

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
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AGREEMENT

THIS AGREEMENT is made and entered, in duplicate, as of May 25, 2007 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 December 19, 2006, by and between Moore Iacofano Goltsman, Inc., a California corporation, whose business address is 801 N Harbor Blvd. Fullerton California 92832 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

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

WHEREAS, City desires to have Consultant perform these specialized 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 specialized 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 \$600,000 over a three-year period, 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, shall be available only during City's normal business hours and provided that

1 milestones for performance, if any, are met.

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

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

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

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

25 3. COORDINATION AND ORGANIZATION.

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

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

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

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

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

28 (a) Commercial general liability insurance (equivalent in scope to ISO form

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

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

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

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

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

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1 the City evidence of uninterrupted, continuing coverage for a period of not less than
2 three (3) years, commencing on the date this Agreement expires or is terminated.
3 Consultant shall require that all subconsultants and contractors which Consultant uses
4 in the performance of services maintain insurance in compliance with this - Section
5 unless otherwise agreed in writing by City's Risk Manager or designee.

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

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

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

23 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
24 contemplates the personal services of Consultant and Consultant's employees, and the
25 parties acknowledge that a substantial inducement to City for entering this Agreement
26 was and is the professional reputation and competence of Consultant and Consultant's
27 employees. Consultant shall not assign its rights or delegate its duties under this
28 Agreement, or any interest in this Agreement, or any portion, hereof, without the prior

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

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

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

20 9. OWNERSHIP OF DATA. All materials, information and data
21 prepared, developed, or assembled by Consultant or furnished to Consultant in
22 connection with this Agreement, including but not limited to documents, estimates,
23 calculations, studies, maps, graphs, charts, computer disks, computer source
24 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,
25 information, material, and memorandum ("Data") shall be the exclusive property of City.
26 Data shall be given to City, and City shall have the unrestricted right to use and disclose
27 the Data in any manner and for any purpose without payment of further compensation
28 to Consultant. Copies of Data may be retained by Consultant but Consultant warrants

1 that Data shall not be made available to any person or entity for use without the prior
2 approval of City. This warranty shall survive termination of this Agreement for five (5)
3 years. The City agrees to indemnify, defend, and hold Consultant harmless from and
4 against any claims, costs, losses and damages as a result of the City's intentional or
5 wilful misuse or reuse of such drawings, specifications whether in print or in electronic
6 form.

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

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

25 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable
26 for a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
27 Consultant knew prior to the time City disclosed it; or (b) Is or becomes publicly
28 available without breach of this Agreement by Consultant; or (c) A third party who has a

1 right to disclose does so to Consultant without restrictions on further disclosure; or (d)
2 Must be disclosed pursuant to subpoena or court order.

3 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

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

1 17. INDEMNITY. Consistent with California Civil Code section 2782.2,
2 when the services to be provided under this Agreement are design professional
3 services to be performed by a design professional, as that term is defined under said
4 section 2782.2, Consultant shall to the fullest extent by law, indemnify, protect, defend
5 and hold harmless City, and its employees, officials and agents (“indemnified Parties”)
6 for all claims, demands, costs or liability that arise out of, pertain to, or relate to the
7 negligence, recklessness or willful misconduct of Consultant, its officers, employees,
8 agents, in said performance of professional services under this Agreement.

9 Other than in the performance of professional services, independent of the
10 indemnification duty and as a free-standing duty on the part of the Consultant,
11 Consultant shall defend City and shall continue such defense until the Claim is
12 resolved, whether by settlement, judgement or otherwise. Consultant’s duty to defend
13 shall be limited to the extent the claim arises from the negligent or wrongful acts, errors
14 or omissions of Consultant, in connection with performance of this Agreement.
15 Consultant shall not be responsible for the negligence, errors and/or omissions of
16 independent third parties hired by City. Consultant shall notify the City of any claim
17 within ten (10) days. Likewise, City shall notify Consultant of any claim, shall tender the
18 defense of such claim to Consultant, and shall assist Consultant, as may be reasonably
19 requested, in such defense.

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

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 20. NONDISCRIMINATION. In connection with performance of this
27 Agreement and subject to applicable rules and regulations, Consultant shall not
28 discriminate against any employee or applicant for employment because of race,

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

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

25 22. COPYRIGHTS AND PATENT RIGHTS. Consultant warrants that
26 the Data does not violate or infringe any patent, copyright, trade secret or other
27 proprietary right of any other party. Consultant agrees to and shall protect, defend,
28 indemnify and hold City, its officials and employees harmless from any and all claims,

1 demands, damages, loss, liability, causes of action, costs or expenses (including
2 reasonable attorneys' fees) whether or not reduced to judgment, arising from any
3 breach or alleged breach of this warranty.

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

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

17 25. CONTINUATION. Termination or expiration of this Agreement
18 shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7,
19 10, 11, 16, 18, 21, and 27 prior to termination or expiration of this Agreement.

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

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

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

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

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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.

(Name of Consultant), YIG, Inc

By [Signature]
President

Susan Goltzman
(Type or Print Name)

By [Signature]
Secretary

Carolyn Verheyen
(Type or Print Name)

"Consultant"

City of Long Beach **ASSISTANT**

By [Signature]
City Manager

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

June 1, 2007

This Agreement is approved as to form on May 14, 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.