall be endorsed to state: should the policy be canceled before the expiration date, the issuing insurer shall mail 30 days' prior written notice to the City.

6. If insurance coverage is canceled or reduced in coverage or in limits, Contractor shall within two business days of notice from insurer, phone, fax and/or notify the City via first class mail, postage prepaid, of the changes to or cancellation of the policy.

(c) The City's Risk Manager may, in writing, amend and/or waive any or all of the insurance provisions set forth herein. In such case, the Contractor shall comply with the insurance provisions required by the City's Risk Manager.

(d) 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-;VII in the latest edition of Best's Insurance Guide, unless waved in writing by City's Risk Manager.

(e) Contractor 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 Contractor's expense, the premium thereon.

(f) All insurance coverages shall be confirmed by execution of endorsements on forms approved by City. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before services commence. As an alternative to City forms, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

(g) Any deductibles or self-insured retentions must be declared to and approved by City.

(h) Contractor shall require each of its sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.

Section 13. Indemnification. Contractor shall defend, indemnify, and hold harmless the City, its officials, and every officer, employee and agent of City (collectively "City") from any claim, liability or financial loss (including, without limitation, attorneys fees and costs), injuries to property or persons (including without limitation, attorneys fees and costs) arising out of any acts or omissions of Contractor, its officials, officers, employees or agents in connection with the performance of this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend City, with counsel of City's choice, at Contractor's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Contractor shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by

Contractor or City. All duties of Contractor under this Section shall survive termination 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 calendar days' written notice to Contractor. Contractor agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) City may at any time, for any reason, with or without cause, suspend this Agreement, or any portion hereof, by serving upon the Contractor written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends only a portion of this Agreement, such suspension shall not make void or invalidate the remainder of this Agreement.

(c) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Contractor, Contractor shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor 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 Contractor with all pertinent data, documents, and other requested information as is available for the proper performance of Contractor's Services.

Section 16. Information and Documents.

(a) Contractor covenants that all data, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, 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 Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, 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 retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, the City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) All Data 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 Data submitted by Contractor 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 work, surveys, notes, and other documents prepared in the course of providing the Services shall become the sole property of the City and may be used, reused or otherwise disposed of by City without Contractor's permission.

(d) Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts 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. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit said 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 3 years after receipt of final payment.

(e) Contractor's covenants under this Section shall survive the termination of this Agreement.

Section 17. Default

(a) Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to Contractor. If such failure by Contractor to make progress in the performance of work hereunder arises out of causes beyond Contractor's control, and without fault or negligence of Contractor, it shall not be considered a default.

(b) If the City Manager or his delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of

this Agreement, to 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.

Section 18. Changes in the Services. City shall have the right to order, in writing, changes in the Services or the services to be performed. Any changes in the Services requested by Contractor must be made in writing and approved by both Parties.

Section 19. 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: City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, California 90266
Attn: Gilbert Gamboa, Senior Civil Engineer

With a copy to: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Attn: City Manager

If to Contractor: Willdan Engineering
13191 Crossroads Parkway North, Suite 405
Industry, CA 91746-3443
Attn: Chris Baca, Deputy Director of Construction

Section 20. Attorneys' Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

Section 21. Entire Agreement. This Agreement represents the entire integrated agreement between City and Contractor, 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 Contractor.

Section 22. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 23. Venue. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Manhattan Beach.

Section 24. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Contractor.

Section 25. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 26. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

Section 27. 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 on the date first written above at Manhattan Beach, California.

CITY OF MANHATTAN BEACH:

WILLDAN ENGINEERING:

DAVID N. CARMANY
City Manager

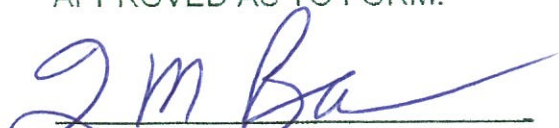


Chris Baca, Deputy Director of
Construction Management

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:



QUINN M. BARROW
City Attorney

EXHIBIT A

SCOPE OF SERVICES

Contractor shall provide construction management and inspection services for the Street Resurfacing Project for Ardmore Avenue, Valley Drive and 11th Place. The project consists of roadway surface improvements along Ardmore Avenue (from Manhattan Beach Boulevard to Boundary Place), Valley Drive (from 1st Street to the southern City boundary), and 11th Place alley (from Ardmore Avenue to Highview Avenue) as shown on the City's Plan No. P-898, Sheets 1 through 21, and Specifications prepared thereof, which are on file with the City's Public Works Department.

The construction observation services are generally performed in accordance with the provisions of the latest editions of the Standard for Public Works Construction "Green Book", City of Manhattan Beach Standard Plans, Caltrans Standard Specifications, and the Public Work Inspector's Manual. Following is a listing of the inspection services, which will be applied to the subject project:

1. Review plans, specifications, and all other contract and construction related documents.
2. Conduct a field investigation of the project area to become familiar with the existing facilities and the project environment.
3. Attend preconstruction conference and provide meeting minutes.
4. Become familiar with traffic control plans, construction schedule, construction sequence, and permit requirements from other agencies.
5. Monitor contractor for conformance to design survey line and grades.
6. Provide full-time and as-needed construction inspection including night work, of the work to monitor materials and methods toward compliance with plans, specifications, and contract documents; address and document non-conforming items as they are discovered.
7. Monitor compliance with Cal OSHA requirements and compliance with all local, state and federal regulations. Although Willdan will monitor the activities, it is the contractor's sole responsibility to provide their workers with a safe working environment.
8. Monitor compliance with the Clean Air Act and the Clean Water Act (National Pollutant Discharge Elimination System – NPDES best management practices). Also monitor contractor's compliance with approved SWPPP.
9. Meet with the Contractor at the beginning of each day and review proposed work plans, including specific details that may affect progress.

10. Conduct daily measurements of quantities of work with the contractor.
11. Review actual contractor performance throughout the day and discuss discrepancies with the contractor as they occur.
12. Assist in coordination of engineering support, surveying, specialty inspections, and fieldwork by utility companies.
13. Ensure compliance of Underground Service Alert notification/delineation.
14. Evaluate the contractor's operation and production with respect to quality and progress, and report to the Resident Engineer.
15. Photograph continuous property frontages along street alignment once prior to construction and once immediately following construction. Maintain a photographic record of key elements of each major operation of work each day, with increased detail in situations of potential changes or claims.
16. Closely monitor testing results and require the contractor to provide corrective measures to achieve compliance.
17. Maintain copies of all permits needed to construct the project and enforce special requirements of each.
18. Prepare and maintain detailed daily diary inspector reports on construction progress.
19. Prepare clear and concise letters and memoranda, as needed. A solid paper trail will be established.
20. Maintain field file bound workbooks during construction, including a cumulative record of quantities constructed, daily and weekly reports, working day reports, change order documentation, photographs, and other documentation.
21. Review the construction schedule and enforce requirements for updating schedules and maintaining appropriate progress of the work.
22. Analyze delays and review claims on a timely basis and make recommendations to the Construction Manager.
23. Assist with the review and evaluation of change order work.
24. Provide complete measurements and calculations documented to administer progress payments.
25. Maintain and submit a clean set of plans marked in red for as-built corrections on record drawings to be filed with the City. (City's Design Consultant will transfer the contractor's record drawings to original Mylar drawings.)

26. Prepare punch list at substantial completion and follow up with the contractor regarding progress of corrections.
27. Schedule final inspection with the City and applicable agencies; prepare, distribute, and inspect corrections to the final punch list for completion; recommend final acceptance.
28. Prepare documentation for final payment to contractor.
29. Upon project completion, provide the finished set of project workbooks to the City.

EXHIBIT B

CONSIDERATION AND METHOD OF PAYMENT

Willdan will be compensated on an hourly basis for providing professional public works inspection services. It is our understanding that the City of Manhattan Beach desires a full-time public works observer at 8 hours per day.

In addition, as a part of our quality control and quality assurance programs for this type of service, Willdan assigns a supervising public works observer to each assignment. This individual is responsible for making a weekly visit to the job site to verify that the inspector's paperwork is in order and to assist with any issues associated with the project that may require additional expertise or knowledge. The following is a schedule of hourly billing rates and proposed not-to-exceed fee is based on a 45 working day working period.

Willdan's proposed fee is based on 45 working days. Additional services needed beyond the stated contract working days will be provided on a time-and-material basis at Willdan's standard hourly rates.

Willdan's not to exceed fee is broken-down as follows:

Supervision	\$6,480
Preconstruction (16 Hrs. @ 95)	\$1,520
Inspection (360 Hrs. @ \$95)	\$34,200
Project Close-Out (16 Hrs. @ 95)	\$1,520
Total Not-to-Exceed Fee	\$43,720

The personnel's hourly billing rate stated above includes a vehicle for use by our inspector and mobile phone. Additional services required beyond the specified completion date will be provided on a time-and-material basis at Willdan's standard hourly rates.

The above schedule is for straight time. Overtime will be charged at 1.25 times the standard hourly rates. Sundays and holidays will be charged at 1.70 times the standard hourly rates.

Blueprinting, reproduction, messenger services, and printing will be invoiced at cost plus 15 percent.

A subconsultant management fee of 15 percent will be added to the direct cost of all subconsultant services to provide for the cost of administration, consultation, and coordination.