

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated Aug 26, 2015 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and David Volz Design, Inc., a California corporation. City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City issued Request for Proposals No. 1039-15 on March 31, 2015, seeking proposals for the provision of landscape architecture and design services for Veteran's Parkway as described in the Supervisor Don Knabe 2013 Competitive Grant Program Proposal.

B. Contractor submitted a proposal dated July 2, 2015 ("Contractor's Proposal") in response to the RFP.

C. City desires to utilize the services of Contractor as an independent contractor to provide landscape architecture and design services to prepare plans and specifications for the improvements described in the Supervisor Don Knabe 2013 Competitive Grant Program Proposal.

D. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

E. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

#### 1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in Contractor's Proposal (the "Services"), attached as Exhibit A. City may request, in writing, changes in the Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be David Volz, President (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the Services on the Effective Date and shall perform all Services in conformance with the project timeline, attached hereto as Exhibit C.

D. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through December 31, 2016, unless sooner terminated as provided in Section 13 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Contractor's Services provided under this Agreement, City shall pay Contractor the total sum of Thirty-One Thousand Nine Hundred Twelve Dollars (\$ 31,912) (the "Maximum Compensation"), as set forth in the Approved Fee Schedule included in Exhibit A.

The City Manager shall have authority to increase the Maximum Compensation by up to twenty percent (20%); any further increase requires City Council approval.

B. Expenses. City shall only reimburse Contractor for those expenses expressly set forth in Exhibit A. In no event shall reimbursable expenses collectively exceed the total sum of Five Hundred Dollars (\$500).

C. Additional Services. City shall not allow any claims for additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in Exhibit A, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

**4. Method of Payment.**

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten (10) business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

**5. Independent Contractor.** Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

**6. Information and Documents.**

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor



agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

**7. Conflicts of Interest.** Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

## **8. Indemnification.**

A. Indemnity for Design Professional Services. To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, protect, indemnify, and hold harmless City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Contractor, its officers, agents, servants, employees,



subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph B. 2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnities, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate

to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

C. Workers' Compensation Acts not Limiting. Contractor's obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provisions in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in this Section 8 shall survive the expiration or termination of this Agreement.

## **9. Insurance.**

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A. 1) of this Section 9.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this Section 9 is canceled or reduced in coverage or limits, Contractor shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the



requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

## **10. Mutual Cooperation.**

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

**11. Records and Inspections.** Contractor shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of 3 years after receipt of final payment.

**12. Termination of Agreement.**

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least five (5) calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

**13. Force Majeure.** Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

**14. Default.**

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

B. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have ten (10) calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**15. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three

business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:  
Attn: Karen Domerchie  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5321  
Email:

If to Contractor:

David Volz Design  
David Volz

151 Kalamus Dr., M-8  
Costa Mesa, CA 92626

With a courtesy copy to:

Quinn M. Barrow, City Attorney  
1400 Highland Avenue  
Manhattan Beach, CA 90266  
Telephone: (213) 626-8484  
Email: qbarrow@citymb.info

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**17. Prohibition of Assignment and Delegation.** Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**18. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.



**19. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**20. Final Payment Acceptance Constitutes Release.** The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, sub-consultants and agents.

**21. Corrections.** In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, the Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

**23. Exhibits.** Exhibits A, B and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive

statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

**25. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

**26. Word Usage.** Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

**27. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

**28. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

**29. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded actual attorneys' fees together with any costs and expenses in addition to all other relief to which that Party may be entitled.

**30. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**31. Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

**32. Corporate Authority.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of the

Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

[SIGNATURE PAGE FOLLOWS]

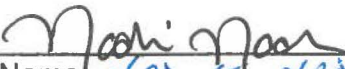
*[Faint handwritten signatures and text in blue ink, including what appears to be a name and a date]*



The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,  
a California municipal corporation

By:   
Name: NADINE NADER  
Title: ASSISTANT CITY MGR

ATTEST:

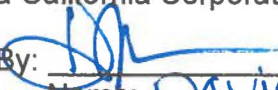
By:  8-26-15  
Name: Liza Tamura  
Title: City Clerk


APPROVED AS TO FORM:

By:   
Name: Quinn M. Barrow  
Title: City Attorney

Contractor:

David Volz Design, Inc.,  
a California Corporation

By:   
Name: David J. Volz  
Title: President

By:   
Name: David J. Volz  
Title: Secretary.

**EXHIBIT A  
SCOPE OF SERVICES**





June 25, 2015  
REVISED July 2, 2015

Karen Domerchi  
Senior Management Analyst  
Department of Public Works  
City of Manhattan Beach  
3621 Bell Avenue  
Manhattan Beach, CA 90266

[www.dvoldesign.com](http://www.dvoldesign.com)

**Home Office**  
151 Kalmus Drive, Suite M8  
Costa Mesa, CA 92626  
phone 714.641.1300  
fax 714.641.1323

**Coachella Valley Office**  
78060 Calle Estado  
La Quinta, CA 92253  
phone 760.580.5165  
fax 760.564.0369

**RE: Proposal to Provide Landscape Architectural Design Services For Access and Landscape Improvements to the Manhattan Beach Veterans Parkway**

Dear Ms. Domerchi,

David Volz Design proposes to provide landscape architectural plans for implementation of the project described in the Supervisor Don Knabe 2013 Competitive Grant Program Proposal. The identified project costs of \$297,825 are to be allocated to the construction of two phases of improvements. The David Volz Design team proposes the following scope of services to prepare plans and specifications for the public bidding of these improvements.

### **Phase I - Trail Improvements throughout Veterans Parkway**

#### **A. Access Improvements**

The landscape architects at DVD will work with city staff to identify up to six access points that are in need of improvement. We will be guided by the Veterans Parkway Master Plan Guidelines (VPMG) of June 2013 and identify improvements that are able to be accomplished within the grant budget amount.

- a. Identification of specific work sites for the access improvements.
- b. Construction Documents, layout, construction plan details for stairs, walks, hardscape, landscape and signs.
- c. Construction cost budget estimates
- d. Technical specifications

#### **B. Landscape Features**

DVD will work with city staff to identify up to ten sites along the parkway where boulders, safety walls, landscape features and seating areas can be implemented. The



VMPG will aid in the identification of improvement areas. The line item grant budget will dictate the extent of the design work.

- a. Identification of specific work sites for improvement
- b. Construction documents, layout and construction plan details for boulders, walks, landscape and seating
- c. Construction cost budget estimates
- d. Technical specifications

**C. Shade Tree Installation**

Relying heavily on the VPMG, DVD will work with city staff to identify tree types and general locations for tree installation along the length of the parkway. The grant item budget will dictate the extent of the planting operations. Exact location and placement of the trees will be laid out in the field during construction.

- a. Identification of species and general areas of new tree plantings
- b. Construction documents for quantities and size
- c. Construction cost budget estimates
- d. Technical Specifications

**Phase II - Access and Trail Improvements to Manhattan Beach Gateway**

**A. Trail Design Improvements**

Designs to enhance safety and better trail access will be put forward by the DVD team. This work could include trail extensions, minor re-routing, and general improvements to the paving and trail edge within the proposed grant budget.

- a. Identification of specific work sites for improvement
- b. Construction documents, layout and construction plan details for boulders, walks, landscape and seating.
- c. Construction cost budget estimates
- d. Technical Specifications

**B. Gateway Enhancements**

The parkway layout at this intersection will require a bold and dramatic landscape scheme as it is the northern boundary of the civic center corridor. DVD foresees putting forward schematic plans with notable specimen plants, new hardscape improvement, planting and irrigation improvements as well as updated signage.

- a. Identification of landscape design elements for this intersection area improvement
- b. Construction documents for landscape and irrigation
- c. Construction cost budget estimates

**DVD**



d. Technical Specifications

Thank you for the opportunity to propose on this existing parkway improvement work. Should you have any questions please do not hesitate to call.

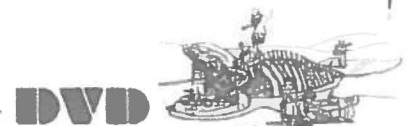
Very truly yours,

**DAVID VOLZ DESIGN**



David J. Volz, RLA #2375

LEED Accredited Profession QSD/P



# FEE SCHEDULE

**Veterans Parkway  
Access & Landscape Improvements**

City of Manhattan Beach

Revised July 2, 2015

David Volz Design proposes the following fee schedule to provide the services identified in this proposal. The tasks listed below are offered at a fixed fee for the design services for identified program elements.

**PHASE ONE: TRAIL IMPROVEMENTS**

- A. Access improvements
- B. Landscape features
- C. Shade tree installation

PR	LA	PP	CT	AD	Total	Fee
\$220	\$193	\$135	\$121	\$110	Hrs	
4	24	20	12	4	64	\$ 10,104
4	24	20	12	2	62	\$ 9,884
2	4	4	2	2	14	\$ 2,214
10	52	44	26	8	140	

**PHASE ONE: DESIGN DEVELOPMENT TOTAL \$ 22,202**

**PHASE TWO: ACCESS AND TRAIL IMPROVEMENTS AT MANHATTAN BEACH BLVD.**

- A. Trail design improvements
- B. Gateway enhancements

2	4	4	2	4	16	\$ 2,434
4	16	12	8	2	42	\$ 6,776
6	20	16	10	6	58	

**PHASE TWO: CONSTRUCTION DOCUMENT DEVELOPMENT TOTAL \$ 9,210**

**REIMBURSABLES**

Reimbursable expenses, printing, copying, postage, etc.  
where identified included in proposed fee.

**Estimate \$ 500**

**TOTAL PROPOSED DESIGN FEE \$ 31,912**

**ASSUMPTIONS:**

1. Design services during construction as needed time & materials to be determined
2. Survey and mapping if needed at Manhattan Beach Boulevard or elsewhere time & materials to be determined.
3. Engineering, geotech, electrical, storm water, or other specialized design service.
4. Base map development or surveying. DVD will work from city record drawings if available.
5. Sign design development, the project signs will be based upon sign guidelines provided by the city.
6. Community outreach or other agency reviews.



**EXHIBIT B**  
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**EXHIBIT C  
PROJECT TIMELINE**

Preparation of Schematic Design Documents:	August 2015 – September 2015
Preparation of Design Documents:	September 2015 – October 2015
Preparation of Construction Documents:	October 2015 – November 2015
Obtain Permits	December 2015
Bidding Phase for Construction:	January 2016
Construction Phase:	February 2016 – April 2016
Project Complete:	May 2016





**AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MANHATTAN BEACH  
AND DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS, INC.**

This First Amendment ("Amendment No. 1") to that certain agreement dated August 26, 2015 ("Agreement") by and between the City of Manhattan Beach, a California municipal corporation ("City") and David Volz Design Landscape Architects, Inc., a California corporation ("Consultant") (collectively, the "Parties") is hereby entered into as of this December 30, 2016 ("Effective Date").

**RECITALS**

- A. On August 26, 2015, the City and Consultant entered into an agreement for landscape architecture and design services for the Veterans Parkway Improvements project as described in the Supervisor Don Knabe 2013 Competitive Grant Program Proposal;
- B. The City requires additional services from Consultant and Consultant desires to provide the services; and
- C. The Parties now desire to amend the Agreement to allow Consultant to provide specified additional services to the City, and to allow the City to provide compensation for the services provided.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereby amend the Agreement as follows:

Section 1. Consultant shall perform the services described in the fee proposal from Consultant dated July 27, 2016, attached hereto as Exhibit A and incorporated herein by reference, to the full satisfaction of the City and pursuant to a timeline directed by the City Manager.

Section 2. The term of the Agreement is hereby extended through December 31, 2017, unless sooner terminated by the City as provided in Section 12 of the Agreement or extended.


Section 3. The "Maximum Compensation" of \$31,912 specified in Section 3.1 of the Agreement is hereby increased by \$6,200, for a new total of \$38,112. For the services provided pursuant to this Amendment No. 1, compensation shall be provided in accordance with the fee proposal attached hereto as Exhibit A.

Section 4. Except as specifically amended by this Amendment No. 1, all other provisions of the Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 1 on the day and year first shown above.

City:

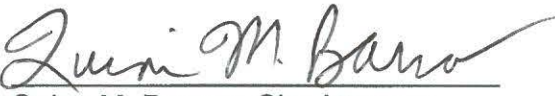
City of Manhattan Beach, a California municipal corporation

By:   
Name: Nadine Nader  
Title: Asst City Manager

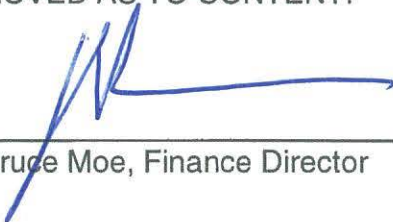
ATTEST:

By:  1-12-17  
Liza Tamura, City Clerk

APPROVED AS TO FORM:


By:   
Quinn M. Barrow, City Attorney

APPROVED AS TO CONTENT:

By:   
Bruce Moe, Finance Director

Consultant:

David Volz Design Landscape Architects, Inc., a California corporation

By:   
Name: David Volz  
Title: President

By:   
Name: David Volz  
Title: Secretary

**EXHIBIT A**  
**FEE PROPOSAL**

[Attach Additional Fee Request prepared by David Volz Design Landscape Architects, Inc. dated July 27, 2016.]

July 27, 2016

[www.dvolzdesign.com](http://www.dvolzdesign.com)

Karen J. Domerchie  
City of Manhattan Beach  
3621 Bell Avenue  
Manhattan Beach, CA 90266

**Home Office**  
151 Kalmus Drive, Suite M8  
Costa Mesa, CA 92626  
phone 714.641.1300  
fax 714.641.1323

**Coachella Valley Office**  
78060 Calle Estado  
La Quinta, CA 92253  
phone 760.580.5165  
fax 760.564.0369

RE: Veteran's Parkways - Additional services fee request - Memorial Trail -

Dear Ms. Domerchie:

Per your request, David Volz Design is proposing to provide additional meeting reviews and design services for this project. We understand that one or two meetings with an oversight committee are now needed to adjust the plans and to include new work areas. The work could include new boulder areas, more trees, and other work items not included in the current plan set.

Our team will prepare some plan modifications and new ideas to address the last committee and council concerns. We will be ready to show these changes with the committee at the meeting scheduled for two weeks from now. Following the meeting we will prepare new drawings and specifications, update the cost estimate, and resubmit a new bid package for review. We anticipate a final review meeting about three to four weeks after receiving new direction from the committee.

As the extent of the design services is not known at this time, DVD proposes a time and materials fee for the preparation work, committee meeting time and response, drawings and spec updates and review and revisions for final approval. We propose a fee budget of \$6,200 approximately 40 hours of professional time to complete these tasks.

Should you have any questions or comments about this proposed additional service amendment, please do not hesitate to call.

Very truly yours,

**DAVID VOLZ DESIGN**



David J. Volz, L.A. # 2375

LEED Accredited Professional, QSD/QSP





**AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MANHATTAN BEACH  
AND DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS, INC.**

This Amendment ("Amendment") to that certain agreement by and between the City of Manhattan Beach, a California municipal corporation ("City") and David Volz Design Landscape Architects, Inc., a California corporation ("Consultant") (collectively, the "Parties") is hereby entered into as of this August 24 2017 ("Effective Date").

**RECITALS**

- A. On August 26, 2015, the City and Consultant entered into an agreement for landscape architecture and design services for the Veterans Parkway Improvements project as described in the Supervisor Don Knabe 2013 Competitive Grant Program Proposal ("Original Agreement");
- B. On or about December 30, 2016, the Parties entered into Amendment No. 1 to the Original Agreement. The Original Agreement, as amended by Amendment No. 1 is referred to herein as the Agreement.
- C. On July 31, 2017, in response to a request from City for additional design services, Consultant submitted a proposal for an amendment in the amount of \$11,850.
- D. The Parties now desire to amend the Agreement to allow Consultant to provide additional specified services to the City, and to allow the City to provide compensation for the services provided.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereby amend the Agreement as follows:

Section 1. Consultant shall perform the services described in the fee proposal from Consultant dated July 31, 2017, attached hereto as Exhibit A and incorporated herein by reference, to the full satisfaction of City and pursuant to a timeline directed by the City Manager.

Section 2. The term of the Agreement is hereby extended to December 31, 2018, unless earlier terminated as provided in Section 12 of the Agreement.

Section 3. The "Maximum Compensation" of \$38,112 specified in Section 3 of the Agreement is hereby increased by \$11,850, for a new total of \$49,962. For the services provided pursuant to this Amendment No. 2, compensation shall be provided in accordance with the fee proposal attached hereto as Exhibit A.

Section 4. Except as specifically amended by this Amendment No. 2, all

other provisions of the Agreement shall remain in full force and effect.


IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 2 on the day and year first shown above.

City:

City of Manhattan Beach, a California municipal corporation

By:   
Name: Mark Danaj  
Title: City Manager

ATTEST:

By:  9-18-17  
Liza Tamura, City Clerk

APPROVED AS TO FORM:


By:   
Quinn M. Barrow, City Attorney


APPROVED AS TO CONTENT:

By:   
Bruce Moe, Finance Director

Consultant:

David Volz Design Landscape Architects, Inc., a California corporation

By:   
Name: David Volz  
Title: President

By:   
Name: David Volz  
Title: Secretary

**EXHIBIT A**  
**FEE PROPOSAL**

[Attach Additional Fee Request prepared by David Volz Design Landscape Architects, Inc. dated July 31, 2017.]

July 31, 2017

[www.dvolzdesign.com](http://www.dvolzdesign.com)

Prem Kumar  
City Engineer  
City of Manhattan Beach  
3621 Bell Avenue  
Manhattan Beach, CA 90266

**Home Office**  
151 Kalmus Drive, Suite. MB  
Costa Mesa, CA 92626  
**phone** 714.641.1300  
**fax** 714.641.1323

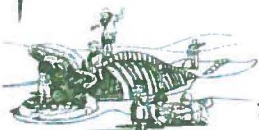
**Coachella Valley Office**  
78060 Calle Estado  
La Quinta, CA 92253  
**phone** 760.580.5165  
**fax** 760.564.0369

**RE: Veterans Parkway - Additional services to revise plans**

Dear Mr. Kumar,

The City council has directed that changes and revisions be made to the project construction documents. The revisions include reduction in some plan elements, protection of some plants that were to be removed and a strict maximum budget for the project construction. The following redesign services will be undertaken to make the required changes.

- T1- Title Sheet will be updated
- LC-1
  - a) Boulder area to be reduced in size and the number of boulders to be placed will be reduced (only 3 to 4 in each areas)
  - b) Curb ramps and walkway spurs (2) will be bid as additive, alter notes
- LC-2
  - a) Boulder areas will be reduced
- LC-3
  - b) Junipers and mature trees at maintenance parking area to remain
  - c) Improvements at Ardmore Avenue and 15<sup>th</sup> Street will be removed from plans
  - d) Boulder areas will be reduced
- LC-4
  - a) Manhattan Beach Boulevard plantings will remain
  - b) Boulder areas will be reduced
- LC-5
  - a) Duncan Avenue trail and planters will be an additive alternate bid item
  - b) The City monument sign planter will be an additive alternate bid item
  - c) Boulder areas will be reduced
- LD-1
  - a) Modify construction details



LD-2

a) Modify construction details

LI-1

a) Update irrigation plans to comply with new layout

LI-2

a) Update irrigation plans to comply with new layout

LI-3

a) Update irrigation plans to comply with new layout

LI-4

a) Update irrigation plans to comply with new layout

Technical specifications will be required for bidding and construction. The specifications must be direct for the contractor to meet the grant's youth participation requirement. Revisions to the plans will require updated construction budget estimates and revised bid schedule with additive alternates.

The project cost must be below the grant amount of \$297,000 which must also include construction period services and inspection costs.

These revisions will require an additional fee of \$11,850 and approximately 6 weeks to complete. These services will begin upon your notice to proceed. Should you have any questions or comments about these proposed additional services, please do not hesitate to call.

Very truly yours,

**DAVID VOLZ DESIGN**



David J. Volz, L.A. # 2375

LEED Accredited Professional, QSD/QSP

**DVD**

