

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
4 May 25, 2007 for reference purposes only, pursuant to a minute order
5 adopted by the City Council of the City of Long Beach at its meeting held on December
6 19, 2006 by and between Hirsch & Associates, Inc., a California corporation, whose
7 business address is 2221 E. Winston Road, Suite A, Anaheim, California 92806
8 ("Consultant"), and the 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, and Consultant is willing and able to do so on the terms and conditions stated
18 in 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,

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1 shall be available only during City's normal business hours and provided that
2 milestones 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
5 by City of invoices showing the services or task performed, the time expended (if billing
6 is 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
12 Consultant during the next invoice cycle. Where billing is done and payment is made on
13 an hourly basis, the parties acknowledge that this arrangement is either customary
14 practice for Consultant's profession, industry, or business, or is necessary to satisfy
15 audit and legal 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.

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

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

26 3. COORDINATION AND ORGANIZATION.

27 A. Consultant shall coordinate its performance with City's representative, if
28 any, named in Exhibit "B", attached to this Agreement and incorporated by this

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

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

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

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

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

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

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

18 Any self-insurance program, self-insured retention, or deductible must be
19 separately approved in writing by City's Risk Manager or designee and shall protect
20 City, its officials, employees and agents in the same manner and to the same extent as
21 they would have been protected had the policy or policies not contained retention or
22 deductible provisions. Each insurance policy shall be endorsed to state that coverage
23 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior
24 written notice to City, and shall be primary and not contributing to any other insurance
25 or self-insurance maintained by City. Consultant shall notify the City in writing within five
26 (5) days after any insurance has been voided by the insurer or cancelled by the
27 insured. If this coverage is written on a "claims made" basis, it must provide for an
28 extended reporting period of not less than one year, commencing on the date this

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1 Agreement expires or is terminated, unless Consultant guarantees that Consultant will
2 provide to the City evidence of uninterrupted, continuing coverage for a period of not
3 less than three (3) years, commencing on the date this Agreement expires or is
4 terminated.

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

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

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

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

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

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

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

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

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

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

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

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

23 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
24 a 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
26 available without breach of this Agreement by Consultant; or (c) A third party who has a
27 right to disclose does so to Consultant without restrictions on further disclosure; or (d)
28 Must be disclosed pursuant to subpoena or court order.

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13. ADDITIONAL COSTS AND REDESIGN.

A. Any costs incurred by the City due to Consultant's failure to meet the standards required by the Scope of Work or Consultant's failure to perform fully the tasks. described in the Scope of Work which, in either case, causes the City to request that Consultant perform again all or a part of the Scope of Work shall be at the sole cost of Consultant and City shall not pay any additional compensation to Consultant for its re-performance.

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

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

15. LAW. This Agreement shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and regulations of and obtain all permits, licenses, and certificates required by all federal, state and local governmental authorities.

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

17. INDEMNITY. Consultant shall indemnify and hold harmless the City, its Boards, Commissions, and their officials, employees and agents (collectively in this

1 Section "City") from and against any and all liability, claims, demands, damage, causes
2 of action, proceedings, penalties, loss, costs, and expenses (including attorney's fees,
3 court costs, and expert and witness fees) (collectively "Claims or individually "Claim").
4 Claims include allegations and include by way of example but are not limited to: Claims
5 for property damage, personal injury or death arising in whole or in part from any
6 negligent act or omission of Consultant, its officers, employees, agents, sub-
7 consultants, or anyone under Consultant's control (collectively "Indemnitor");
8 Consultant's breach of this Agreement; misrepresentation; willful misconduct; and
9 Claims by any employee of Indemnitor relating in any way to worker's compensation.
10 Independent of the duty to indemnify and as a free-standing duty on the part of
11 Consultant, Consultant shall defend City and shall continue such defense until the
12 Claim is resolved, whether by settlement, judgment or otherwise. Consultant shall notify
13 the City of any claim within ten (10) days. Likewise, City shall notify Consultant of any
14 claim, shall tender the defense of such claim to Consultant, and shall assist Consultant,
15 as may be reasonably requested, in such defense.

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

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

22 20. NONDISCRIMINATION. In connection with performance of this
23 Agreement and subject to applicable rules and regulations, Consultant shall not
24 discriminate against any employee or applicant for employment because of race,
25 religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap,
26 or disability. Consultant shall ensure that applicants are employed, and that employees
27 are treated during their employment, without regard to these bases. These actions shall
28 include, but not be limited to, the following: employment, upgrading, demotion or

1 transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or
2 other forms of compensation, and selection for training, including apprenticeship.
3 It is the policy of City to encourage' the participation of Disadvantaged, Minority and
4 Women-owned Business Enterprises in City's procurement process, and Consultant
5 agrees to use its best efforts to carry out this policy in the hiring of subconsultants and
6 contractors to the fullest extent consistent with the efficient performance of this
7 Agreement. Consultant may rely on written representations by subconsultants and
8 contractors regarding their status. City's policy is attached as Exhibit "D". Consultant
9 shall report to City in May and in December or, in the case of short-term agreements,
10 prior to invoicing for final payment, the names of all subconsultants and contractors
11 hired by Consultant for this Project and information on whether or not they are a
12 Disadvantaged, Minority or Women-owned Business Enterprise, as defined in Section 8
13 of the Small Business Act (15 U.S.C. Sec. 637).

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

21 22. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

15 24. WAIVER. The acceptance of any services or the payment of any
16 money by City shall not operate as a waiver of any provision of this Agreement, or of
17 any right to damages or indemnity stated in this Agreement. The waiver of any breach
18 of this Agreement shall not constitute a waiver of any other or subsequent breach of
19 this Agreement.

20 25. CONTINUATION. Termination or expiration of this Agreement shall
21 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
22 16, 18, 21, and 27 prior to termination or expiration of this Agreement.

23 26. TAX REPORTING. As required by federal and state law, City is
24 obligated to and will report the payment of compensation to Consultant on Form
25 1099-Misc. Consultant shall be solely responsible for payment of all federal and state
26 taxes resulting from payments under this Agreement. Consultant's Employer
27 Identification Number is 33-0299754. If Consultant has a Social Security Number rather
28 than an Employer Identification Number, then Consultant shall submit that, Social

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1 Security Number in writing to City's Accounts Payable, Department of Financial
2 Management. Consultant acknowledges and agrees that City has no obligation to pay
3 Consultant until Consultant provides one of these numbers.

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

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

12 29. THIRD PARTY BENEFICIARY. This Agreement is intended by
13 the parties to benefit themselves only and is not in any way intended or designed to or

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1 entered for the purpose of creating any benefit or right for any person or entity of any
2 kind that is not a party to this Agreement.

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

(Name of Consultant), HIRSCH & ASSOCIATES, INC

LANDSCAPE ARCHITECTS.

7 APRIL 19, 2007

By [Signature]
President

PATRICK L. HIRSCH
(Type or Print Name)

10 APRIL 19, 2007

By [Signature]
Secretary

AMELIA HIRSCH
(Type or Print Name)

"Consultant"

City of Long Beach

16 5-11, 2007

By [Signature] ASSISTANT
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form on May 2, 2007.

ROBERT E. SHANNON, CITY ATTORNEY

By [Signature]
Deputy

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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.