

DESIGN SERVICES AGREEMENT

This Design Services Agreement ("Agreement") is dated July 20, 2021 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Leighton Consulting, Inc., California corporation ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide geotechnical/materials testing and special inspection services.

B. 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.

C. 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 geotechnical/materials testing and special inspection services for the Fire Station No. 2 Replacement 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 the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Jason D. Hertzberg, Principal Engineer (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

Approved for Use 3/1/2021

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.

H. Prevailing Wages. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in the California Labor Code. Therefore, as to those services that are “public works”, Consultant shall comply in all respects with all applicable provisions of the California Labor Code, including those set forth in Exhibit C hereto.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through December 29, 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 at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$51,000.00 (the “Maximum Compensation”) for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Services and Expenses. City will not pay for any services not specified in the Scope of Services, or reimburse for any expenses not set forth in **Exhibit B**, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services or expenses in writing prior to Consultant’s performance of those services or incurrence of additional expenses. Any additional services authorized by the City Council, or (where authorized) 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. Any additional expense authorized by the City Council or (where authorized) the City Manager shall be reimbursed in the amounts authorized by the City Council or City Manager. 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. Invoices must be submitted to Mamerto Estepa at mestepa@citymb.info. Each invoice shall itemize the Services rendered during the billing period, 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 up to the Maximum Compensation set forth 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. 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, surveys, studies, drawings, plans, maps, models, photographs, discussion, or other information (collectively "Data and Documents") 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 and Documents 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 Data and Documents, including computer files containing Data and Documents generated for the Services, 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. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless 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 claims, damages, judgments, penalties, and losses of any nature whatsoever,

including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), which arise out of, pertain to, or relate to in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, 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 design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c). There is no up-front obligation to provide a defense, but defense costs will be reimbursed to the extent of culpability/responsibility as determined in a California court of law.

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, 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 "Claims"), 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 Claims 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 Claim 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 the 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 B.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 indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims 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'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 Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.

C. Workers' Compensation Acts not Limiting. Consultant's 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.

D. 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 hold harmless and indemnification provisions in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in 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 \$2,000,000.00 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, phone, fax or 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. Broader Coverage/Higher Limits. If Consultant maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. 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:

TO CITY:

City of Manhattan Beach
Attn: Mamerto Estepa, Sr. Civil Engr.
1400 Highland Avenue
Manhattan Beach, CA 90266
Telephone: (310) 802-5325
Email: mestepa@citymb.info

TO CONSULTANT:

Leighton Consulting, Inc.
Attn: Jason Hertzberg, Principal Engr.
17781 Cowan
Irvine, CA 92614
Telephone: (949) 250-1421 Ext. 8772
Email: jhertzberg@leightongroup.com

COPY TO CITY ATTORNEY:

City of Manhattan Beach
Attn: City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266

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. Non-Appropriation of Funds. Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only to the conclusion of the

last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

23. Exhibits. Exhibits A, B and C 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:

Leighton Consulting, Inc.,
a California corporation

By: _____

Name: Bruce Moe
Title: City Manager

By: _____

Name: Thomas C. Benson Jr.
Title: President and CEO

ATTEST:

By: _____

Name: Kris Lutton
Title: Senior Vice President

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 FISCAL IMPACT:

By: _____

Name: Steve S. Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

By: _____

Name: Erick Lee
Title: Interim Public Works Director

EXHIBIT A SCOPE OF SERVICES

Leighton Consulting, Inc.'s (Leighton) services will be on an as-needed, on-call basis for geotechnical/material testing and special inspection.

Fieldwork

Site safety is the responsibility of the contractor. Therefore, Leighton will notify the contractor's site superintendent whenever Leighton is on site. Leighton will equip their field representatives with conventional and customary personal protection for similar construction sites, including a hard hat, yellow/orange vest and eye protection, and they will wear hard sole shoes. Leighton also will have a yellow rotating beacon on all Leighton field vehicles (pickup trucks). Leighton field personnel will also report to the superintendent upon completion of activities for the day. Leighton's Daily Field Report (DFR) will be brought to the project superintendent or designated field representative (e.g. possibly the City's construction manager), so that the activities and hours worked each day can be confirmed; and for their signature on the DFR to document their confirmation and comprehension of what was reported.

Pre-Construction Meeting: Leighton has budgeted for one pre-construction meeting with construction representative(s), contractor/sub-contractors and construction management to establish points of contact, protocol for scheduling services and distribution lists for test results.

Geotechnical Observation and Testing: Leighton's services will consist of geotechnical observation and testing during site preparation, excavation, and fill placement during earthwork and grading. Leighton will provide periodic and continuous observation and testing of the building pad overexcavation and recompaction, backfill placement, utility trench backfills, flatwork and pavement subgrade preparation, and wall backfills as fill thickness and the earthwork contractor's schedule requires. In addition, Leighton will observe spread and continuous footing excavations to confirm that properly compacted fill soils are exposed, prior to additional fill or concrete placement.

Reinforcing Steel: Leighton will pick up representative reinforcing steel samples and "tag" source materials for site delivery identification.

Reinforced Concrete Special Inspection: Provide concrete special inspectors for rebar inspection and placement prior to concrete pour. Leighton's inspector will sample fresh concrete, perform slump tests (ASTM C 143) and air content tests (ASTM C 173 or C 231) when requested by the City's designated field representative. Concrete compressive strength cylinders will also be molded in accordance with ASTM C31, by Leighton's representative, at a sampling frequency in accordance with the project specifications. After initial field curing, Leighton will transport hardened concrete cylinders from the site to Leighton's materials laboratory for curing and testing. **Batch plant**

inspection is not included in the scope of work. Concrete sampling and testing for site concrete (outside building area) is not included.

Post Installed Anchors/Epoxy Dowels: Leighton will provide a special inspector that has been certified by the International Code Council (ICC) to observe installation of powder driven anchors, expansion anchors, adhesive anchors and dowels. Leighton's special inspector will view installation of these anchors in accordance with ICC/ESR requirements, specific to anchors used. The special inspector will also evaluate drill bit compliance, hole depth and cleanliness, rod diameter, length of embedment, ambient temperature, material condition, product description and name, and adhesive shelf life and condition of packaging. If required, Leighton will also provide pull/torque and/or proof testing of post-installed anchors.

Structural Steel (Field Welding) Special Inspection: Leighton will provide an American Welding Society (AWS) Certified Welding Inspector (CWI) to inspect structural steel welding on site. Their work will consist of periodic inspection of all single-pass fillet welds less-than (<) 5/16-inch-thick; and continuous inspection for all multi-pass fillet welds greater-than (>) 5/16-inch-thick plus all complete penetration welds made during structural steel erection on site. Leighton's CWI will also tabulate/record all inspected welds, including listing defective welds and documenting correction of defects. Leighton's CWI will also check material, equipment, details of construction and procedures. The CWI will also check ability of the welder. Upon completion of all welding for this project, a verified report will be provided to document that inspected welding was proper and completed in accordance with approved structural plans and specifications. **Shop welding is not included in the scope of work.**

Laminated Wood Beams Special Inspection: Leighton will provide a special inspector that has been certified for glued-laminated beams and/or open-web trusses. Their work will consist of periodic inspection during fabrication of glued-laminated beams and/or open web trusses in accordance with approved structural plans and job specifications. Additional charges may be incurred for inspections at fabrication shops outside of southern California.

Structural Wood Frame Special Inspection: Leighton will provide an inspector that has been certified by ICC to observe the framing of walls and diaphragm prior to covering with panels and/or sheathings. Leighton's services will consist of periodic inspection of nailing, bolting, anchor and other fastening of shear wall, blocked floor and roof diaphragm, drag strut, seismic brace, shear panel and hold down assembly in accordance with approved structural plans and job specifications. Masonry testing/inspections for site walls are not included in the scope.

Laboratory Testing

Geotechnical: Leighton will perform geotechnical laboratory testing of representative onsite soils and imported materials. Geotechnical laboratory testing is expected to include modified Proctor (ASTM D1557) laboratory maximum dry density and optimum moisture content “compaction curves,” and sieve analyses to help match tested soils with an appropriate compaction curve. Actual number and type of tests required will depend upon conditions observed in the field and the Contractor’s construction materials source selection.

Reinforcing Steel: Tensile and bend tests will be performed in accordance with ASTM A370, and A615 or A706 for reinforcing steel larger than the #4 rebar.

Concrete - Concrete laboratory curing and compressive strength testing of fieldmolded concrete test cylinders will be performed in general accordance with ASTM C31 and C39, respectively. Verbal and/or e-mail reports will be provided for 7-day breaks. Leighton will provide a final one-page report summarizing compressive strength tests results for a given set of cylinders (four cylinders, plus one hold) after the 28-day breaks are completed.

High Strength (HS) Bolts - Mechanical testing of high strength bolt assemblies, including bolts, nuts, and washers, will be performed in accordance with ASTM A325/A490.

Office Support, Management and Reporting

Professional and administrative support services will be provided including dispatching field personnel, management, and quality review. Leighton’s Associate Engineer will review DFRs and laboratory test results, and distribute these reports. Construction materials concerns encountered in the field and noted in daily reports, and any materials tested and found to be outside project specifications, will be brought to the attention of your designated representative(s). Leighton will prepare a summary report containing the daily field reports and laboratory results upon completion of the project.

Schedule

Leighton requires at least two working days advance notice when scheduling field personnel at the commencement of construction; work thereafter may be scheduled with one working day (minimum 24 hour) notice. Calls to Leighton’s dispatch (**866-LEIGHTON**) after 3:00 pm (prior work day) or on weekends and holidays are not addressed until the first following working day, without prior project-specific arrangement. Leighton anticipates that personnel will be on site periodically for observation and testing, as requested by the City’s field representative.

Organizational Chart

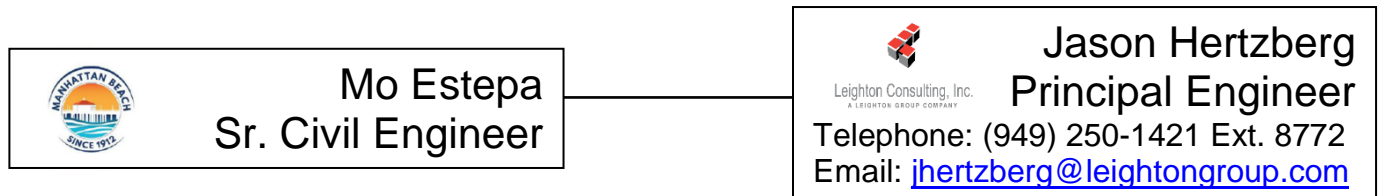


EXHIBIT B APPROVED FEE SCHEDULE

Based on the assumed number of hours and quantities in Table 1, an estimated budget for these services of not-to-exceed **Fifty-One Thousand Dollars (\$51,000)**.

The actual scope and cost may vary from what is estimated, if additional time is required on site or if additional testing is required than assumed in Table 1. If the actual number of Leighton site visits and/or hours requested are less-than assumed, Leighton's fee will be less-than estimated. Conversely, if there are numerous failed compaction tests, extensive standby or unnecessary site visits, this budget estimate may be insufficient to complete the project, and Leighton will notify the City that the budget needs to be augmented. Services not referenced in the estimated budget will be charged on a time-and-expense basis in accordance with the Agreement.

Changes to the drawings and specifications and a construction schedule may affect the scope and budget, and can provide a basis for us to update the fee estimate. Assumptions have been made in quantities and hours for estimating the costs. These assumptions are presented in Table 1. Additional assumptions are listed below.

- **Prevailing Wage:** Leighton assumes that this project **is** governed by the California Prevailing Wage Law. If not, then Leighton's hourly rates can be reduced.
- **Site Access:** Leighton assumes this site will be readily and safely accessible to Leighton staff during construction. Leighton also assumes that free parking will be provided for Leighton's technician at this site (Leighton will be notified if free parking is not provided).
- **Overtime:** This fee estimate is also based on the assumption that Leighton's field services will be performed during normal weekday daylight-hours, and does **not** include overtime. Overtime work (over 8 hours per day and/or 40 hours per week, weekends and/or holidays) will be billed in accordance with the Agreement, beyond the estimated budget.
- **Relying On Provided Construction Design Documents:** Leighton relies on others to make Leighton aware of approved plans and specifications modifications and updates. Changes to project drawings and specifications and updates to the construction schedule may affect the scope and budget.

Since this is a California public works project, Leighton will need a **DIR Project ID** from the City (the "awarding body") before Leighton begin any prevailing wage work on site; see:

<https://www.dir.ca.gov/Public-Works/Awarding-Bodies.html>
<https://www.dir.ca.gov/pwc100ext/ExternalLookup.aspx>

Leighton has not included budget to staff the project with an apprentice. Although possible under California Prevailing Wage law, it is not anticipated that an apprentice will be dispatched for training on this project. If Leighton is required to provide training for an apprentice on the project, then additional fees would be required to cover that additional labor expense.

Table 1 Estimated Fees

TASK DESCRIPTION		RATE	UNITS	COST
Project Setup and Kick-Off				
Associate		\$199.00 / hour	1	\$199.00
Project Engineer		\$167.00 / hour	2	\$334.00
			SUBTOTAL	\$533.00
Field Observation and Testing				
Field Soils/Material Tester (Prevailing Wage)	Soil Rough Grade	\$129.00 / hour	40	\$5,160.00
Field Soils/Material Tester (Prevailing Wage)	Soil Post Grade	\$129.00 / hour	92	\$11,868.00
Operations Manager	Soil	\$162.00 / hour	6	\$972.00
Vehicle Usage	Soil	\$16.00 / hour	138	\$2,208.00
Field Soils/Material Tester (Prevailing Wage)	Rebar Tag and Sample/Release	\$129.00 / hour	4	\$516.00
Field Soils/Material Tester (Prevailing Wage)	Fresh Concrete Sampling and Field Testing	\$129.00 / hour	12	\$1,548.00
Building/Construction Inspector (Prevailing Wage)	Rebar Inspection	\$134.00 / hour	16	\$2,144.00
Building/Construction Inspector (Prevailing Wage)	Post-Installed Anchors	\$134.00 / hour	16	\$2,144.00
Building/Construction Inspector (Prevailing Wage)	Field Welding	\$134.00 / hour	40	\$5,360.00
Building/Construction Inspector (Prevailing Wage)	Structural Wood	\$134.00 / hour	24	\$3,216.00
Field Soils/Material Tester (Prevailing Wage)	Bolt Inspection	\$129.00 / hour	4	\$516.00
			SUBTOTAL	\$35,652.00
Laboratory Testing - Soils				
Particle size - Sieve only 1½ inch to #200, (ASTM D6913/CTM 202)		\$135.00 / each	2	\$270.00
Sand Equivalent (SE, ASTM D2419/CTM 217)		\$105.00 / each	1	\$105.00
Modified Proctor compaction 4 inch mold (Methods A & B ASTM D1557)		\$220.00 / each	2	\$440.00
			SUBTOTAL	\$815.00
Laboratory Testing - Materials				
Pick-up & delivery – (weekdays, per trip, <50 miles from Leighton office)		\$90.00 / each	4	\$360.00
Rebar tensile test up to ≤ No. 10 bars (ASTM A370)		\$45.00 / each	6	\$270.00
Rebar bend test, up to ≤ No. 10 bars (ASTM A370)		\$45.00 / each	6	\$270.00
Concrete cylinders compression (ASTM C39 4" x 8")		\$22.00 / each	15	\$330.00
			SUBTOTAL	\$1,230.00
Outside Laboratory Testing				
HS Bolts		\$160.00 / ea	2	\$320.00
Glue Laminated Beams Shop		\$150.00 / hr	24	\$3,600.00
Glue Laminated Beams Shop - Travel	if needed	\$1,100.00 / ea		
Glue Laminated Beams Shop - Overnight Stay	if needed	\$200.00 / day		
Mark-up			18%	\$648.00
			SUBTOTAL	\$4,568.00
Office / Project Management / Reporting				
Principal		\$199.00 / hour	4	\$796.00
Associate		\$199.00 / hour	6	\$1,194.00
Project Engineer		\$167.00 / hour	10	\$1,670.00
Staff Engineer		\$135.00 / hour	10	\$1,350.00
Project Administrator/Word Processor		\$72.00 / hour	9	\$648.00
Dispatcher		\$72.00 / hour	8	\$576.00
GIS Specialist		\$126.00 / hour	2	\$252.00
Misc.		\$1,716.00 / ea	1	\$1,716.00
			SUBTOTAL	\$8,202.00
			TOTAL ESTIMATED COST	\$51,000.00

EXHIBIT C
TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS

1. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Contractor acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, as to those Services that are “public works”, Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Contractor shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Contractor shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Contractor and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Contractor or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Contractor shall immediately notify City.

4. Pursuant to Labor Code Section 1771.4, Contractor’s Services are subject to compliance monitoring and enforcement by DIR. Contractor shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Agreement.

6. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to City, forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

7. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform City of the location of the records. Pursuant to Labor Code Section 1771.4, Contractor and each subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

9. The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Contractor or any subcontractor becomes debarred or suspended during the duration of the project, the Contractor shall immediately notify City.

10. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

12. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor’s compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor’s compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor’s expense with counsel reasonably acceptable to City) City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys’ fees, and other related costs and expenses. All duties of Contractor under this Section shall survive the termination of the Agreement.