

30226

AGREEMENT

THIS AGREEMENT is made and entered, in duplicate, as of July 27, 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 NUVIS, a California corporation, whose business address is 3151 Airway Avenue, Suite J-3, Costa Mesa, California 92626 ("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 milestones

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4684

1 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 by
4 City of invoices showing the services or task performed, the time expended (if billing is
5 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 Consultant
11 during the next invoice cycle. Where billing is done and payment is made on an hourly
12 basis, the parties acknowledge that this arrangement is either customary practice for
13 Consultant's profession, industry, or business, or is necessary to satisfy audit and legal
14 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 is
24 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 reference.
28 Consultant shall advise and inform City's representative of the work in progress on the

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

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

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

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

26 (a) Commercial general liability insurance (equivalent in scope to
27 ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than
28 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This

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

9 (b) Workers' Compensation insurance as required by the California
10 Labor Code and employer's liability insurance in an amount not less than
11 \$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
16 amount 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 City,
19 its officials, employees and agents in the same manner and to the same extent as they
20 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 written
23 notice to City, and shall be primary and not contributing to any other insurance or self-
24 insurance maintained by City. Consultant shall notify the City in writing within five (5)
25 days after any insurance has been voided by the insurer or cancelled by the insured. If
26 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 the

1 City evidence of uninterrupted, continuing coverage for a period of not less than three (3)
2 years, commencing on the date this Agreement expires or is terminated.

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

6 Prior to the start of performance, Consultant shall deliver to City certificates
7 of insurance and endorsements for approval as to sufficiency and form. In addition,
8 Consultant, shall, within thirty (30) days prior to expiration of the insurance furnish to City
9 certificates of insurance and endorsements evidencing renewal of the insurance. City
10 reserves the right to require complete certified copies of all policies of Consultant and
11 Consultant's subconsultants and contractors, at any time. Consultant shall make
12 available to City's Risk Manager or designee all books, records and other information
13 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 not
19 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 or
22 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 moneys 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 the
6 prior approval of the City Manager or designee or substitute a subconsultant or contractor
7 without the prior approval to the substitution. Nothing stated in this Section shall prevent
8 Consultant from employing as many employees as Consultant deems necessary for
9 performance, of this Agreement.

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

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

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

1 available to any person or entity for use without the prior approval of City. This warranty
2 shall survive termination of this Agreement for five (5) years.

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

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

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

26 13. ADDITIONAL COSTS AND REDESIGN.

27 A. Any costs incurred by the City due to Consultant's failure to meet the
28 standards required by the Scope of Work or Consultant's failure to perform fully the tasks

described in the Scope of Work which, in either case, causes the City to request that Consultant perform again all or a part of the Scope of Work shall be at the sole cost of Consultant and City shall not pay any additional compensation to Consultant for its re-performance.

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

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

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

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

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

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

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

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

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

28 It is the policy of City to encourage' the participation of Disadvantaged,

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

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

18 22. COPYRIGHTS AND PATENT RIGHTS.

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

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

25 C. Consultant warrants that the Data does not violate or infringe any patent,
26 copyright, trade secret or other proprietary right of any other party. Consultant agrees to
27 and shall protect, defend, indemnify and hold City, its officials and employees harmless
28 from any and all claims, demands, damages, loss, liability, causes of action, costs or

1 expenses (including reasonable attorneys' fees) whether or not reduced to judgment,
2 arising from any breach or alleged breach of this warranty.

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

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

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

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

28 27. ADVERTISING. Consultant shall not use the name of City, its officials or

employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.

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

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

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.

NUVIS, a California corporation

By Robert R. Cardoza
President
Robert R. Cardoza
(Type or Print Name)

By Wesley A. Temple
Secretary
Wesley A. Temple, PASCA
(Type or Print Name)

"Consultant"

CITY OF LONG BEACH ASSISTANT

By Christine J. Shipley
City Manager

EXECUTED PURSUANT
"City" TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form on July 24, 2007.

ROBERT E. SHANNON, City Attorney

By Doug J. Anderson
Deputy

Exhibit 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.

Exhibit "B"

City representative coordinator:

Anna Mendiola
Park Development Officer
Parks, Recreation and Marine
2760 Studebaker Road
Long Beach, CA 90815
562/570-3165

Exhibit "C"

No materials to be provided to contractor.