

FINANCIAL IMPACT

The Agreement has a total compensation not to exceed one hundred twenty-six thousand dollars (\$126,000.00). This amount is budgeted in the General Fund through Plan Check Fees and no additional funding is needed.

RECOMMENDATION

It is recommended that the City Council:

- Approve the attached agreement with Willdan Engineering in the amount of \$126,000.00 per year for five years, for a total of \$630,000.00; and
- Authorize the City Manager to execute the agreement and amendments thereto, on behalf of the City.



SUSAN EMERY
Community Development Director



By: Alana Cheng
Administrative Aide

Attachment 1: The Willdan Engineering Contract for Plan Check Consulting

Recommended for Approval



Matthew Ferial
City Manager

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made this 12th day of July, 2011, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **Willdan Engineering**, referred to as "CONSULTANT".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED July 12, 2011.
2. CITY desires to utilize the services of CONSULTANT to provide the agreed upon services as described below.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall be for period of one (1) year from full execution of the agreement, with an option to extend said agreement additional four (4) years, for a total performance period of five (5) years. Option years shall be exercised one (1) year at a time, at the sole option of the CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with proposal which is attached as Exhibit A and is hereby incorporated by reference. Contractor is required to present evidence to support performed work.
2. **Services to be Provided.** CONSULTANT shall provide Plan Check Services and Inspection Services as listed in Exhibit A for the Building Services Division of Community Development. The Scope of Work is attached as Exhibit A, and is incorporated herein by reference. The Scope of Work and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 AMOUNT: Total Compensation under this agreement shall not exceed (NTE) amount of One Hundred Twenty Six Thousand Dollars

(\$126,000.00), per year, payable in arrears and in accordance with proposal in Exhibit A.

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice submitted by CONSULTANT after one or more completed background investigations. Payments terms shall be Net30.
- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers' Compensation Insurance. For the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers' Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONSULTANT shall maintain the following insurance for the duration of this Agreement:
 - (a) Commercial general liability in an amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
 - (b) Automobile liability in an amount of \$1,000,000.00 combined single limit (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY

and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (c) Professional liability in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier

An On-Going and Completed Operations Additional Insured Endorsement for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

5. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
6. **Work to be Performed by the City.** The City shall perform the work as outlined in Exhibit B.
7. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
8. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
9. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
10. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by the CITY.
11. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of the CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
13. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

a. (CONSULTANT)
 Willdan Engineering
 2401 E. Katella Avenue
 Anaheim, CA 92806

b. (mailing address)
 (Address of City Purchasing)
 City of Garden Grove

(with a copy to):
 Garden Grove City Attorney

11222 Acacia Parkway
Garden Grove, CA 92840

11222 Acacia Parkway
Garden Grove, CA 92840

14. **CONSULTANT'S PROPOSAL.** This Agreement shall include CONSULTANT'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
15. **Licenses, Permits, and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits, and licenses as may be required by this Agreement.
16. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. **Time of Essence.** Time is of the essence in the performance of this Agreement.
18. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
19. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
20. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses,

or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

a. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the CONSULTANT.

21. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual agreements executed by the CITY and CONSULTANT.
22. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
23. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

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(Agreement Signature Block On Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: 6/23/11

**"CITY"
CITY OF GARDEN GROVE**

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

**"CONSULTANT"
Willdan Engineering**

By: [Signature]

Name: DANIEL T. CHOW

Title: PRESIDENT/CEO

Date: 6/21/2011

Tax ID No. _____

If CONSULTANT is a corporation, a Corporate Resolution and/or Corporate Seal are required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

James H Eggert for
Garden Grove City Attorney

6/23/2011
Date

EXHIBIT A

**WORK TO BE PERFORMED BY "CONSULTANT"
AND COMPENSATION**

A. Plan Review Services Scope of Work

1. Perform traditional preliminary plan review consultations in CONSULTANT'S main office by meetings or by telephone.
2. Perform traditional plan review of submitted plans to determine compliance with CITY adopted:
 - California Building Code
 - California Plumbing Code
 - California Mechanical Code
 - California Electrical Code
 - California State, Title 24 (Energy Conservation;
and Disabled Access regulations)
3. Provide the applicant's designee and the CITY a typed list of items needing clarification or change to achieve conformance with the above regulations.
4. Perform all necessary liaison with the applicant's designee, by telephone, FAX, mail, or meeting in CONSULTANT'S main office, and perform all necessary rechecks to achieve conformance to the regulations.
5. Perform all necessary liaison with the Building Official or his designee, by mail, telephone, FAX, or in CONSULTANT'S main office, to insure compliance with all applicable State and local codes and to insure compliance with local policy interpretations.
6. Perform plan reviews of revisions to plans that have previously been approved for permit issuance.
7. Perform extra work when requested in writing by the CITY.
8. Attend meetings related to proposed building projects at the request of the Building Official at locations other than CONSULTANT'S OFFICE.

B. Compensation for Plan Review Services

1. Compensation for each plan under Section A. 1-5 reviewed shall be 70% of the established plan check fee as calculated per the Garden Grove Master Fee Resolution for each building plan checked. The construction valuation shall be as determined by the City of Garden Grove or as mutually agreed upon by the CITY and CONSULTANT. The value shall include all proposed construction as defined in Section 304.2 of the Uniform Administrative Code, 1997 edition as adopted by the City of Garden Grove.

Plan check fee for repetitive identical buildings shall be noted above for the first, or basic building and 15% of the established plan check fee as calculated per the Garden Grove Master Fee Resolution for each additional building checked.

Compensation for structural-only plan reviews is reduced to 50% of the established plan check fee as calculated per the Garden Grove Master Fee Resolution.

The single fee includes up to two (2) rechecks, plan check conferences with the applicant and /or City staff at the CONSULTANT'S office, the review of plans initially found to be incomplete, and the transmission of plans back to the jurisdiction. When it is found and agreed to by the CITY and CONSULTANT that the scope of plan review activity has been substantially altered, an additional fee may be charged.

2. Compensation for work performed under Section A.6. shall be calculated as reflected in #1 above or shall be based on CONSULTANT'S current Labor Rates Schedule. The method of calculating compensation for each plan reviewed shall be as agreed to by the Building Services Manager and CONSULTANT.
3. Compensation for work performed under Section A.7. shall be based on the attached CONSULTANTS' Labor Rates Schedule (Exhibit C).

EXHIBIT B

A. The CITY shall perform the following work:

1. Arrange and pay the cost of shipping one set of plans and documents to the CONSULTANT'S office.
2. Obtain from the applicant, at the time of the project submittal, the necessary items to allow plan review to be completed in the shortest overall time frame. Necessary items include, but are not limited to, complete plans, construction specifications, soil reports, Title 24 energy calculations, structural calculations, the name and address and telephone number of the applicant's designated contact person and similar items that may be unique to a particular project.
3. Provide the valuation for the proposed construction or instruct the CONSULTANT to calculate the valuation in accordance with Exhibit A, B.1.
4. Provide the CONSULTANT with copies of any CITY ordinances that modify the regulations listed in Exhibit A, A.2.
5. Collect sufficient plan check fees or deposits from project applicants to ensure the CITY will not suffer a loss if the applicant decides to abandon the permit process after the CONSULTANT has completed the initial plan check.

B. **Extra Work**

The CONSULTANT shall not perform extra work without written authorization from the Building Services Manager or authorized City Representative.

Schedule of Hourly Rates

The proposed fee for this project will be billed monthly on a time-and-materials basis not-to-exceed the above fees.. Willdan will submit invoice in accordance with the below Schedule of Hourly Rates.

WILLDAN ENGINEERING
Schedule of Hourly Rates
 Effective July 1, 2010 to June 30, 2011

ENGINEERING		LANDSCAPE ARCHITECTURE	
Principal Engineer	\$200.00	Principal Project Manager	180.00
Director	180.00	Principal Landscape Architect	150.00
Deputy Director	180.00	Senior Landscape Architect	125.00
Principal Project Manager	180.00	Associate Landscape Architect	115.00
City Engineer	180.00	Assistant Landscape Architect	100.00
Project Manager	180.00		
Program Manager	180.00	BUILDING AND SAFETY	
Supervising Engineer	160.00	Director	180.00
Senior Engineer	145.00	Deputy Director	180.00
Senior Design Manager	145.00	Principal Project Manager	180.00
Design Manager	135.00	Supervising Plan Check Engineer	150.00
Associate Engineer	135.00	Building Official	150.00
Senior Designer	130.00	Plan Check Engineer	140.00
Senior Design Engineer II	130.00	Deputy Building Official	140.00
Senior Design Engineer I	125.00	Inspector of Record	140.00
Designer II	120.00	Senior Plans Examiner	125.00
Designer I	115.00	Supervising Building Inspector	125.00
Design Engineer II	120.00	Plans Examiner	115.00
Design Engineer I	115.00	Senior Building Inspector	115.00
Senior Drafter	110.00	Supervisor Code Enforcement	115.00
Drafter II	100.00	Building Inspector	**105.00/110.00
Drafter I	95.00	Supervising Construction Permit Specialist	105.00
Technical Aide	85.00	Senior Construction Permit Specialist	100.00
		Senior Code Enforcement Officer	95.00
		Assistant Building Inspector	**95.00/110.00
		Code Enforcement Officer	80.00
		Construction Permit Specialist	80.00
		Assistant Construction Permit Specialist	85.00
		Plans Examiner Aide	75.00
		Assistant Code Enforcement Officer	70.00
		PLANNING	
		Director	180.00
		Deputy Director	180.00
		Principal Planner	150.00
		Principal Community Development Planner	150.00
		Senior Planner	130.00
		Senior Community Development Planner	130.00
		Associate Planner	115.00
		Associate Community Development Planner	115.00
		Assistant Community Development Planner	105.00
		Assistant Planner	105.00
		Planning Technician	85.00
		Community Development Technician	85.00
		ADMINISTRATIVE	
		Computer Data Entry	65.00
		Clerical	65.00
		Word Processing	65.00
		Personal Computer Time	30.00

CONSTRUCTION MANAGEMENT	
Director	180.00
Deputy Director	180.00
Project Manager	180.00
Senior Construction Manager	155.00
Construction Manager	145.00
Assistant Construction Manager	120.00
Utility Coordinator	125.00
Labor Compliance Manager	120.00
Labor Compliance Specialist	95.00

INSPECTION SERVICES	
Supervising Public Works Observer	120.00
Senior Public Works Observer	110.00
Public Works Observer	**100.00/110.00
Assistant Public Works Observer	**100.00/110.00

SURVEYING	
Principal Project Manager	180.00
Supervisor - Survey & Mapping	155.00
Senior Survey Analyst	130.00
Certified Party Chief	130.00
Senior Calculator	120.00
Calculator II	110.00
Calculator I	100.00
Survey Analyst II	115.00
Survey Analyst I	100.00
Survey Party Chief	115.00
Field Party (One)	180.00
Field Party (Two)	235.00
Field Party (Three)	295.00

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 1.25 times and Sundays and holidays, 1.75 times the standard rates. Reprinting, reproduction, messenger services, and printing will be invoiced at cost plus fifteen percent (15%). A subconsultant management fee of fifteen percent (15%) will be added to the direct cost of all subconsultant services to provide for the cost of administration, consultation, and coordination. Valid July 1, 2010 thru June 30, 2011; thereafter, the rates may be raised once per year to the value of change of the Consumer Price Index for the Los Angeles/Orange County/Sacramento area, but not more than five percent per year.

Mileage reimbursement will be charged at the current Federal guideline rate at the time of billing. Vehicles will be charged at a monthly rate of \$500.00.

** Prevailing Wage Project, Use \$110.00