

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

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of July 3, 2008 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on October 21, 2008 by and between MAPLE DELL and McCLELLAND ARCHITECTS, LLP, a California Limited Liability Partnership, whose business address is 201 S. Lake Ave, Suite 413, Pasadena, CA 91101 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires professional services requiring unique skills to be performed in connection with the Belmont Plaza Olympic Pool Revitalization ("Project"); and

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

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish professional services described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed \$594,435.00 at the rates or charges described in Exhibit "A".

B. Consultant may select the time and place of its performance provided, 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 F. The City agrees that the Consultant is not responsible for damages
25 arising directly or indirectly from any delays for causes beyond the Consultant's control.
26 For purposes of this Agreement, such causes include but are not limited to, strikes or
27 other labor disputes; severe weather disruptions or other natural disasters or acts of God;
28 fires, riots, war or other emergencies; failure of any government agency to act in a timely

1 manner; failure of performance by the City of the City's contractors or consultants; or
2 discovery of any hazardous substances or differing site conditions.

3 In addition, if the delays resulting from any such causes increase the cost or
4 time required by the Consultant to perform its services in an orderly and efficient manner,
5 the Consultant shall be entitled to a reasonable adjustment in schedule and/or scope of
6 work.

7 G. Should a delay longer than six (6) months in duration occur through
8 no fault of the Consultant, the Consultant will be paid reasonable and mutually negotiated
9 costs to resume services and the Consultant will provide the City with an adjusted
10 schedule for the project's timely completion.

11 2. TERM. The term of this Agreement shall commence at midnight on
12 October 21, 2008 and shall terminate at 11:59 p.m. on April 20, 2009, unless sooner
13 terminated as provided in this Agreement, or unless the services or the Project is
14 completed sooner.

15 3. COORDINATION AND ORGANIZATION.

16 A. Consultant shall coordinate its performance with City's representative, if
17 any, named in Exhibit "B", attached to this Agreement and incorporated by this reference.
18 Consultant shall advise and inform City's representative of the work in progress on the
19 Project in sufficient detail so as to assist City's representative in making presentations
20 and in holding meetings on the Project. City shall furnish to Consultant information or
21 materials, if any, described in Exhibit "C" attached to this Agreement and incorporated by
22 this reference, and shall perform any other tasks described in the Exhibit.

23 B. The parties acknowledge that a substantial inducement to City for
24 entering this Agreement was and is the reputation and skill of Consultant's key employee,
25 Richard E. Dell. City shall have the right to approve any person proposed by Consultant
26 to replace that key employee.

27 4. INDEPENDENT CONTRACTOR. In performing its services, Consultant
28 is and shall act as an independent contractor and not an employee, representative, or

1 agent of City. Consultant shall have control of Consultant's work and the manner in which
2 it is performed. Consultant shall be free to contract for similar services to be performed
3 for others during this Agreement provided, however, that Consultant acts in accordance
4 with Section 9 and Section 11 of this Agreement. Consultant acknowledges and agrees
5 that a) City will not withhold taxes of any kind from Consultant's compensation, b) City will
6 not secure workers' compensation or pay unemployment insurance to, for or on
7 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of
8 the usual and customary rights, benefits or privileges of City employees. Consultant
9 expressly warrants that neither Consultant nor any of Consultant's employees or agents
10 shall represent themselves to be employees or agents of City.

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

16 (a) Commercial general liability insurance (equivalent in scope to
17 ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than
18 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
19 coverage shall include but not be limited to broad form contractual liability,
20 cross liability, independent contractors liability, and products and completed
21 operations liability. The City, its officials, employees and agents shall be
22 named as additional insureds by endorsement (on City's endorsement form
23 or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or
24 to both CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall
25 contain no special limitations on the scope of protection given to the City, its
26 officials, employees and agents.

27 (b) Workers' Compensation insurance as required by the California
28 Labor Code and employer's liability insurance in an amount not less than

1 \$1,000,000.

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

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

7 Any self-insurance program, self-insured retention, or deductible exceeding
8 One Hundred Thousand Dollars (\$100,000.00) must be separately approved in writing by
9 City's Risk Manager or designee and shall protect City, its officials, employees and
10 agents in the same manner and to the same extent as they would have been protected
11 had the policy or policies not contained retention or deductible provisions. Each
12 insurance policy shall be endorsed to state that coverage shall not be reduced (except for
13 diminution of limits due to claim payments) or canceled except after thirty (30) days prior
14 written notice to City, and shall be primary and not contributing to any other insurance or
15 self-insurance maintained by City. Consultant shall notify the City in writing within five (5)
16 days after any insurance has been voided by the insurer or cancelled by the insured. A
17 ten (10) day notice will be provided if cancellation is due to non-payment of the premium.
18 If this coverage is written on a "claims made" basis, it must provide for an extended
19 reporting period of not less than one year, commencing on the date this Agreement
20 expires or is terminated, unless Consultant states that Consultant will provide to the City
21 evidence of uninterrupted, continuing coverage for a period of not less than three (3)
22 years, commencing on the date this Agreement expires or is terminated.

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

26 Prior to the start of performance, Consultant shall deliver to City certificates
27 of insurance and endorsements for approval as to sufficiency and form. In addition,
28 Consultant, shall, within ten (10) days prior to expiration of the insurance furnish to City

1 certificates of insurance and endorsements evidencing renewal of the insurance. City
2 reserves the right to require complete certified copies of all policies of Consultant and
3 Consultant's subconsultants and contractors, at any time. Consultant shall make
4 available to City's Risk Manager or designee all books, records and other information
5 relating to the insurance, during normal business hours.

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

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

15 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
16 contemplates the personal services' of Consultant and Consultant's employees, and the
17 parties acknowledge that a substantial inducement to City for entering this Agreement
18 was and is the professional reputation and competence of Consultant and Consultant's
19 employees. Consultant shall not assign its rights or delegate its duties under this
20 Agreement, or any interest in this Agreement, or any portion hereof, without the prior
21 approval of City, except that Consultant may with the prior approval of the City, Manager
22 of City, assign any moneys due or to become due the Consultant under this Agreement.
23 Any attempted assignment or delegation shall be void, and any assignee or delegate
24 shall acquire no right or interest by reason of an attempted assignment or delegation.
25 Furthermore, Consultant shall not subcontract any portion of its performance without the
26 prior approval of the City Manager or designee or substitute a subconsultant or contractor
27 without the prior approval to the substitution. Nothing stated in this Section shall prevent
28 Consultant from employing as many employees as Consultant deems necessary for

1 performance, of this Agreement.

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

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

12 9. OWNERSHIP OF DATA. The City acknowledges the Consultant's and
13 its subconsultants' construction documents, including electronic files, as instruments of
14 professional service. Nevertheless, the final construction documents prepared under this
15 Agreement shall become the property of the City upon completion of services and
16 payment in full of all monies due to the Consultant. The City agrees, to the fullest extent
17 permitted by law, to indemnify and hold harmless the Consultant, its officers, directors,
18 employees and subconsultants (collectively, "Consultant") against any damages,
19 liabilities or costs, including reasonable attorney's fees and defense costs, arising from or
20 allegedly arising from or in any way connected with the modification of the construction
21 documents by the City or any person or entity that acquires or obtains the construction
22 documents from or through the City.

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

1 unrestricted right to use and disclose the Data in any manner and for any purpose without
2 payment of further compensation to Consultant. Copies of Data may be retained by
3 Consultant but Consultant warrants that Data shall not be made available to any person
4 or entity for use without the prior approval of City. This warranty shall survive termination
5 of this Agreement for five (5) years. City acknowledges that some Data provided by the
6 Consultant maybe copyrighted or proprietary Data and, therefore, may not be used
7 without the express written consent of the Consultant.

8 10. TERMINATION. Either party shall have the right to terminate this
9 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
10 prior notice to the other party. If a reason for termination of the Consultant exists, the City
11 shall notify Consultant of such reason prior to notice of termination and the Consultant
12 shall be given the opportunity to correct the reason prior to the commencement of the
13 termination period. In the event of termination under this Section, City shall pay
14 Consultant for services satisfactorily performed and costs incurred up to the effective
15 date of termination for which Consultant has not been previously paid. The procedures
16 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of
17 termination and upon payment of all earned professional fee's and expenses, Consultant
18 shall deliver to City all Data developed or accumulated in the performance of this
19 Agreement, whether in draft or final form, or in process.

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

28 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a

1 breach of confidentiality with respect to Data that: (a) Consultant demonstrates
2 Consultant knew prior to the time City disclosed it; or. (b) Is or becomes publicly available
3 without breach of this Agreement by Consultant; or (c) A third party who has a right to
4 disclose does so to Consultant without restrictions on further disclosure; or (d) Must be
5 disclosed pursuant to subpoena or court order.

6 13. ADDITIONAL COSTS AND REDESIGN. A. Any costs incurred by the
7 City due to Consultant's failure to meet the professional industry standards of the
8 Consultant in performing the requirements in the Scope of Work, shall be at the sole cost
9 of Consultant and City shall not pay any additional compensation to Consultant for its re-
10 performance.

11 B. If the Project involves construction and the scope of work requires
12 Consultant to prepare plans and specifications with an estimate of the cost of
13 construction, then Consultant may be required to modify the plans and specifications, any
14 construction documents relating to the plans and specifications, and Consultant's
15 estimate, at no cost to City, when the lowest qualified bid for construction received by
16 City, excluding general contractual overhead, other costs and contingencies exceeds by
17 more than fifteen percent (15%) Consultant's final approved estimate. This modification
18 shall be submitted in a timely fashion to allow City to receive new bids within four (4)
19 months of the date on which the lowest bid was verified to have exceeded the approved
20 estimate on the original plans and specifications submitted by Consultant. If the bidding
21 process does not commence within ninety (90) days of the Consultant's submittal of the
22 original plans and specifications, the estimate will be adjusted to reflect changes in the
23 general level of prices in the construction industry.

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

27 15. LAW. This Agreement shall be governed by and construed pursuant to
28 the laws of the State of California (except those provisions of California law pertaining to

1 conflicts of laws). Consultant shall obtain and maintain necessary professional licenses
2 mandated by the State for providing professional landscape architecture services and to
3 comply with laws applicable to said professional services.

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

7 17. INDEMNITY. A. With respect to liability other than that arising out of
8 Professional Services, Consultant shall indemnify and hold harmless the City, its Boards,
9 Commissions, and their officials, employees and agents (collectively in this Section
10 "City") from and against any and all liability, claims, demands, damage, causes of action,
11 proceedings, penalties, loss, costs, and expenses (including attorney's fees, court costs,
12 and expert and witness fees) (collectively "Claims or individually "Claim"). Claims
13 including by way of example but not limited to: Claims for property damage, personal
14 injury or death caused by the negligence or willful misconduct of Consultant, its officers,
15 employees, agents, or sub-consultants, (collectively "Indemnitor"); Consultant shall not
16 be required to indemnify or hold harmless City from any claims that arise from the
17 negligence or willful misconduct of the City. Consultant shall notify the City of any claim
18 within ten (10) days. Likewise, City shall notify Consultant of any claim, shall tender the
19 defense of such claim to Consultant, and shall assist Consultant, as may be reasonably
20 requested, in such defense.

21 B. With respect to professional liability, the Consultant agrees, to the fullest
22 extent permitted by law, to indemnify and hold harmless the City, its officers, directors
23 and employees (collectively, City) against all damages, liabilities or costs, including
24 reasonable attorney's fees and defense costs, to the extent caused by the Consultant's
25 negligent performance of professional services under this Agreement and that of its
26 subconsultants or anyone for whom the Consultant is legally liable.

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

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

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

14 It is the policy of City to encourage' the participation of Disadvantaged,
15 Minority and Women-owned Business Enterprises in City's procurement process, and
16 Consultant agrees to use its best efforts to carry out this policy in the hiring of
17 subconsultants and contractors to the fullest extent consistent with the efficient
18 performance of this Agreement. Consultant may rely on written representations by
19 subconsultants and contractors regarding their status. Consultant shall report to City in
20 May and in December or, in the case of short-term agreements, prior to invoicing for final
21 payment, the names of all subconsultants and contractors hired by Consultant for this
22 Project and information on whether or not they are a Disadvantaged, Minority or Women-
23 owned Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C.
24 Sec. 637).

25 21. NOTICES. Any notice or approval required under this Agreement shall
26 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
27 postage prepaid, addressed to Consultant at the address first stated above, and to the
28 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.

1 Notice of change of address shall be given in the same manner as stated for other
2 notices. Notice shall be deemed given on the date deposited in the mail or on the date
3 personal delivery is made, whichever first occurs.

4 22. COPYRIGHTS AND PATENT RIGHTS. A. Consultant shall place the
5 following copyright protection on all Data: © City of Long Beach, California 2008, inserting
6 the appropriate year.

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

11 C. Consultant represents that the Data does not violate or infringe any
12 patent, copyright, trade secret or other proprietary right of any other party. Consultant
13 agrees to and shall protect, defend, indemnify and hold City, its officials and employees
14 harmless from any damages, loss, liability, costs or expenses (including reasonable
15 attorneys' fees) arising from the breach of representation.

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

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

1 25. CONTINUATION. Termination or expiration of this Agreement shall not
2 affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 16,
3 18, 21, and 27 prior to termination or expiration of this Agreement.

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

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

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

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

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


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

MAPLE DELL and McCLELLAND
ARCHITECTS, LLP., a California Limited
Liability Partnership

21 Oct '08, 2008

By 
Partner

Richard E. Dell, AIA, C,11985
(Type or Print Name)

_____, 2008

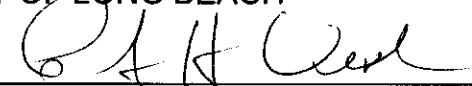
By _____
Partner

(Type or Print Name)

"Consultant"

CITY OF LONG BEACH

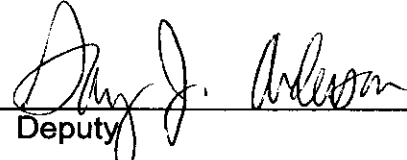
10/22, 2008

By 
City Manager

"City"

This Agreement is approved as to form on October 22, 2008.

ROBERT E. SHANNON, City Attorney

By 
Deputy

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


MAPLE DELL and McCLELLAND ARCHITECTS, LLP, a California Limited Liability Partnership

_____, 2008

By _____
Partner

(Type or Print Name)

OCTOBER 21, 2008

By 
Partner

James P. McClelland C-21797

"Consultant"

CITY OF LONG BEACH

10/22, 2008

By 
City Manager

"City"

This Agreement is approved as to form on October 22, 2008.

ROBERT E. SHANNON, City Attorney

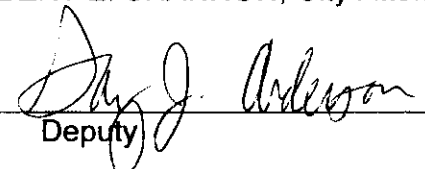
By 
Deputy

Exhibit A – Scope of Work

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

Exhibit A – Scope of Work

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Appendix A

Scope of Work

Initial Professional Fee Outline
REVISED Phase I - Programming and Concept Design

| | |
|--|---------------------|
| Maple Dell + McClelland Architects, LLP | \$136,640.00 |
| Executive Architect | |
| Moody Nolan, Inc. | \$114,200.00 |
| Design Architect | |
| Counsilman Hunsaker, Inc. | \$139,255.00 |
| Aquatic Design Consultant | |
| Miyamoto International, Inc. | \$30,800.00 |
| Structural Engineer | |
| Gausman & Moore Associates, Inc. | \$31,850.00 |
| Mechanical, Electrical & Plumbing Engineer | |
| Psomas Engineering | \$36,000.00 |
| Civil Engineer | |
| MacTech | \$49,800.00 |
| Soils, Geological Engineer | |
| Melendrez | \$16,590.00 |
| Landscape Architect | |
| Saylor Associates | \$9,300.00 |
| Cost Estimator | |
| Engineering Economics, Inc. | \$00.00 |
| Commissioning Consultant | |

TOTAL ESTIMATED PROFESSIONAL FEE **\$564,435.00**

Reimbursable Expense Budget Allocation **\$30,000.00 (NTE)**

Reimbursables invoiced to include: mileage, authorized travel, printing, copies, phone calls, plotting, mailing, postage, etc., which are directly related to materials and deliverables to and for the City. Any internal reimbursable costs to consultants will not be billed to City.


Richard E. Dell, AIA, NCARB

REVISED Phase I - Programming and Concept Design Scope with Fees/Task
Led by Architects - Maple Dell + McClelland Architects, LLP
and Moody Nolan, Inc.

Phase I Programming & Concept

Task A. Initial Programming (1 Meeting) (Budget \$88,540.00)

- One (1) Kick-Off Meeting with city officials and/or internal city departments for initial project input, direction, programming, and time line estimates
- Review, discuss and establish initial potential project concept(s), goals, needs assessment, programs, users, options, budget and establish LEED™ thresholds
- City Departments, including;
 - City Manager
 - Planning Department
 - Park Recreation and Marine
 - Community Services
 - Fire Department
 - Marketing
 - Operations/Maintenance
 - Public Works/Engineering
- Review and discuss pool operations/systems: current and proposed
- Review funding sources and discuss capital campaign program
- Review and identify optional and additional revenue streams
- Review and identify additional sports/entertainment attractions
- Program initial concept site plan(s) with potential options for multi-bodies of water for competitive and recreational components and processing. Concept plans to be provided in AutoCAD format in Task H
- Coordination with city on Local Coastal Plan, Belmont Pier Improvement Plan
- Brief the following for city, environmental, input and facility impact
 - Local Coastal Plan sub areas "C" & "D"
 - Chapter 138 Line
 - FEMA Flood Zone "A"
 - Environmental Assessment forms
 - Review current energy use and consumption
 - Shoreline access
 - Current traffic studies
 - Belmont Pier Improvement Plan
 - City Hydrology Stabilization program, criteria and input
 - New proposed marina
 - Review city's current events hosted at facility site
 - Belmont Heights Neighborhood Area 'C' land use elements/ General Plan
- Chart and track project/city's "Goals & Objectives" through Task H
- Discuss initial program and options
- Develop initial concept time line for projects

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Athletic Directors of local schools and organizations
Chamber of Commerce
Local Business Leaders
Swim Coaches of local schools and organizations
Activity Programmers
Senior Groups
Wellness Providers (Water therapy)
Private water-related businesses Homeowners Associations/residents
Local Utility providers

- Develop 3D massing sketch-up rendering of each three (3) concept site plan and contiguous area(s) for visual impact and discussion/presentation purposes
- Work with city to develop presentations, options and information to present at public outreach meetings
- Assist city in efforts for notification, scheduling, orchestrating and preparing for presentation/information gathering meetings
- Two (2) meetings (two consecutive days) to introduce city's general information, efforts to date, present initial concept site plans and obtain input from representative groups designated by city, including:
 - Local organized sports groups
 - Health care providers (if any)
 - Public and private schools/districts
 - Neighborhood/Homeowner Associations
 - County officials, Health Department
 - General public/residents of Long Beach
 - Others as listed
- Work with city/project representatives to assimilate outreach information into city's objectives and goals
- Review LEED™/Green input, options, information and recommendations
- Coordination with city and Design Team consultants, e.g., LEED™, pool, electrical and mechanical consultants to review and discuss specific options for energy efficiency, sustainability components of the project
- Refine audit report and needs assessment, objectives, findings and recommendations

Deliverables to include:

- Three (3) concept site plans (AutoCAD/colored, printed and mounted), with accompanying facility component plan
- One (1) Outline Report on Design Program of spaces and features for three (3) concepts
- One (1) colored "sketch-up" bird's eye sketch of each concept plan (3 total)
- One (1) written concept draft program outline per each concept
- One (1) matrix of programming priorities for discussion during public outreach/interviews

Meeting Attendees: MDM Architects, Moody Nolan, Councilman Hunsaker, Melendrez

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- Outline energy efficiency, sustainability, along with LEED™ and “Green”

Deliverables to include:

- One (1) digital ortho-topographic survey/map (final Field Survey data to be gathered at subsequent phase) in Mylar and AutoCAD format

Meeting Attendees: MDM Architects, Moody Nolan, Counsilman Hunsaker, Gausman & Moore, Melendrez

Task B. Existing Facilities Site Review (1 meeting) (Budget \$156,640.00)

Includes Design Team review of existing pool, existing documents of facility, ADA accessibility, aquatic consultants evaluation/audit of existing facility, and utility capacity and usage.

- Design Team to review current conditions in locker rooms, toilet fixtures and showers vs proposed required support facilities)
- Aquatic consultant to provide pool evaluation / audit
- Structural Engineer to amend report with additional findings, seismic report (on building shell and recommendations)
- Mechanical/Plumbing /Electrical Engineer to provide system outline and options for the facility
- Establish base line of existing facilities (pool and related support/facilities) based on city provided as-built documents and on-site review of Design Team along with existing operational cost
- Sub-surface exploration, drilling, testing, evaluation and final report

Deliverables to include:

- Meeting with city for a design charrette on project planning, juxtapositioning, facility components, etc.
- One (1) LEED systems and option outline report including recommendations of sustainability
- One (1) outline evaluation of existing facility systems/requirements
- One (1) initial Soils Report based on two (2) borings and five (5) CPT explorations
Includes Geologic Seismic Hazard evaluation, laboratory test, corrosion study, engineering analysis report (Additional soils exploration will be required upon final facility design)

Meeting Attendees: MDM Architects, Moody Nolan, Counsilman Hunsaker, Gausman & Moore

Task C. Public Outreach and Meetings (2 meetings) (Budget \$53,595.00)

- Potential Stakeholders, including:
 - Local Coastal Program
 - NCAA
 - Junior Olympics
 - Pac - 10 Conference
 - CIF officials

REVISED Phase I - Programming and Concept Design Scope with Fees/Task
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Task D. Refine Concept and Project Time Line (Budget \$70,935.00)

- Design Team and city to revise projects' concepts, options, etc., into city's strategic plan
- Review and comment on revised detailing of 3D "sketch-up" model based on City stakeholders comments
- Outline major/minor areas of concerns and action item issues
- Refine initial estimated time line, critical path matrix

Deliverables to include:

- One (1) Design Program Outline
- One (1) draft Payback Report on LEED potential components (rough model report)

Task E. Review with City Initial Findings, As-built Conditions, Options Including Renovations to Existing Facility Components to Remain (1 meeting) (Budget \$53,585.00)

- Refine concept site plans and selected, preferred concept options
- Refine LEED™/Green information, options, etc.
- Provide draft outline report of projects' programming

Deliverables to include:

- One (1) meeting with city and stakeholders to discuss findings and present three (3) concept site plans and preliminary programming options and preliminary budget estimates
- List of potential LEED/Green options in conjunction with MEP
- One (1) existing facility Audit Assessment Report
- One (1) outline Amendment Report to earlier report on existing facility focused on removal of existing structure
- One (1) outline of preferred structural system for proposed facility, including materials for main structural components
- One (1) written report dealing with information on seismic mitigating recommendations
- One (1) Outline of Sustainable Systems and Components
- One (1) general landscape outline on three (3) concept plans
- One (1) pre-conceptual opinion of estimated construction cost for each three (3) concepts

Meeting Attendees: MDM Architects, Moody Nolan, Counsilman Hunsaker, Miyamoto, Gausman & Moore, Melendrez

Task F. Budget Formulation (Budget \$21,970.00)

- The Design Team and Cost Estimating consultant to refine estimated concept "Order of Magnitude"/"Opinion of Probable Cost" construction budgets, inclusive of soft costs, providing major line item budgets for three (3) concepts
- Review budgets with city (meeting included in Task E)

Deliverables to include:

- One (1) Project and "Order of Magnitude" Construction Cost Estimate
- One (1) Landscape Budget

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Task G. Review and Evaluate Budgets, Options/ Concepts and Time Line to Refine Project/Plan Preferred by City (1 meeting) (Budget \$61,380.00)

- Revise budgets and time line
- Revise and update reports and findings
- Review concept documents for potential value engineering modifications
- Refine all concept documents including 3D modeling

Deliverables to include:

- Meeting with city and appropriate community stakeholders to present objectives, findings, recommendations, including revised concept documents, site plans, elevations, etc., and options for preliminary project confirmation. Continue to obtain additional input and information from stakeholders
- One (1) matrix of selected concept plan illuminating goals and objectives in relationship to City's stated goals and objectives
- One (1) preliminary project time line for selected concept plan
- One (1) report on alternate storm water quality, quantity and treatment
- One (1) written outline on flood zone impact, hydrology concerns, site drainage concerns
- One (1) revised concept estimate cost on one (1) concept

Meeting Attendees: MDM Architects, Moody Nolan, Councilman Hunsaker, Melendrez,

Task H. Final Concept Presentation (1 meeting) (Budget \$22,075.00)

- Present final concepts with city including needs assessments, community input, concept budget and concept time line

Deliverables to include:

- One (1) Feasibility Study to include the following:
 - One (1) Market Analysis Report
 - One (1) Operational Analysis Report including ROI
 - One (1) Business Plan
- One (1) landscape enhanced plan for selected option
- One (1) imagery of proposed landscape potential elements
- One (1) final concept opinion of cost on one (1) selected site concept
- Site plan review submittal to include 15 sets of plans (3 standard size and 12 reduced size) of the following:
 - Preliminary Site Plan
 - Preliminary Space Concept Floor Plans
 - Preliminary Elevations
 - Preliminary Concept Landscape Plan & Photo Board (10 copies)

Meeting Attendees: MDM Architects, Moody Nolan, Councilman Hunsaker, Gausman & Moore,

REVISED Phase I - Programming and Concept Design Scope with Fees/Task
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Task I. Administration - Phase I (Budget \$35,715.00)

- Time for contract negotiations and signature with city
- Work on all consultants scope and fees and contract with consultants
- Overall Phase I contract and project scope coordination

Task J. Optional Study Sessions/Meetings as Requested by City

(Includes up to two [2] additional meetings with City, Zoning hearings, Planning hearings, and Council meetings)

Review progress reports, drawings, sketches, 3D modeling, and/or budgets, dependent on information available at time of meetings with city personnel, council members, ad-hoc committees, community or Neighborhood Councils, etc. City to request up to two (2) progress meetings at their discretion. Additional meetings for Zoning hearing, Planning hearing, Council meetings, etc. can be provided as well under these listed fees. Fee will be contingent on who is requested to attend from the design team based on the following "Not to Exceed" service charge:

| | | |
|-------------|-------------|------------|
| • MDM | (PA & PM) | \$5,000.00 |
| • MN | (PA & PLN) | \$6,000.00 |
| • CH | (DSH & PJS) | \$6,000.00 |
| • SE | (PA& PM) | \$3,000.00 |
| • MEP | (PA) | \$3,000.00 |
| • Civil | (PA) | \$2,400.00 |
| • Soils | (PA) | \$2,400.00 |
| • Landscape | (PA) | \$1,600.00 |

The above fees are inclusive of both PA and PM attending the same meeting where applicable (MDM, MN, CH, SE). If only one representative from a firm is required, the fees will adjust accordingly. *Fees shown are on a per meeting basis.*

Phase II Planning, Entitlements and Local Coastal Plan Approval
Scope and Fees to be determined

Phase III Schematic Design, Design Development and Construction Documents
Scope and Fees to be determined

Phase IV Bidding and Negotiations
Scope and Fees to be determined

Phase V Construction Administration
Scope to be determined

Note: 1. Where applicable, deliverables will be provided in PDF format at time of submittal
2. Meeting minutes to be provided by Design Team representative.

REVISED Phase I - Programming and Concept Design Scope with Fees/Task
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Exclusions:

Scope of service items not stipulated in this Agreement are excluded from MDM's Basic Services; however, the following scope of items are Specifically Excluded from Basic Services and may be provided upon City's request as additional services:

1. Civil engineering documents for on and off-site improvements. NPDES documentation, parcel map and any other required civil engineering documents
2. Civil engineering services, e.g., flood drainage plan calculations and other documents or services required by the City of Long Beach, along with any work or services required of the existing utilities size, location, capacity
3. Traffic Studies
4. Sound Studies
5. Detailed exterior design elevations
6. A professional architectural model
7. Any or all work for DSA, OSA, other governing bodies for preliminary review of proposed project
8. Phase I and Phase II for hazardous waste identification, mitigation and removal, etc.
9. Building Information Modeling (BIM)
10. Local Coastal submission, processing and approval
11. Environmental studies, reports, mitigation, EIR, EAF's
12. Destructive testing with accompanying reports
13. Radius maps, mailing lists for public hearings
14. Legal work for lot-line adjustments, dedications, etc.
15. Special testing/inspections
16. Cost of any city and/or county fees
17. Inventory of furniture, fixtures and equipment of existing project components to keep/re-use
18. Work/services required of site in a flood plain, sub-surface ground water mitigation, fault line area, etc.
19. Health Department submission, processing or approvals
20. Legal work, i.e., parcel map, easements, lot-line removal/adjustments
21. Services, documents, etc. required to stabilize, shore or maintain existing facility
22. See exclusions included in each Design Team scope
23. Some testing on existing wood driven piles
24. Hydrology Study
25. Preliminary service capacity for any utilities (electric, water, sewer, gas, storm drain lines, etc.)
26. Cost of any city fees
27. Special Testing/Inspections if required
28. Legal work, i.e., dedications, parcel map conditions, etc.
29. Environmental Phase I Testing and Phase II Mitigation if required. Recommendation/removal of hazardous waste material

REVISED Phase I - Programming and Concept Design Scope with Fees/Task
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Additional Services:

The services described in this section are not included in Basic Services unless so identified above in Exhibit A, however, may be provided as additional services in addition to the compensation for Basic Services. Additional services shall only be provided if preauthorized by City. If Additional Services are required or requested, Architect shall seek written authorization from City prior to commencing such services. However, no such services shall be commenced or reimbursed without prior written authorization by City. If City deems that such Additional Services are not required, City shall give prompt written notice to Architect. If City indicates in writing that all or part of such Additional Services are not required, Architect shall have no obligation to provide those services.

1. Extended time, services and resources to obtain approval from Design Review
2. Continued changes, studies, alternatives, beyond outlined above, will be provided as additional services
3. Any and all architectural and engineering documents not listed in the programming and concept phase
4. Services required should a permanent de-watering system be necessary; verification of this requirement will be determined upon receipt of Soils Report and its recommendations.
5. Documents, services, interfacing for grant/loan/funding entities
6. Processing zone variances, CUP, Specific Plan, Design Review Boards and/or District and/or Neighborhood Plan approvals
7. Services required to bring inadequate water, waste, electrical, etc., services up to required availabilities/usage levels
8. Detailed written justifications of design rationales or decisions
9. Special cost accounting tallies/backup data and customized invoicing formats
10. Camera scoping, testing, recording of sewer lines, site drainage lines, other sub-surface piping along with HVAC ducts
11. Record document development or verification of existing as-built conditions
12. Certification of Documents and project for grants and other funding/insurance purposes
13. A fly by video of the project

City to provide the following:

1. All existing documents for the site and on the existing facility/building and building systems, e.g. as-built plans, permitted documents of existing structure
2. Facility operational cost, e.g., utility cost, staffing cost, etc.
3. Title Report

Appendix B

City Contact

**Heather Martin, Analyst
Planning and Development Bureau
Department of Parks, Recreation and Marine
City of Long Beach, CA
562-570-3155**

Appendix C

Materials to be Provided by the City

1. All existing documents for the site and on the existing facility/building and building systems, e.g., as-built plans, permitted documents of existing structure
2. Facility operational cost, e.g., utility cost, staffing cost, etc.
3. Title Report

Appendix D

Consultant shall furnish all labor and supervision, supplies, material, tools, machinery, equipment, appliances, transportation, and services necessary with exception to only those items stated in Appendix C