

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

# 30610

## AGREEMENT

1  
2 THIS AGREEMENT is made and entered, in duplicate, as of  
3 2/14/08, 2008 for reference purposes only, pursuant to a minute order  
4 adopted by the City Council of the City of Long Beach at its meeting held on December  
5 19, 2006 by and between KATHERINE SPITZ ASSOCIATES, Inc., a California  
6 corporation, whose business address is 4212 1/2 Glencoe Avenue, Marina Del Rey,  
7 California 90292 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation  
8 ("City").

9 WHEREAS, the City requires specialized services requiring unique skills to  
10 be performed in connection with As-Needed Landscape Architecture Services ("Project");  
11 and

12 WHEREAS, City has selected Consultant in accordance with City's  
13 administrative procedures and City has ascertained that Consultant and its employees  
14 are qualified, licensed, if so required, and experienced in performing such specialized  
15 services; and

16 WHEREAS, City desires to have Consultant perform these specialized  
17 services, and Consultant is willing and able to do so on the terms and conditions stated in  
18 this Agreement;

19 NOW, THEREFORE, in consideration of the mutual terms covenants, and  
20 conditions in this Agreement, the parties agree as follows:

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services described in Exhibit "A",  
23 attached to this Agreement and incorporated by this reference, in accordance with the  
24 standards of the profession, and City shall pay for these services in the manner  
25 described below, not to exceed \$600,000 over a three-year period, at the rates or  
26 charges described in Exhibit "A".

27 B. Consultant may select the time and place of its performance provided,  
28 however, that access to City documents, records, and the like, if needed by Consultant,

1 shall be available only during City's normal business hours and provided that milestones  
2 for performance, if any, are met.

3 C. Consultant has requested to receive regular payments. City shall pay  
4 Consultant in due course of payments following receipt from Consultant and approval by  
5 City of invoices showing the services or task performed, the time expended (if billing is  
6 hourly), and the name of the Project. Consultant shall certify on the invoices that  
7 Consultant has performed the services in full conformance with this Agreement and is  
8 entitled to receive payment. Each invoice shall be accompanied by a progress report  
9 indicating the progress to date of services performed and covered by the invoice,  
10 including a brief statement of any Project problems and potential causes of delay in  
11 performance, and listing those services that are projected for performance by Consultant  
12 during the next invoice cycle. Where billing is done and payment is made on an hourly  
13 basis, the parties acknowledge that this arrangement is either customary practice for  
14 Consultant's profession, industry, or business, or is necessary to satisfy audit and legal  
15 requirements which may arise due to the fact that City is a municipality.

16 D. Consultant represents that Consultant has obtained all necessary  
17 information on conditions and circumstances that may affect its performance and has  
18 conducted site visits, if necessary. However, Consultant shall not be held responsible for  
19 site conditions that are not readily visible above ground and for which documentation has  
20 not been provided by City.

21 E. **CAUTION:** Consultant shall not begin work until this Agreement has  
22 been signed by both parties and until Consultant's evidence of insurance has been  
23 delivered to and approved by the City.

24 2. TERM. The term of this Agreement shall commence at midnight on  
25 December 19, 2006 and shall terminate at 11:59 p.m. on December 18, 2009, unless  
26 sooner terminated as provided in this Agreement, or unless the services or the Project is  
27 completed sooner.

28 3. COORDINATION AND ORGANIZATION.

1           A. Consultant shall coordinate its performance with City's representative, if  
2 any, named in Exhibit "B", attached to this Agreement and incorporated by this reference.  
3 Consultant shall advise and inform City's representative of the work in progress on the  
4 Project in sufficient detail so as to assist City's representative in making presentations  
5 and in holding meetings on the Project. City shall furnish to Consultant information or  
6 materials, if any, described in Exhibit "C" attached to this Agreement and incorporated by  
7 this reference, and shall perform any other tasks described in the Exhibit.

8           B. The parties acknowledge that a substantial inducement to City for  
9 entering this Agreement was and is the reputation and skill of Consultant's key employee  
10 \_\_\_\_\_ . City shall have the right to approve any person proposed by  
11 Consultant to replace that key employee.

12           4. INDEPENDENT CONTRACTOR. In performing its services, Consultant  
13 is and shall act as an independent contractor and not an employee, representative, or  
14 agent of City. Consultant shall have control of Consultant's work and the manner in which  
15 it is performed. Consultant shall be free to contract for similar services to be performed  
16 for others during this Agreement provided, however, that Consultant acts in accordance  
17 with Section 9 and Section 11 of this Agreement. Consultant acknowledges and agrees  
18 that a) City will not withhold taxes of any kind from Consultant's compensation, b) City will  
19 not secure workers' compensation or pay unemployment insurance to, for or on  
20 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of  
21 the usual and customary rights, benefits or privileges of City employees. Consultant  
22 expressly warrants that neither Consultant nor any of Consultant's employees or agents  
23 shall represent themselves to be employees or agents of City.

24           5. INSURANCE. As a condition precedent to the effectiveness of this  
25 Agreement, Consultant shall procure and maintain at Consultant's expense for the  
26 duration of this Agreement from insurance companies that are admitted to write  
27 insurance in California or from authorized non-admitted insurance companies that have  
28 ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

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(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or to both CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain no special limitations on the scope of protection given to the City, its officials, employees and agents.

(b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000.

(c) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.

(d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City. Consultant shall notify the City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured. If

1 this coverage is written on a "claims made" basis, it must provide for an extended  
2 reporting period of not less than one year, commencing on the date this Agreement  
3 expires or is terminated, unless Consultant guarantees that Consultant will provide to the  
4 City evidence of uninterrupted, continuing coverage for a period of not less than three (3)  
5 years, commencing on the date this Agreement expires or is terminated.

6 Consultant shall require that all subconsultants and contractors which  
7 Consultant uses in the performance of services maintain insurance in compliance with  
8 this Section unless otherwise agreed in writing by City's Risk Manager or designee.

9 Prior to the start of performance, Consultant shall deliver to City certificates  
10 of insurance and endorsements for approval as to sufficiency and form. In addition,  
11 Consultant, shall, within thirty (30) days prior to expiration of the insurance furnish to City  
12 certificates of insurance and endorsements evidencing renewal of the insurance. City  
13 reserves the right to require complete certified copies of all policies of Consultant and  
14 Consultant's subconsultants and contractors, at any time. Consultant shall make  
15 available to City's Risk Manager or designee all books, records and other information  
16 relating to the insurance, during normal business hours.

17 Any modification or waiver of these insurance requirements shall only be  
18 made with the approval of City's Risk Manager or designee. Not more frequently than  
19 once a year, the City's Risk Manager or designee may require that Consultant,  
20 Consultant's subconsultants and contractors change the amount, scope or types of  
21 coverages if, in his or her sole opinion, the amount, scope, or types of coverages are not  
22 adequate.

23 The procuring or existence of insurance shall not be construed or deemed  
24 as a limitation on liability relating to Consultant's performance or as full performance of or  
25 compliance with the indemnification provisions of this Agreement.

26 **6. ASSIGNMENT AND SUBCONTRACTING.** This Agreement  
27 contemplates the personal services' of Consultant and Consultant's employees, and the  
28 parties acknowledge that a substantial inducement to City for entering this Agreement

1 was and is the professional reputation and competence of Consultant and Consultant's  
2 employees. Consultant shall not assign its rights or delegate its duties under this  
3 Agreement, or any interest in this Agreement, or any portion hereof, without the prior  
4 approval of City, except that Consultant may with the prior approval of the City, Manager  
5 of City, assign any moneys due or to become due the Consultant under this Agreement.  
6 Any attempted assignment or delegation shall be void, and any assignee or delegate  
7 shall acquire no right or interest by reason of an attempted assignment or delegation.  
8 Furthermore, Consultant shall not subcontract any portion of its performance without the  
9 prior approval of the City Manager or designee or substitute a subconsultant or contractor  
10 without the prior approval to the substitution. Nothing stated in this Section shall prevent  
11 Consultant from employing as many employees as Consultant deems necessary for  
12 performance, of this Agreement.

13           7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
14 certifies that, at the time Consultant executes this Agreement and for its duration,  
15 Consultant does not and will not perform services for any other client which would create  
16 a conflict, whether monetary or otherwise, as between the interests of City under this  
17 Agreement and the interests of that other client. And, Consultant shall obtain similar  
18 certifications from Consultant's employees, subconsultants and contractors.

19           8. MATERIALS. Consultant shall furnish all labor and supervision, supplies,  
20 material, tools, machinery, equipment, appliances, transportation, and services  
21 necessary to or used in the performance of Consultant's obligations hereunder, except as  
22 stated in Exhibit "C", if any.

23           9. OWNERSHIP OF DATA. All materials, information and data prepared,  
24 developed, or assembled by Consultant or furnished to Consultant in connection with this  
25 Agreement, including but not limited to documents, estimates, calculations, studies,  
26 maps, graphs, charts, computer disks, computer source documentation, samples,  
27 models, reports, summaries, drawings, designs, notes, plans, information, material, and  
28 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,

1 and City shall have the unrestricted right to use and disclose the Data in any manner and  
2 for any purpose without payment of further compensation to Consultant. Copies of Data  
3 may be retained by Consultant but Consultant warrants that Data shall not be made  
4 available to any person or entity for use without the prior approval of City. This warranty  
5 shall survive termination of this Agreement for five (5) years.

6           10. TERMINATION. Either party shall have the right to terminate this  
7 Agreement for any reason or no reason at any time by giving fifteen (15)  
8 calendar days prior notice to the other party. In the event of termination under this  
9 Section, City shall pay Consultant for services satisfactorily performed and costs incurred  
10 up to the effective date of termination for which Consultant has not been previously paid.  
11 The procedures for payment in Section 1.B. with regard to invoices shall apply. On the  
12 effective date of termination, Consultant shall deliver to City all Data developed or  
13 accumulated in the performance of this Agreement, whether in draft or final form, or in  
14 process.

15           11. CONFIDENTIALITY. Consultant shall keep the Data confidential and  
16 shall not disclose the Data or use the Data directly or indirectly other than in the course of  
17 performing its services during the term of this Agreement and for five (5) years following  
18 expiration or termination of this Agreement. In addition, Consultant shall keep confidential  
19 all information, whether written, oral, or visual, obtained by any means whatsoever in the  
20 course of performing its services for the same period of time. Consultant shall not  
21 disclose any or all of the Data to any third party or use it for Consultant's own benefit or  
22 the benefit of others except for the purpose of this Agreement.

23           12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a  
24 breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
25 Consultant knew prior to the time City disclosed it; or (b) Is or becomes publicly available  
26 without breach of this Agreement by Consultant; or (c) A third party who has a right to  
27 disclose does so to Consultant without restrictions on further disclosure; or (d) Must be  
28 disclosed pursuant to subpoena or court order.

1                   13. ADDITIONAL COSTS AND REDESIGN.

2                   A. Any costs incurred by the City due to Consultant's failure to meet the  
3 professional standards of Landscape Architects in performing the requirements in the  
4 Scope of Work, shall be at the sole cost of Consultant and City shall not pay any  
5 additional compensation to Consultant for its re-performance.

6                   B. If the Project involves construction and the scope of work requires  
7 Consultant to prepare plans and specifications with an estimate of the cost of  
8 construction, then Consultant may be required to modify the plans and specifications, any  
9 construction documents relating to the plans and specifications, and Consultant's  
10 estimate, at no cost to City, when the lowest bid for construction received by City  
11 exceeds by more than ten percent (10%) Consultant's estimate. This modification shall  
12 be submitted in a timely fashion to allow City to receive new bids within four (4) months of  
13 the date on which the original plans and specifications were submitted by Consultant.

14                   14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
15 amended, nor any provision or breach waived, except in writing signed by the parties  
16 which expressly refers to this Agreement.

17                   15. LAW. This Agreement shall be governed by and construed pursuant to  
18 the laws of the State of California (except those provisions of California law pertaining to  
19 conflicts of laws). Consultant shall obtain and maintain necessary professional licenses  
20 mandated by the State for providing professional landscape architecture services and to  
21 comply with laws applicable to said professional services.

22                   16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
23 constitutes the entire understanding between the parties and supersedes all other  
24 agreements, oral or written, with respect to the subject matter in this Agreement.

25                   17. INDEMNITY. Consultant shall indemnify and hold harmless the City, its  
26 Boards, Commissions, and their officials, employees and agents (collectively in this  
27 Section "City") from and against any and all liability, claims, demands, damage, causes of  
28 action, proceedings, penalties, loss, costs, and expenses (including attorney's fees, court



1 costs, and expert and witness fees) (collectively "Claims or individually "Claim"). Claims  
2 including by way of example but not limited to: Claims for property damage, personal  
3 injury or death caused by the negligence or willful misconduct of Consultant, its officers,  
4 employees, agents, or sub-consultants, (collectively "Indemnitor"); Consultant shall not  
5 be required to indemnify or hold harmless City from any claims that arise from the  
6 negligence or willful misconduct of the City. Consultant shall notify the City of any claim  
7 within ten (10) days. Likewise, City shall notify Consultant of any claim, shall tender the  
8 defense of such claim to Consultant, and shall assist Consultant, as may be reasonably  
9 requested, in such defense.

10 18. AMBIGUITY. In the event of any conflict or ambiguity between this  
11 Agreement and any Exhibit, the provisions of this Agreement shall govern.

12 19. COSTS. If there is any legal proceeding between the parties to enforce  
13 or interpret this Agreement or to protect or establish any rights or remedies under this  
14 Agreement, the prevailing party shall be entitled to its costs and expenses, including  
15 reasonable attorneys' fees and court costs (including appeals).

16 20. NONDISCRIMINATION. In connection with performance of this  
17 Agreement and subject to applicable rules and regulations, Consultant shall not  
18 discriminate against any employee or applicant for employment because of race, religion,  
19 national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or  
20 disability. Consultant shall ensure that applicants are employed, and that employees are  
21 treated during their employment, without regard to these bases. These actions shall  
22 include, but not be limited to, the following: employment, upgrading, demotion or transfer,  
23 recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of  
24 compensation, and selection for training, including apprenticeship.

25 It is the policy of City to encourage' the participation of Disadvantaged,  
26 Minority and Women-owned Business Enterprises in City's procurement process, and  
27 Consultant agrees to use its best efforts to carry out this policy in the hiring of  
28 subconsultants and contractors to the fullest extent consistent with the efficient

1 performance of this Agreement. Consultant may rely on written representations by  
2 subconsultants and contractors regarding their status. City's policy is attached as Exhibit  
3 "D". Consultant shall report to City in May and in December or, in the case of short-term  
4 agreements, prior to invoicing for final payment, the names of all subconsultants and  
5 contractors hired by Consultant for this Project and information on whether or not they  
6 are a Disadvantaged, Minority or Women-owned Business Enterprise, as defined in  
7 Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

8           21. NOTICES. Any notice or approval required under this Agreement shall  
9 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
10 postage prepaid, addressed to Consultant at the address first stated above, and to the  
11 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.  
12 Notice of change of address shall be given in the same manner as stated for other  
13 notices. Notice shall be deemed given on the date deposited in the mail or on the date  
14 personal delivery is made, whichever first occurs.

15           22. COPYRIGHTS AND PATENT RIGHTS.

16           A. Consultant shall place the following copyright protection on all Data: ©  
17 City of Long Beach, California \_\_\_\_\_, inserting the appropriate year.

18           B. City reserves the exclusive right to seek and obtain a patent or copyright  
19 registration on any Data or other result arising from Consultant's performance of this  
20 Agreement. By executing this Agreement, Consultant assigns any ownership interest  
21 Consultant may have in the Data to City.

22           C. Consultant warrants that the Data does not violate or infringe any patent,  
23 copyright, trade secret or other proprietary right of any other party. Consultant agrees to  
24 and shall protect, defend, indemnify and hold City, its officials and employees harmless  
25 from any and all claims, demands, damages, loss, liability, causes of action, costs or  
26 expenses (including reasonable attorneys' fees) whether or not reduced to judgment,  
27 arising from any breach or alleged breach of this warranty.

28           23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants that

1 Consultant has not employed or retained any entity or person to solicit or obtain this  
2 Agreement and that Consultant has not paid or agreed to pay any entity or person any  
3 fee, commission, or other monies based on or from the award of this Agreement. If  
4 Consultant breaches this warranty, City shall have the right to terminate this Agreement  
5 immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to  
6 deduct from payments due under this Agreement or otherwise recover the full amount of  
7 the fee, commission, or other monies.

8           24. WAIVER. The acceptance of any services or the payment of any money  
9 by City shall not operate as a waiver of any provision of this Agreement, or of any right to  
10 damages or indemnity stated in this Agreement. The waiver of any breach of this  
11 Agreement shall not constitute a waiver of any other or subsequent breach of this  
12 Agreement.

13           25. CONTINUATION. Termination or expiration of this Agreement shall not  
14 affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 16,  
15 18, 21, and 27 prior to termination or expiration of this Agreement.

16           26. TAX REPORTING. As required by federal and state law, City is  
17 obligated to and will report the payment of compensation to Consultant on Form 1099-  
18 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
19 resulting from payments under this Agreement. Consultant's Employer Identification  
20 Number is \_\_\_\_\_. If Consultant has a Social Security Number rather than an  
21 Employer Identification Number, then Consultant shall submit that, Social Security  
22 Number in writing to City's Accounts Payable, Department of Financial Management.  
23 Consultant acknowledges and agrees that City has no obligation to pay Consultant until  
24 Consultant provides one of these numbers.

25           27. ADVERTISING. Consultant shall not use the name of City, its officials or  
26 employees in any advertising or solicitation for business, nor as a reference, without the  
27 prior approval of the City Manager or designee.

28           28. AUDIT. City shall have the right at all reasonable times during the term

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 of this Agreement and for a period of five (5) years after termination or expiration of this  
2 Agreement to examine, audit, inspect, review, extract information from, and copy all  
3 books, records, accounts, and other documents of Consultant relating to this Agreement.

4 29. THIRD PARTY BENEFICIARY. This Agreement is intended by the  
5 parties to benefit themselves only and is not in any way intended or designed to or  
6 entered for the purpose of creating any benefit or right for any person or entity of any kind  
7 that is not a party to this Agreement.

8 IN WITNESS WHEREOF, the parties have caused this document to be duly  
9 executed with all formalities required by law as of the date first stated herein.

10 Katherine Spitz Associates Inc., a California  
11 corporation

12  
13 February 6, 2008

14 By [Signature]  
15 President  
16 Katherine Spitz  
17 (Type or Print Name)

18 February 6, 2008

19 By [Signature]  
20 Secretary  
21 Katherine Spitz  
22 (Type or Print Name)

23 **EXECUTED PURSUANT  
24 TO SECTION 301 OF  
25 THE CITY CHARTER.**

26 March 21, 2008

27 "Consultant"  
28 CITY OF LONG BEACH  
By [Signature] Assistant City Manager  
City Manager

"City"

This Agreement is approved as to form on February 14, 2008.

ROBERT E. SHANNON, City Attorney  
By [Signature]  
Deputy

Katherine  
Spitz  
Associates  
Inc.



LANDSCAPE ARCHITECTURE

## SCHEDULE OF FEES

\$185.00 per hour for Principal Landscape Architect  
\$125.00 per hour for Associate Landscape Architect  
\$95.00 per hour for Project Architect  
\$85.00 per hour for Project Manager  
\$75.00 per hour for Draftsperson  
\$65.00 per hour for Clerical Staff

Office hourly rate schedule is subject to annual review and the client will be notified thirty days in advance of any change.

310 574 4460

Fax 574 4462

42121/2 Glencoe Avenue Marina Del Rey California 90292

**Exhibit "B"**

City representative coordinator:

Anna Mendiola  
Park Development Officer  
Parks, Recreation and Marine  
2760 Studebaker Road  
Long Beach, CA 90815  
562/570-3165

**Exhibit "C"**

No materials to be provided to contractor.