

AGREEMENT

31016

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3 THIS AGREEMENT is made and entered, in duplicate, as of February 3,
4 2009 for reference purposes only, pursuant to a minute order of the City Council of the
5 City of Long Beach at its meeting on February 3, 2009, by and between LARRY CURTIS,
6 an individual ("Curtis"), and the CITY OF LONG BEACH, a municipal corporation ("City").

7 WHEREAS, Curtis performs specialized services requiring unique skills as
8 a conductor and music director; and

9 WHEREAS, City requires the type of services performed by Curtis and
10 desires to hire Curtis to perform them; and

11 WHEREAS, Curtis is willing and able to perform these services for City on
12 the terms and conditions stated in this Agreement;

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

15 SECTION 1. Curtis shall furnish services for City's Municipal Band in
16 accordance with the standards of the profession and as set forth in Exhibit "A" attached
17 and incorporated by this reference, not to exceed Fifty-Nine Thousand Dollars (\$59,000).

18 City shall pay Curtis following receipt by City of both Curtis' invoice showing
19 the number of rehearsals and concerts performed per week in the preceding month and a
20 monthly report updating Curtis' progress on goals and scope of services stated in this
21 Agreement.

22 City shall pay Curtis on the following schedule provided, however, that
23 Curtis has performed in accordance with Exhibit "A" and has submitted the invoices and
24 reports described above: 1) on or before July 1, 2009, City shall pay to Curtis up to but
25 no more than Twelve Thousand Five Hundred Dollars (\$12,500) for "pre-season"
26 services following receipt by the City of invoices from Curtis for such services; 2) City
27 shall pay to Curtis Four Thousand Eight Hundred Dollars (\$4,800) per week for services
28 related to rehearsals and concert performances on or before the Monday following the

1 last concert of the season; and 3) City shall pay to Curtis Eight Thousand One Hundred
2 (\$8,100) for "post-season" services.

3 SECTION 2. The term of this Agreement shall commence at 12:01 a.m. on
4 January 1, 2009, and shall terminate at midnight on December 31, 2009, unless sooner
5 terminated as provided in this Agreement.

6 City's City Manager or his designee shall have the sole option, of extending
7 the term of this Agreement for two (2) consecutive periods of one (1) year each by
8 amendment of this Agreement.

9 SECTION 3. In performing these services, Curtis is and shall act as an
10 independent contractor and not an employee, representative, or agent of City. Curtis
11 shall be free to contract for similar services with others during the term of this Agreement
12 provided that the other contracts do not interfere with performance of this Agreement.
13 Curtis acknowledges and agrees that a) City will not withhold taxes of any kind from
14 Curtis' compensation, b) City will not secure workers' compensation or pay
15 unemployment insurance to, for or on Curtis' behalf, and c) City will not provide and
16 Curtis is not entitled to any of the usual and customary rights, benefits or privileges of
17 City employees. Curtis expressly warrants that he shall not represent himself to be an
18 employee or agent of City.

19 SECTION 4. As a condition precedent to the effectiveness of this
20 Agreement, Curtis shall procure and maintain at Curtis' expense for the duration of this
21 Agreement from insurance companies that are admitted to write insurance in California or
22 from non-admitted insurance companies that have ratings of or equivalent to A:VIII by
23 A.M. Best Company the following insurance:

24 (a) Comprehensive general liability insurance (equivalent in scope to
25 ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than \$1,000,000
26 combined single limit for each occurrence or \$2,000,000 general aggregate. The
27 coverage shall include but not be limited to broad form contractual liability, cross liability,
28 and independent contractors liability. The City, its officials, employees, and agents shall

1 be named as additional insureds by endorsement equivalent in scope to IOS form CG 20
2 10 11 85 or CG 20 26 11 85 and this insurance shall contain no special limitations on the
3 scope of protection given to the City.

4 (b) Workers' Compensation insurance as required by the Labor Code of
5 the State of California.

6 (c) Automobile liability insurance (equivalent in scope to ISO form CA 00
7 01 06 92) covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000
8 combined single limit per accident.

9 Each insurance policy shall be endorsed to state that coverage shall not be
10 reduced, non-renewed, or cancelled except after thirty (30) days' prior written notice to
11 City, and shall be primary and not contributing to any other insurance or self-insurance
12 maintained by City. Curtis shall notify the City in writing within five (5) days after any
13 insurance has been voided by the insurer or cancelled by the insured.

14 Prior to the start of performance, Curtis shall deliver to City certificates of
15 insurance and original endorsements for approval as to sufficiency and form. The
16 certificates and endorsements for each insurance policy shall contain the original
17 signature of a person authorized by that insurer to bind coverage on its behalf. In
18 addition, Curtis shall furnish to City certificates and endorsements for renewal coverage,
19 within thirty (30) days prior to expiration of the insurance. "Claims made" policies of
20 insurance are not acceptable unless the City Risk Manager determines that "occurrence"
21 policies are not available in the market for the risk being insured. If a "claims made"
22 policy is accepted, it must provide for an extended reporting period of not less than 180
23 days. Such insurance as required herein shall not be deemed to limit Curtis' liability
24 under this Agreement. City reserves the right to require complete certified copies of all
25 said policies at any time. Any modification or waiver of the insurance requirements
26 herein shall only be made with the written approval of the City Risk Manager.

27 SECTION 5. This Agreement contemplates the personal services of Curtis,
28 and the parties acknowledge that a substantial inducement to City for entering this

1 Agreement was and is the professional reputation and competence of Curtis. Curtis shall
2 not assign his rights or delegate his duties under this Agreement, or any interest in or any
3 portion of this Agreement without the prior written consent of City. Any attempted
4 assignment or delegation shall be void, and any assignee or delegate shall acquire no
5 right or interest by reason of such attempted assignment or delegation. Furthermore,
6 Curtis shall not subcontract any portion of his performance without the prior written
7 consent of the City Manager or his designee.

8 SECTION 6. Curtis shall furnish all labor and supervision, supplies,
9 materials, tools, machinery, equipment, appliances, transportation, and services
10 necessary to or used in the performance of Curtis' obligations.

11 SECTION 7. Either party shall have the right to terminate this Agreement at
12 any time by giving thirty (30) days' prior notice to the other, which thirty (30) days shall
13 begin on the date of deposit in the mail or the date on which personal delivery is made,
14 whichever occurs first. City shall have the right to terminate this Agreement by giving ten
15 (10) days' prior notice to Curtis if Curtis fails to meet any of the following goals:

16 A. Coordinate the activities of the City of Long Beach Municipal Band to
17 include selection, supervision, and scheduling of up to forty (40) musicians, six (6)
18 technical crew members, one (1) personnel assistant, one (1) librarian; one (1)
19 technician, one (1) technical assistant, and up to eight (8) vocalists.

20 B. Perform four (4) Municipal Band concerts per week during the
21 summer, as scheduled by the City.

22 C. Assist with budget preparations, administration and review under
23 direction of City staff designated to approve expenditures.

24 D. Assist with pursuit of outside funding sources, solicitation and
25 collection of donations and sponsorship opportunities.

26 E. Selection of all music to be performed at any concert of the Municipal
27 Band.

28 In the event of termination pursuant to this Section 7, City shall pay Curtis

1 for services satisfactorily performed up to the effective date of termination for which
2 Curtis has not been previously paid. The procedures for payment in Section 1 with
3 regard to invoices shall apply.

4 SECTION 8. This Agreement, including Exhibit "A", shall not be amended,
5 nor any provision or breach hereof waived, except in writing signed by the parties which
6 expressly refers to this Agreement.

7 SECTION 9. This Agreement shall be governed by and construed pursuant
8 to the laws of the State of California. Curtis shall comply with all laws, ordinances, rules
9 and regulations of all federal, state and local governmental authorities having jurisdiction
10 over his performance and that of the Municipal Band. This Agreement shall not be
11 construed against either party as the drafter.

12 SECTION 10. This Agreement, including Exhibit "A", constitutes the entire
13 understanding between the parties and supersedes all other agreements, whether oral or
14 written, with respect to the subject matter in it.

15 SECTION 11. Curtis shall indemnify and hold harmless City, its officials,
16 employees, and agents from and against any and all liability, claims, demands, damage,
17 causes of action, proceedings, penalties, loss, costs and expenses (including attorneys'
18 fees, court costs, and expert and witness fees)(collectively "Claims" or individually
19 "Claim"). Claims include allegations and include by way of example but are not limited to:
20 Claims for property damage, personal injury or death arising in whole or in part from any
21 negligent act or omission by Curtis or anyone under Curtis' control (collectively
22 "Indemnitor"); Curtis' breach of this Agreement, misrepresentation; and willful
23 misconduct. Independent of the duty to indemnify and as a free-standing duty on the part
24 of Curtis, Curtis shall defend City and shall continue such defense until the Claim is
25 resolved, whether by settlement , judgment or otherwise. Curtis shall notify the City of
26 any Claim within 10 days. Likewise, City shall notify Curtis of any Claim, shall tender the
27 defense of such Claim to Curtis, and shall assist Curtis, as may be reasonably requested,
28 in such defense.

1 SECTION 12. In the event of any conflict or ambiguity between this
2 Agreement and Exhibit "A", the provisions of this Agreement shall govern.

3 SECTION 13. If there is any legal proceeding between the parties to
4 enforce or interpret this Agreement or to protect or establish any rights or remedies under
5 it, the prevailing party shall be entitled to its costs and expenses, including reasonable
6 attorneys' fees.

7 SECTION 14. Curtis agrees, subject to applicable laws, rules and
8 regulations, that no person shall be subjected to discrimination in the performance of this
9 Agreement on the basis of race, color, religion, national origin, AIDS, HIV status, sex,
10 sexual orientation, age, disability, or handicap.

11 SECTION 15. Any notice given by either party shall be in writing and
12 personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid
13 to the following address of each party:

14 CITY OF LONG BEACH
15 Director, Parks, Recreation and Marine
16 2760 Studebaker Road
17 Long Beach, California 90815-1697

18
19 Larry Curtis
20 28131 Ambar
21 Mission Viejo, California 92692

22 Notice of change of address shall be given in the same manner for other
23 notices. Any notice shall be deemed given on the date deposited in the mail or on the
24 date personal delivery is made, whichever occurs first.

25 SECTION 16. The acceptance of any services or payment of any money
26 by City shall not operate as a waiver of any provision of this Agreement, or of any right to
27 damages or indemnity stated in this Agreement. The waiver of any breach of this
28 Agreement shall not constitute a waiver of any other or subsequent breach of this

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

1 Agreement.

2 SECTION 17. The City will attempt to include the caption "Larry Curtis,
3 Conductor" in all advertising relating to the performances of the Long Beach Municipal
4 Band in 2009.

5 SECTION 18. Curtis acknowledges and agrees that the services to be
6 performed do not constitute a peculiar risk of bodily harm and that no special precautions
7 are required to perform these services.

8 SECTION 19. This Agreement is intended by the parties to benefit
9 themselves only and is not in any way intended or designed to or entered for the purpose
10 of creating any benefit or right for any person or entity of any kind that is not a party to
11 this Agreement.

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

14 LARRY CURTIS, an individual
15 1-26 -, 2009 By [Signature]
16 Larry Curtis

17 "Curtis"
18 CITY OF LONG BEACH, a municipal
19 corporation,
20 2.10, 2009 By [Signature] Assistant City Manager
21 City Manager

EXEMPTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

22 This Agreement is approved as to form on January 28, 2009.

23 ROBERT E. SHANNON, City Attorney
24 By: [Signature]
25 Deputy
26
27
28

EXHIBIT "A"

SCOPE OF SERVICES

Curtis shall timely perform the following services:

1. Develop a program of music for the concert band, studio band and vocalists to be performed 4 nights per week for a minimum of 4 weeks to a maximum of 8 weeks, as determined and scheduled by the City.
2. Assist with recruitment, selection and scheduling of all musicians, technical crew, personnel assistant, librarian and vocalists.
3. Meet with the Community Recreation Services Bureau Manager of the City's Department of Parks, Recreation and Marine, or designee(s), ("Bureau Manager") as needed on issues relating to the Municipal Band.
4. Find space for rehearsals by lease, sublease, or permit and submit the location and terms to the City for approval by the Director of Parks, Recreation and Marine.
5. Submit all requests for expenditures relating to the Municipal Band to the Bureau Manager.
6. Perform "pre-season" services including but not limited to engaging band members, crew members, and vocalists, purchasing equipment, supplies, materials and the like for rehearsals and performances, selecting sites for concerts (with the prior approval of the City), developing a plan to set-up for the concerts, arranging to transport and secure equipment, preparing an inventory of existing equipment for the Bureau Manager, assisting with marketing and fund-raising activities, selecting and purchasing music and arrangements for the first half of the season's concerts, and scheduling and holding the first rehearsal.
7. Arrange, supervise, plan and conduct 4 band concerts per week (Tuesday through Friday) for a minimum of 4 weeks to a maximum of 8 weeks, at sites approved by the City. Be responsible to see that all City employees working on the concerts submit time cards to the Bureau Manager by Friday of each week during the concert season.
8. Perform "post-season" service including but not limited to removing equipment from vehicles used to transport it and returning the equipment to storage, verifying the existing inventory of the equipment, returning equipment that has been rented to the lessor, preparing written feedback from all personnel working with the Municipal Band, reviewing and approving all receipts, requests for reimbursement, billings and direct payments, and completing an evaluation of the season.

In performing the above described services and other services stated in the Agreement, Curtis shall coordinate the City's Municipal Band program with the Bureau Manager.