

1 AGREEMENT

2 **30112**

3 THIS AGREEMENT is made and entered, in duplicate, as
4 of May 25, 2007 for reference purposes only, pursuant to a minute order adopted
5 by the City Council of the City of Long Beach at its meeting held on December 19, 2006,
6 by and between DAVID VOLZ DESIGN, a California corporation whose business address
7 is 17050 Bushard Street, Suite 300, Fountain Valley, CA 92708 ("Consultant"), and the
8 CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, the City requires specialized services requiring unique skills to
10 be performed in connection with As-Needed Landscape Architecture Services ("Project");
11 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 in
18 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
24 accordance with the standards of the profession, and City shall pay for these services in
25 the manner described below, not to exceed \$600,000 over a three-year period, at the
26 rates or 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,

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

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.

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 19, 2009, unless
24 sooner terminated as provided in this Agreement, or unless the services or the Project is
25 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 reference.

1 Consultant shall advise and inform City's representative of the work in progress on the
2 Project in sufficient detail so as to assist City's representative in making presentations
3 and in holding meetings on the Project. City shall furnish to Consultant information or
4 materials, if any, described in Exhibit "C" attached to this Agreement and incorporated by
5 this reference, and shall perform any other tasks described in the 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 employee
8 David Volz, 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 from
17 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 and
19 Consultant is not entitled to any of the usual and customary rights, benefits or privileges
20 of City employees. Consultant expressly warrants that neither Consultant nor any of
21 Consultant's employees or agents shall represent themselves to be employees or agents
22 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:

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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 each
3 occurrence and \$2,000,000 general aggregate. This coverage shall include but not be
4 limited to broad form contractual liability, cross liability, independent contractors liability,
5 and products and completed operations liability. The City, its officials, employees and
6 agents shall be named as additional insureds by endorsement (on City's endorsement
7 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or to both
8 CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain no special
9 limitations on the scope of protection given to the City, its officials, employees and
10 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 not
14 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 than
17 \$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 City,
20 its officials, employees and agents in the same manner and to the same extent as they
21 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 written
24 notice to City by either the Consultant or the Consultant's insurance carrier, and shall be
25 primary and not contributing to any other insurance or self-insurance maintained by City.
26 Consultant shall notify the City in writing within five (5) days after any insurance has been
27 voided by the insurer or cancelled by the insured. If this coverage is written on a "claims
28 made" basis, it must provide for an extended reporting period of not less than one year,

1 commencing on the date this Agreement expires or is terminated, unless Consultant
2 guarantees that Consultant will provide to the City evidence of uninterrupted, continuing
3 coverage for a period of not less than three (3) years, commencing on the date this
4 Agreement expires or is 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 certificates
9 of insurance and endorsements for approval as to sufficiency and form. In addition,
10 Consultant, shall, within thirty (30) days prior to expiration of the insurance furnish to City
11 certificates of insurance and endorsements evidencing renewal of the insurance. City
12 reserves the right to require complete certified copies of all policies of Consultant and
13 Consultant's subconsultants and contractors, at any time. Consultant shall make
14 available to City's Risk Manager or designee all books, records and other information
15 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 not
21 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 or
24 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

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

12 7. CONFLICT OF INTEREST. Consultant, by executing this
13 Agreement, certifies that, at the time Consultant executes this Agreement and for its
14 duration, Consultant does not and will not perform services for any other client which
15 would create a conflict, whether monetary or otherwise, as between the interests of City
16 under this Agreement and the interests of that other client. And, Consultant shall obtain
17 similar 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 services
20 necessary to or used in the performance of Consultant's obligations hereunder, except as
21 stated in Exhibit "C", if any.

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

1 the Data in any manner and for any purpose without payment of further compensation to
2 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
3 Data shall not be made available to any person or entity for use without the prior approval
4 of City. 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 effective
9 date of termination for which Consultant has not been previously paid. The procedures
10 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of
11 termination, Consultant shall deliver to City all Data developed or accumulated in the
12 performance of this Agreement, whether in draft or final form, or in process.

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

21 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
22 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
23 Consultant knew prior to the time City disclosed it; or (b) Is or becomes publicly available
24 without breach of this Agreement by Consultant; or (c) A third party who has a right to
25 disclose does so to Consultant without restrictions on further disclosure; or (d) Must be
26 disclosed pursuant to subpoena or court order.

27 13. ADDITIONAL COSTS AND REDESIGN.

28 A. Any costs incurred by the City due to Consultant's failure to meet the

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

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

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

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

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

25 17. INDEMNITY. Consultant shall indemnify and hold harmless the City,
26 its Boards, Commissions, and their officials, employees and agents (collectively in this
27 Section "City") from and against any and all liability, claims, demands, damage, causes of
28 action, proceedings, penalties, loss, costs, and expenses (including attorney's fees, court

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

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

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

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

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

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

19 22. COPYRIGHTS AND PATENT RIGHTS.

20 A. Consultant shall place the following copyright protection on all Data: ©
21 City of Long Beach, California 2007.

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

26 C. Consultant warrants that the Data does not violate or infringe any
27 patent, copyright, trade secret or other proprietary right of any other party. Consultant
28 agrees to and shall protect, defend, indemnify and hold City, its officials and employees

1 harmless from any and all claims, demands, damages, loss, liability, causes of action,
2 costs or expenses (including reasonable attorneys' fees) whether or not reduced to
3 judgment, arising from any 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 this
6 Agreement and that Consultant has not paid or agreed to pay any entity or person any
7 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 of
11 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 any
14 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
15 Agreement shall not constitute a waiver of any other or subsequent breach of this
16 Agreement.

17 25. CONTINUATION. Termination or expiration of this Agreement shall
18 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
19 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 1099-
22 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
23 resulting from payments under this Agreement. Consultant's Employer Identification
24 Number is [REDACTED] If Consultant has a Social Security Number rather than
25 an Employer Identification Number, then Consultant shall submit that Social Security
26 Number in writing to City's Accounts Payable, Department of Financial Management.
27 Consultant acknowledges and agrees that City has no obligation to pay Consultant until
28 Consultant provides one of these numbers.

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 of
6 this Agreement to examine, audit, inspect, review, extract information from, and copy all
7 books, records, accounts, and other documents of Consultant relating to this Agreement.

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

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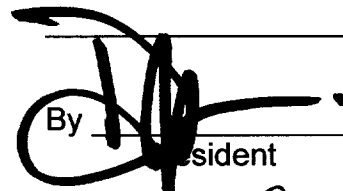
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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated herein.

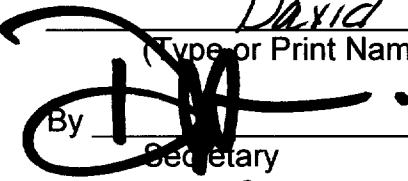
DAVID VOLZ DESIGN, a California corporation

May 8, 2007

By 
President

David J. Volz
(Type or Print Name)

May 8, 2007

By 
Secretary

David J. Volz
(Type or Print Name)

"Consultant"

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

June 1, 2007

By Christine J. Shepperd
City Manager

ASSISTANT

"City"

This Agreement is approved as to form on May 17, 2007.

ROBERT E. SHANNON, City Attorney

By Ray J. Anderson
Deputy

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.