

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

AGREEMENT
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3 THIS AGREEMENT is made and entered, in duplicate, as of 2007
4 May 25 for reference purposes only, pursuant to a minute order adopted by
5 the City Council of the City of Long Beach at its meeting held on December 19, 2006 by
6 and between Melendrez, a California corporation, whose business address is 617
7 South Olive Street, 11th Floor, Los Angeles, California 90014 ("Consultant"), and the
8 CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, the City requires specialized services requiring unique skills
10 to be performed in connection with As-Needed Landscape Architecture Services
11 ("Project"); 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,
18 and Consultant is willing and able to do so on the terms and conditions stated in this
19 Agreement;

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

22 1. SCOPE OF WORK OR SERVICES.

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

28 B. Consultant may select the time and place of its performance provided,

1 however, that access to City documents, records, and the like, if needed by Consultant,
2 shall be available only during City's normal business hours and provided that
3 milestones for performance, if any, are met.

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

17 D. Consultant represents that Consultant has obtained all necessary
18 information on conditions and circumstances that may affect its performance and has
19 conducted site visits, if necessary.

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

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

27 3. COORDINATION AND ORGANIZATION.

28 A. Consultant shall coordinate its performance with City's representative, if

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

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

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14 4. INDEPENDENT CONTRACTOR. In performing its services,
15 Consultant is and shall act as an independent contractor and not an employee,
16 representative, or agent of City. Consultant shall have control of Consultant's work and
17 the manner in which it is performed. Consultant shall be free to contract for similar
18 services to be performed for others during this Agreement provided, however, that
19 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
20 Consultant acknowledges and agrees that a) City will not withhold taxes of any kind
21 from Consultant's compensation, b) City will not secure workers' compensation or pay
22 unemployment insurance to, for or on Consultant's behalf, and c) City will not provide
23 and Consultant is not entitled to any of the usual and customary rights, benefits or
24 privileges of City employees. Consultant expressly warrants that neither Consultant nor
25 any of Consultant's employees or agents shall represent themselves to be employees
26 or agents of City.
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5. INSURANCE. As a condition precedent to the effectiveness of this Agreement, Consultant shall procure and maintain at Consultant's expense for the duration of this Agreement from insurance companies that are admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

(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

1 City, its officials, employees and agents in the same manner and to the same extent as
2 they would have been protected had the policy or policies not contained retention or
3 deductible provisions. Each insurance policy shall be endorsed to state that coverage
4 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior
5 written notice to City, and shall be primary and not contributing to any other insurance
6 or self-insurance maintained by City. Consultant shall notify the City in writing within five
7 (5) days after any insurance has been voided by the insurer or cancelled by the
8 insured. If this coverage is written on a "claims made" basis, it must provide for an
9 extended reporting period of not less than one year, commencing on the date this
10 Agreement expires or is terminated, unless Consultant guarantees that Consultant will
11 provide to the City evidence of uninterrupted, continuing coverage for a period of not
12 less than three (3) years, commencing on the date this Agreement expires or is
13 terminated.
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16 Consultant shall require that all subconsultants and contractors which
17 Consultant uses in the performance of services maintain insurance in compliance with
18 this Section unless otherwise agreed in writing by City's Risk Manager or designee.
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20 Prior to the start of performance, Consultant shall deliver to City
21 certificates of insurance and endorsements for approval as to sufficiency and form. In
22 addition, Consultant, shall, within thirty (30) days prior to expiration of the insurance
23 furnish to City certificates of insurance and endorsements evidencing renewal of the
24 insurance. City reserves the right to require complete certified copies of all policies of
25 Consultant and Consultant's subconsultants and contractors, at any time. Consultant
26 shall make available to City's Risk Manager or designee all books, records and other
27 information relating to the insurance, during normal business hours.
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1 Any modification or waiver of these insurance requirements shall only be
2 made with the approval of City's Risk Manager or designee. Not more frequently than
3 once a year, the City's Risk Manager or designee may require. that Consultant,
4 Consultant's subconsultants and contractors change the amount, scope or types of
5 coverages if, in his or her sole opinion, the amount, scope, or types of coverages are
6 not adequate.
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8 The procuring or existence of insurance shall not be construed or deemed
9 as a limitation on liability relating to Consultant's performance or as full performance of
10 or compliance with the indemnification provisions of this Agreement.
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12 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
13 contemplates the personal services' of Consultant and Consultant's employees, and the
14 parties acknowledge that a substantial inducement to City for entering this Agreement
15 was and is the professional reputation and competence of Consultant and Consultant's
16 employees. Consultant shall not assign its rights or delegate its duties under this
17 Agreement, or any interest in this Agreement, or any portion hereof, without the prior
18 approval of City, except that Consultant may with the prior approval of the City,
19 Manager of City, assign any moneys due or to become due the Consultant under this
20 Agreement. Any attempted assignment or delegation shall be void, and any assignee or
21 delegate shall acquire no right or interest by reason of an attempted assignment or
22 delegation. Furthermore, Consultant shall not subcontract any portion of its
23 performance without the prior approval of the City Manager or designee or substitute a
24 subconsultant or contractor without the prior approval to the substitution. Nothing stated
25 in this Section shall prevent Consultant from employing as many employees as
26 Consultant deems necessary for performance, of this Agreement.
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1 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
2 certifies that, at the time Consultant executes this Agreement and for its duration,
3 Consultant does not and will not perform services for any other client which would
4 create a conflict, whether monetary or otherwise, as between the interests of City under
5 this Agreement and the interests of that other client. And, Consultant shall obtain similar
6 certifications from Consultant's employees, subconsultants and contractors.
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8 8. MATERIALS. Consultant shall furnish all labor and supervision,
9 supplies, material, tools, machinery, equipment, appliances, transportation, and
10 services necessary to or used in the performance of Consultant's obligations
11 hereunder, except as stated in Exhibit "C", if any.
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13 9. OWNERSHIP OF DATA. All materials, information and data prepared,
14 developed, or assembled by Consultant or furnished to Consultant in connection with
15 this Agreement, including but not limited to documents, estimates, calculations, studies,
16 maps, graphs, charts, computer disks, computer source documentation, samples,
17 models, reports, summaries, drawings, designs, notes, plans, information, material, and
18 memorandum ("Data") shall be the exclusive property of City. Data shall be given to
19 City, and City shall have the unrestricted right to use and disclose the Data in any
20 manner and for any purpose without payment of further compensation to Consultant.
21 Copies of Data may be retained by Consultant but Consultant warrants that Data shall
22 not be made available to any person or entity for use without the prior approval of City.
23 This warranty shall survive termination of this Agreement for five (5) years.
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25 10. TERMINATION. Either party shall have the right to terminate this
26 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
27 prior notice to the other party. In the event of termination under this Section, City shall
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1 pay Consultant for services satisfactorily performed and costs incurred up to the
2 effective date of termination for which Consultant has not been previously paid. The
3 procedures for payment in Section 1.B. with regard to invoices shall apply. On the
4 effective date of termination, Consultant shall deliver to City all Data developed or
5 accumulated in the performance of this Agreement, whether in draft or final form, or in
6 process.
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8 11. CONFIDENTIALITY. Consultant shall keep the Data confidential and
9 shall not disclose the Data or use the Data directly or indirectly other than in the course
10 of performing its services during the term of this Agreement and for five (5) years
11 following expiration or termination of this Agreement. In addition, Consultant shall keep
12 confidential all information, whether written, oral, or visual, obtained by any means
13 whatsoever in the course of performing its services for the same period of time.
14 Consultant shall not disclose any or all of the Data to any third party or use it for
15 Consultant's own benefit or the benefit of others except for the purpose of this
16 Agreement.
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18 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
19 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
20 Consultant knew prior to the time City disclosed it; or. (b) Is or becomes publicly
21 available without breach of this Agreement by Consultant; or (c) A third party who has a
22 right to disclose does so to Consultant without restrictions on further disclosure; or (d)
23 Must be disclosed pursuant to subpoena or court order.
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25 13. ADDITIONAL COSTS AND REDESIGN.

26 A. Any costs incurred by the City due to Consultant's failure to meet the
27 standards required by the Scope of Work or Consultant's failure to perform fully the
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1 tasks. described in the Scope of Work which, in either case, causes the City to request
2 that Consultant perform again all or a part of the Scope of Work shall be at the sole
3 cost of Consultant and City shall not pay any additional compensation to Consultant for
4 its re-performance.
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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,
9 any 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
13 of the date on which the original plans and specifications were submitted by Consultant.
14

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

18 15. LAW. This Agreement shall be governed by and construed pursuant
19 to the laws of the State of California (except those provisions of California law
20 pertaining to conflicts of laws). Consultant shall comply with all laws, ordinances, rules
21 and regulations of and obtain all permits, licenses, and certificates required by all
22 federal, state and local governmental authorities.
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24 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
25 constitutes the entire understanding between the parties and supersedes all other
26 agreements, oral or written, with respect to the subject matter in this Agreement.
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28 17. INDEMNITY. Consultant shall indemnify and hold harmless the City,

1 its Boards, Commissions, and their officials, employees and agents (collectively in this
2 Section "City") from and against any and all liability, claims, demands, damage, causes
3 of action, proceedings, penalties, loss, costs, and expenses (including attorney's fees,
4 court costs, and expert and witness fees) (collectively "Claims or individually "Claim").
5 Claims include allegations and include by way of example but are not limited to: Claims
6 for property damage, personal injury or death arising in whole or in part from any
7 negligent act or omission of Consultant, its officers, employees, agents, sub-
8 consultants, or anyone under Consultant's control (collectively "Indemnitor");
9 Consultant's breach of this Agreement; misrepresentation; willful misconduct; and
10 Claims by any employee of Indemnitor relating in any way to worker's compensation.
11 Independent of the duty to indemnify and as a free-standing duty on the part of
12 Consultant, Consultant shall defend City and shall continue such defense until the
13 Claim is resolved, whether by settlement, judgment or otherwise. Consultant shall notify
14 the City of any claim within ten (10) days. Likewise, City shall notify Consultant of any
15 claim, shall tender the defense of such claim to Consultant, and shall assist Consultant,
16 as may be reasonably requested, in such defense.
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19 18. AMBIGUITY. In the event of any conflict or ambiguity between this
20 Agreement and any Exhibit, the provisions of this Agreement shall govern.
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22 19. COSTS. If there is any legal proceeding between the parties to
23 enforce or interpret this Agreement or to protect or establish any rights or remedies
24 under this Agreement, the prevailing party shall be entitled to its costs and expenses,
25 including reasonable attorneys' fees and court costs (including appeals).
26

27 20. NONDISCRIMINATION. In connection with performance of this
28 Agreement and subject to applicable rules and regulations, Consultant shall not

1 discriminate against any employee or applicant for employment because of race,
2 religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap,
3 or disability. Consultant shall ensure that applicants are employed, and that employees
4 are treated during their employment, without regard to these bases. These actions shall
5 include, but not be limited to, the following: employment, upgrading, demotion or
6 transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or
7 other forms of compensation, and selection for training, including apprenticeship.
8 It is the policy of City to encourage' the participation of Disadvantaged, Minority and
9 Women-owned Business Enterprises in City's procurement process, and Consultant
10 agrees to use its best efforts to carry out this policy in the hiring of subconsultants and
11 contractors to the fullest extent consistent with the efficient performance of this
12 Agreement. Consultant may rely on written representations by subconsultants and
13 contractors regarding their status. City's policy is attached as Exhibit "D". Consultant
14 shall report to City in May and in December or, in the case of short-term agreements,
15 prior to invoicing for final payment, the names of all subconsultants and contractors
16 hired by Consultant for this Project and information on whether or not they are a
17 Disadvantaged, Minority or Women-owned Business Enterprise, as defined in Section 8
18 of the Small Business Act (15 U.S.C. Sec. 637).

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

2 22. COPYRIGHTS AND PATENT RIGHTS.

3 A. Consultant shall place the following copyright protection on all
4 Data: © City of Long Beach, California _____ (inserting the appropriate year).

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

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

16
17 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
18 that Consultant has not employed or retained any entity or person to solicit or obtain
19 this Agreement and that Consultant has not paid or agreed to pay any entity or person
20 any fee, commission, or other monies based on or from the award of this Agreement. If
21 Consultant breaches this warranty, City shall have the right to terminate this Agreement
22 immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to
23 deduct from payments due under this Agreement or otherwise recover the full amount
24 of the fee, commission, or other monies.

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26 24. WAIVER. The acceptance of any services or the payment of any
27 money by City shall not operate as a waiver of any provision of this Agreement, or of
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1 any right to damages or indemnity stated in this Agreement. The waiver of any breach
2 of this Agreement shall not constitute a waiver of any other or subsequent breach of
3 this Agreement.

4 25. CONTINUATION. Termination or expiration of this Agreement shall
5 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
6 16, 18, 21, and 27 prior to termination or expiration of this Agreement.

7 26. TAX REPORTING. As required by federal and state law, City is
8 obligated to and will report the payment of compensation to Consultant on Form
9 1099-Misc. Consultant shall be solely responsible for payment of all federal and state
10 taxes resulting from payments under this Agreement. Consultant's Employer
11 Identification Number is [REDACTED] If Consultant has a Social Security Number rather
12 than an Employer Identification Number, then Consultant shall submit that, Social
13 Security Number in writing to City's Accounts Payable, Department of Financial
14 Management. Consultant acknowledges and agrees that City has no obligation to pay
15 Consultant until Consultant provides one of these numbers.

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

19 28. AUDIT. City shall have the right at all reasonable times during the
20 term of this Agreement and for a period of five (5) years after termination or expiration
21 of this Agreement to examine, audit, inspect, review, extract information from, and copy
22 all books, records, accounts, and other documents of Consultant relating to this
23 Agreement.

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

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

7 (Name of Consultant), _____

8 Melindraz

9 May 11, 2007

10 By [Signature]
11 President

12 Lauren Melindraz
13 (Type or Print Name)

14 _____, 2007

15 By [Signature]
16 Secretary

17 Robert Wallace
18 (Type or Print Name)

19 "Consultant"

20 City of Long Beach

21 June 1, 2007

22 By Christine A Shippy
23 City Manager

ASSISTANT

24 "City"

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

25 This Agreement is approved as to form on May 18, 2007.

26 ROBERT E. SHANNON, CITY ATTORNEY

27 By [Signature]
28 Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

Appendix A
(Scope of Work)

SCOPE OF WORK

PROVIDING AS-NEEDED LANDSCAPE ARCHITECTURAL SERVICES FOR PARKS, RECREATION AND MARINE/PUBLIC WORKS PROJECTS IN THE CITY OF LONG BEACH

A. PROJECT DESCRIPTION AND OVERVIEW

The City of Long Beach, acting through its Department of Parks, Recreation and Marine, desires to engage the services of one or more landscape architects to provide landscape architectural services on an “as-needed” basis for Parks, Recreation and Marine/Public Works improvement projects.

SCOPE OF SERVICES

This RFP is intended to procure landscape architectural services including but not limited to the following:

1. Site evaluation and analysis
2. Facilitation of community meeting & workshops
3. Conceptual and schematic design services
4. Design development drawings
5. Construction documents and specifications
6. Grading and drainage plans
7. Planting and irrigation design
8. On-site construction observation

Landscape architectural services may be required for the following types of projects:

1. Park design
2. Streetscape & median design
3. Renovation of existing parks & facilities
4. Water conservation systems (planting & irrigation)
5. Park or facility structures (such as community centers & restrooms)
6. Trails and river parkway design
7. Habitat restoration design
8. Water features, water play areas and pool facilities
9. Universally accessible playgrounds

DEFINITIONS

OWNER – City of Long Beach.

CITY – The City of Long Beach or designated representative.

CITY PROJECT MANAGER (CPM) – The City’s designated manager or representative overseeing the project.