

CITY COUNCIL AGENDA ITEM NO. 6

Meeting Date: March 11, 2008

Subject/Title: Adopt a Resolution approving and authorizing the City Manager or designee to execute a Professional Services Agreement with LPA, Inc. for the preparation of design and construction documents for City Park, CIP Project No. 352-52406, in an amount not to exceed \$204,000, plus a 10% contingency of \$20,400, for a total of \$224,400.

Prepared by: Gail Leech, Management Analyst

Submitted by: Craig Bronzan, Director of Parks and Recreation/Karen Chew, Assistant City Manager

RECOMMENDATION

Adopt a Resolution approving and authorizing the City Manager or designee to execute a Professional Services Agreement with LPA, Inc. for the preparation of design and construction documents for City Park, CIP Project No. 352-52406, in an amount not to exceed \$204,000, plus a 10% contingency of \$20,400, for a total of \$224,400.

PREVIOUS ACTION

In April 2006, Abey Arnold was asked to submit a proposal to participate in design work and community workshop efforts associated with the Downtown Brentwood 2010, inclusive of the redesign of City Park.

On June 12, 2007, by Resolution 2007-126, City Council adopted the Negative Declaration and the 2007/08 – 2011/12 Capital Improvement Program.

On August 14, 2007, by Resolution 2007-190, City Council adopted the Civic Center Master Site Plan which includes City Park.

On August 28, 2007, by Resolution 2007-195, City Council approved a Professional Services Agreement with Abey Arnold Associates for the preparation of design and construction documents for City Park.

BACKGROUND

With City Council authorization on October 23, 2001, staff entered into an agreement with Abey Arnold Associates to hold two community meetings and gather community and user input on the types of improvements/renovations that were needed at City Park. A conceptual master plan and estimates of probable costs were developed based on that initial community input. A conceptual master plan was developed and presented to the Park and Recreation Commission on April 25, 2002 and was accepted as the initial concept design.

After the Park and Recreation Commission approval, the overall project was put on hold to coordinate with the development of the Downtown Specific Plan and the Downtown Parking Study. As these studies were completed, the Downtown Brentwood 2010 design project began and Civic Center Master Site Plan Concept was underway. The City Park concept plan was still waiting for additional input as it relates to the overall Civic Center.

In July 2007, staff held two community workshops that were intended to solidify the "vision" for the future of the downtown, including the redesign and restoration of City Park. The design concepts and program elements that were defined at these workshops will be incorporated into the City Park redesign, which will occur immediately following the construction of the new Civic Center facilities. City Park will be redesigned utilizing the new space plan to the most functional, efficient and user-friendly degree.

In August 2007, Abey Arnold Associates was selected to prepare the design for City Park. After some initial designs were developed, it was determined that limits of work were difficult to differentiate between architect firms, due to the Civic Center Plaza and arcade spaces spilling into City Park. Therefore, it was determined that the design of the City Park design be transferred to the Civic Center architects, LPA, Inc., in order to ensure design continuity and consistency throughout the entire center.

FISCAL IMPACT

The contract with Abey Arnold Associates for landscape and design services for City Park has been terminated and the corresponding purchase order has been closed. The fiscal impact of this agreement is \$204,000, plus a 10% contingency of \$20,400, for a total amount of \$224,400. The funds for this work are included in the adopted 2007/08-2011/12 Capital Improvement Program, which includes the City Park, CIP Project No. 352-52406.

Attachments:

Resolution

LPA, Inc. Professional Services Agreement

Exhibit A – Scope of Services

RESOLUTION NO.

A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH LPA, INC. FOR THE PREPARATION OF DESIGN AND CONSTRUCTION DOCUMENTS FOR CITY PARK, CIP PROJECT NO. 352-52406, IN AN AMOUNT NOT TO EXCEED \$204,000, PLUS A 10% CONTINGENCY OF \$20,400, FOR A TOTAL AMOUNT OF \$224,400.

WHEREAS, in April 2006, Abey Arnold was asked to submit a proposal to participate in design work and community workshop efforts associated with the City Park Master Plan; and

WHEREAS, on June 12, 2007, by Resolution 2007-126, City Council adopted the Negative Declaration and the 2007/08 – 2011/12 Capital Improvement Program; and

WHEREAS, on August 14, 2007, by Resolution 2007-190, City Council adopted the Civic Center Master Site Plan which includes City Park; and

WHEREAS, on August 28, 2007, by Resolution 2007-195, City Council approved a Professional Services Agreement with Abey Arnold Associates for the preparation of design and construction documents for City Park; and

WHEREAS, through staff planning sessions and community outreach meetings, the scope of the new City Hall project has been amended to accurately reflect the needs of the community to lay the foundation for the future Downtown Brentwood; and

WHEREAS, it was determined that limits of work were difficult to differentiate between architect firms, due to the Civic Center Plaza and arcade spaces spilling into City Park. Therefore, it was recommended that the design of the City Park be transferred to the Civic Center architects, LPA, Inc., in order to ensure design continuity and consistency throughout the entire center.

WHEREAS, the City Park project is included in the 2007/08 – 2011/12 CIP Budget; and

WHEREAS, staff is seeking City Council approval for a Professional Services Agreement with LPA, Inc. for \$204,000, plus a 10% contingency of \$20,400, for a total amount of \$224,400, for the preparation of design and construction documents for City Park, CIP Project No. 352-52406.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Brentwood hereby authorizes the City Manager or designee to execute a Professional Services Agreement with LPA, Inc. for the preparation of design and construction documents for City Park, CIP Project No. 352-52406, in an amount not to exceed \$204,000, plus a 10% contingency of \$20,400, for a total of \$224,400.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Brentwood at a regular meeting held on the 11th day of March 2008 by the following vote:

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
LPA, INC.**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2008, by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and LPA, Inc., a California professional corporation ("Consultant") (each a "Party" and collectively, the "Parties").

RECITALS

A. City requires the professional landscape design services of a consultant that is experienced in professional design services.

B. Consultant has the necessary professional skills and experience necessary to perform the services described in this Agreement.

C. City desires to engage Consultant to provide these services by reason of its qualifications and experience in performing such services

D. Consultant has submitted a proposal to City and has affirmed its willingness and ability to perform such work on the terms and manner set forth in this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work.

1.1 City retains Consultant to perform, and Consultant agrees to render, those services (the "Services") that are described in the attached Exhibit "A," which is incorporated by this reference, pursuant to this Agreement's terms and conditions.

1.2 Consultant will be responsible for the professional quality, technical accuracy and coordination of the Services. Consultant will, without additional compensation, correct or revise any errors or deficiencies in the Services.

1.3. Consultant will keep City informed on a regular basis that the Services are being performed in accordance with the requirement and intentions of this Agreement.

1.4 If applicable, Consultant has designated those persons listed in Exhibit "A" to provide the Services to the City. Consultant will not change or reassign those persons described in Exhibit "A" without prior written notice to City, and will not replace those individuals with individuals to whom City has a reasonable objection.

2. Standard of Performance. Consultant acknowledges that in entering into this Agreement the City is relying on Consultant's skills and experience to do and perform the Services in accordance with standards of professional practice. While performing the Services, Consultant will exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Northern California area. The acceptance of the Services by City does not release Consultant from these obligations.

Consultant will be responsible for employing or engaging all persons necessary to perform the Services. All of Consultant's staff will be qualified by training and experience to perform their assigned tasks. Consultant will give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and will keep the Services under its control. On demand of City, if any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement

or appears to be incompetent or to act in a disorderly or improper manner, he or she will be discharged immediately from the Services.

3. Term. Unless earlier terminated, the term of this Agreement will commence upon the date first above written and will expire upon completion of the Services by Consultant.

4. Schedule. Consultant will generally adhere to the schedule set forth in Exhibit "A" provided, that City will grant reasonable extensions of time for the performance of the Services occasioned by unusually lengthy governmental reviews of Consultant's work product or other unavoidable delays occasioned by unforeseen circumstances; provided, further, that such unavoidable delay will not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees.

Consultant acknowledges the importance to City of City's project schedule and agrees to put forth its best professional efforts to perform the Services in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound practices. Consultant will work such overtime or engage such personnel and equipment as necessary to maintain the schedule, without additional compensation.

5. Compensation.

5.1 The total fee payable for the Services to be performed during the term of this Agreement will be a not to exceed amount of Two Hundred and Four Hundred Thousand dollars (\$204,000) as may be further specified in the attached Exhibit "A." No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the Services.

5.2 Payment will occur only after receipt by City of invoices sufficiently detailed to include hours performed, hourly rates, and related activities and costs for approval by City.

5.3 Within thirty (30) days after receipt of any applicable progress payment request, City will verify the accuracy of the request, correct the charges where appropriate, and make payment to Consultant in an amount equal to the amount of such application, as verified or corrected by City. No payment made prior to completion and acceptance of the Services will constitute acceptance of any part of the Services. City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services, or other defaults hereunder.

6. Status of Consultant. Consultant will perform the Services in Consultant's own way and pursuant to this Agreement as an independent contractor and in pursuit of Consultant's independent calling, and not as an employee of City. The persons used by Consultant to provide the Services under this Agreement will not be considered employees of City for any purposes.

The payment made to Consultant pursuant to the Agreement will be the full and complete compensation to which Consultant is entitled. City will not make any federal or state tax withholdings on behalf of Consultant or its agents, employees or subcontractors. City will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Consultant or its employees or subcontractors. Consultant agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Consultant or any agent, employee, or contractor of Consultant for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Consultant.

7. Subcontracting. Consultant's services are unique and personal. Except as may be specified in Exhibit "A", Consultant will not subcontract any portion of the Services without prior written approval of City Manager or his/her designee. If Consultant subcontracts any of the Services, Consultant will be fully responsible to City for the acts, errors and omissions of Consultant's subcontractor and of the persons

either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Consultant and City. Consultant will be responsible for payment of subcontractors. Consultant will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

8. Other Consultants. The City reserves the right to employ other consultants in connection with the Services.

9. Indemnification. Consultant agrees to indemnify, City, its officers serving as City officials and employees from any and all claims, demands, costs or liability to the extent that they arise out of, or pertain to, or relate to the negligence, , or willful misconduct of Consultant and its agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the negligence, willful misconduct or defects in design by City or the agents, servants, or independent contractors who are directly responsible to City, or arising from the negligence of City or of other third parties for which the Consultant is not legally liable. The Consultant's obligation to indemnify for professional liability and/or errors or omissions in the performance of its services under this Agreement does not include the obligation to defend actions or proceedings brought against the City, but rather to reimburse the City for attorney fees and costs incurred by the City in defending such actions or proceedings brought against the City to the extent caused by the negligence or willful misconduct of the City or other third parties for which the Consultant is not legally liable.

10. Insurance. Consultant will obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Consultant or Consultant's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-VII."

10.1 Coverages and Limits. Consultant will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Consultant's indemnification obligations under this Agreement. City, its officers, and employees make no representation that the limits of the insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation and errors and omissions insurance. Consultant will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage, as Consultant deems adequate, at Consultant's sole expense.

10.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

10.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Consultant has no employees and provides, to City's satisfaction, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim.

10.2 Endorsements. For Commercial General Liability Insurance and Automobile Liability Insurance, Consultant will ensure that the policies are endorsed to name the City, its officers, , and employees as additional insureds. Prior to City's execution of this Agreement, Consultant will furnish certificates of insurance and endorsements to City.

10.3 Cancellation. Insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the notice provisions of this Agreement except for non-payment of premium for which notice shall be ten (10) days.

10.4 Failure to Maintain Coverage. If Consultant fails to maintain any of these insurance coverages, then City will have the option to declare Consultant in breach of this Agreement, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Consultant is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Consultant or deduct the amount paid from any sums due Consultant under this Agreement.

10.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

10.6 Primary Coverage. For any claims related to the Services and this Agreement, the Consultant's insurance coverage will be primary insurance with respect to City, its officers, and employees. Any insurance or self-insurance maintained by City for itself, its officers, and employees, will be in excess of Consultant's insurance and not contributory with it.

10.7 Reduction in Coverage/Material Changes. Consultant will notify City in writing pursuant to the notice provisions of this Agreement thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies.

10.8 Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.

11. Business License. Consultant will obtain and maintain a City of Brentwood Business License for the term of the Agreement, as it may be amended from time-to-time.

12. Maintenance of Records. Consultant will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Consultant will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

13. Ownership of Documents.

13.1 All product produced by Consultant or its agents, employees, and subcontractors pursuant to this Agreement (the "Work Product") is the property of City. In the event this Agreement is terminated, all Work Product produced by Consultant or its agents, employees and subcontractors pursuant to this Agreement will be delivered to City pursuant to the termination clause of this Agreement. Consultant will have the right to make one (1) copy of the Work Product for Consultant's records.

13.2 The Work Product may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable, without further employment of or payment of any compensation to Consultant; provided, however, that if this Agreement

is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another consultant to use, the Work Product, City agrees to hold Consultant harmless from any and all liability, costs, and expenses relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of Consultant, or anyone for whose acts it is responsible, in preparation of the Work Product. Consultant will not be responsible for deficiencies solely attributable to modifications of the Work Product performed by others, or that arise from use of the Documents in connection with a project or site other than that shown in the Work Product.

14. Copyrights. Consultant agrees that all copyrights that arise from the Services will be vested in City and Consultant relinquishes all claims to the copyrights in favor of City.

15. Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of the Services pursuant are confidential until released by the City to the public, and the Consultant will not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

16. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Brentwood
708 Third Street
Brentwood, CA 94513
Phone No. (925) 516-5118
Facsimile No. (925) 516-5407
Attn: Gail Leech

For Consultant:

Name: LPA, Inc.
Title: Principal
Address: 1548 Eureka Road, #101
Roseville, CA 95661
Phone No.: (916) 772-4300
Facsimile No.: (916) 772-4330
Attn: Kevin Sullivan

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

17. Conflicts of Interest.

17.1 City will evaluate Consultant's duties pursuant to this Agreement to determine whether disclosure under the Political Reform Act and City's Conflict of Interest Code is required of Consultant or any of Consultant's employees, agents, or subcontractors. Should it be determined that disclosure is required, Consultant or Consultant's affected employees, agents, or subcontractors will complete and file with the City Clerk those schedules specified by City and contained in the Statement of Economic Interests Form 700.

17.2 Consultant understands that its professional responsibility is solely to City. Consultant warrants that it presently has no interest, present or contemplated, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Consultant further warrants that neither Consultant, nor Consultant's agents, employees, subcontractors and consultants have any ancillary real property, business interests or income that will be affected by this Agreement or, alternatively, that Consultant will file with the City an affidavit disclosing this interest. Consultant will not knowingly, and will take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If after employment of a person, Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant will promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

18. General Compliance with Laws. Consultant will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of the Services by Consultant. Consultant will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the Services with all applicable laws, ordinances and regulations.

19. Discrimination and Harassment Prohibited. Consultant will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

20. Termination. In the event of the Consultant's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Consultant in writing pursuant to the notice provisions of this Agreement. Consultant has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Consultant has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement. In the event City elects to terminate, City will have the right to immediate possession of all Work Product and work in progress prepared by Consultant, whether located at the project site, at Consultant's place of business, or at the offices of a subconsultant.

Either Party, upon tendering thirty (30) calendar days written notice to the other Party, may terminate this Agreement for convenience. In this event and upon request of City, Consultant will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Consultant will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

21. Covenants Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. Claims And Lawsuits. By signing this Agreement, Consultant agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Consultant acknowledges that if a false claim is submitted to City by Consultant, it may be considered fraud and Consultant may be subject to criminal prosecution. Consultant acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act, applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Consultant acknowledges that the filing of a false claim may subject Consultant to an administrative debarment proceeding as the result of which Consultant may be prevented to act as a Consultant on any public work or improvement for a period of up to five (5) years. Consultant acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

23. Dispute Resolution. Should any dispute arise out of this Agreement, either Party may request that it be submitted to mediation. The Parties will meet in mediation within thirty (30) days of a request. The cost of mediation will be borne equally by the Parties. Neither Party will be deemed the prevailing party. No Party will be permitted to file a legal action without first requesting mediation and making a

good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator will last until agreement is reached by the Parties but not more than sixty (60) days, unless the maximum time is extended by the parties.

24. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This agreement will be governed by the laws of the State of California.

25. Testimony. Consultant will testify at City's request if litigation is brought against City in connection with Consultant's services under this agreement. Unless the action is brought by Consultant, or is based upon Consultant's actual or alleged negligence or other wrongdoing, City, upon prior written agreement with Consultant will compensate Consultant for time spent in preparation for testimony, testimony, and travel at Consultant's standard hourly rates at the time of actual testimony.

26. Successors and Assigns. It is mutually understood and agreed that this Agreement will be binding upon the Parties and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Consultant without the prior written consent of City, which will not be unreasonably withheld.

27. Section Headings. Section headings as used in this Agreement are for convenience only and will not be deemed to be a part of such sections and will not be construed to change the meaning of the section.

28. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

29. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. The City Manager is authorized, in consultation with the City Attorney, to agree to non-material amendments to this Agreement. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

30. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Agreement.

31. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

CONSULTANT:

CITY:

* By: _____

By: _____

Printed Name: Robert O. Kupper, AIA

Donna Landeros, City Manager

Title: Executive Vice President

ATTEST:

** By: _____

By: _____

Printed Name: James A. Kelly, AIA

Margaret Wimberly, City Clerk

Title: Secretary

APPROVED AS TO FORM:

LPA Project No. 26115.80

By: _____

Damien Brower, City Attorney

If required by City, proper notarial acknowledgment of execution by Consultant must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, or
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO or Assistant Treasurer

Otherwise, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

EXHIBIT "A"
SCOPE OF SERVICES

See attached scope of services.

SCOPE OF SERVICES

1- PRELIMINARY SITE EVALUATION AND DOCUMENTATION

1.01 Site Survey

- .01 City to provide LPA with a site survey at 20 scale with one-foot contours, tree locations with spot elevations, existing site features, easements, setbacks and site constraints.
- .02 Collect existing studies including Tree Survey prepared by arborist, streets, drainage, traffic signals street lighting etc.

1.02 Geotechnical Study

- .01 City to provide geotechnical report / information collected to date.

1.03 LPA Site Evaluation services including:

- .01 Review City of Brentwood Final Program Environmental Impact Report and identify constraints and recommendations.
- .02 Conduct a site walk to observe and document site features and attributes photographically. Identify special issues related to removal of existing structures and relocation of existing utilities.
- .03 Identify and document site attributes such as views, traffic circulation, sun angles, prevailing breezes, etc. and overlay onto site plan.
- .04 Identify and document current understanding of adjacent land uses including existing off-site improvement issues.

2 - MASTER PLAN DEVELOPMENT / COMMUNITY CONSENSUS BUILDING PROCESS

- 2.01** Develop a Conceptual Master Plan Vision for the park site and present that vision to City Staff along with a plan for community consensus building workshop(s) tailored to the specific needs of this community and this project.
- 2.02** Conduct Workshop(s). Present Master Plan Vision and support documents in a community consensus building forum to solicit input and ideas.
- 2.03** Develop final documentation of workshop results in the form of a PowerPoint Presentation including reproducible copies of the following:

- .01 Methodology
- .02 Goals of the Process
- .03 Site Evaluation Documents
- .04 Preliminary Site Layouts with dimensions, preliminary grading and drainage concepts.
- .05 Preliminary Landscape, Hardscape, and Parking Concept Plans.
- .06 Photographs
- .07 Preliminary Park Features Elevations

2.04 Present results of the Community Workshop Process to the City Boards and City Council.

2.05 It is the intent of this proposal that a total on four (4) public meetings are included. This includes one workshop, and three meetings with City Boards, Arts Committee and City Council. The fee proposal identifies costs for additional workshops and agency presentations.

3 – SCHEMATIC DESIGN

In the Schematic Design Phase, LPA shall provide those services designated necessary to prepare Schematic Design Documents for the park consisting of drawings and other documents illustrating the general scope, scale and relationship of Project components for approval by the City.

3.01 Schematic Design/Documentation responding to program requirements and consisting of preparation of:

- .01 Schematic park site plan.
- .02 Schematic park structure floor plans.
- .03 Preliminary sections and elevations of the park structures and park site.
- .04 Preliminary selection of systems and materials.

3.02 Landscape Design/ Documentation services consisting of consideration of alternate materials, systems and equipment and development of conceptual design solutions for landforms, lawns and plantings based on program requirements, and the Master Plan including circulation, picnic areas, children's play area(s) shade structures, night-time security lighting, fencing/walls, site furnishings, and courtyards.

3.03 Structural Design/Documentation services consisting of recommendations regarding basic structural materials and systems.

3.04 Electrical Design/Documentation services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and



development of conceptual design solutions for the park site and any structures.

- 3.05 Sustainable Design and Audit including a list of various sustainable features and a brief description of the potential cost and benefits of each feature for the City's consideration.
- 3.06 Project Development Scheduling services consisting of revising the most current schedule for decision making, design, documentation, contracting and construction.
- 3.07 Project Budgeting services relating to development of a Schematic Design Phase Statement of Probable Construction Cost based on programming and schematic studies.
- 3.08 Presentation services consisting of presentations of Schematic Design for review and approval of the following:
 - .01 City Staff
 - .02 City Council
- 3.09 Schematic Design Deliverables
 - .01 Schematic Park Site plan with vehicle parking, landscape areas, site structures and park amenities.
 - .02 Park structure schematic floor plans
 - .03 Park structure schematic exterior elevations.
 - .04 Site schematic conceptual sections
 - .05 Cost Estimate.
 - .06 Final Schematic Design Documents required for approval, including CUP.

4 –DESIGN DEVELOPMENT SERVICES

LPA, Inc. shall provide those services necessary to prepare from the approved Schematic Design Documents, for approval by the City, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project, including landscape architectural, structural, and electrical systems, materials and such other elements as may be appropriate. Consideration shall be given to availability of materials, equipment and labor, construction and operations, maintenance requirements, and energy conservation / sustainable design.

- 4.01 Landscape Architectural Design/Documentation services consisting of continued development and expansion of Schematic Design Documents to establish the final scope, relationships, forms,

materials and finishes and appearance of the Project through:

- .01 Plans, sections and elevations.
- .02 Typical construction details.
- .03 Final materials selections.
- 4.02 Architectural Design/Documentation services consisting of continued development and expansion of Schematic Design Documents to establish the final scope, relationships, forms, materials and finishes and appearance of any structures within the park:
 - .01 Floorplans, sections and elevations.
 - .02 Typical construction details.
 - .03 Final materials selections.
- 4.03 Structural Design/Documentation services consisting of development of the specific basic structural system(s) and documents in sufficient details to establish:
 - .01 Final structural design criteria.
 - .02 Foundation structural design criteria
 - .03 Preliminary sizing of major structural components.
 - .04 Critical coordination clearances.
 - .05 Outline Specifications of materials lists.
- 4.04 Electrical Design/Documentation services consisting of development of Electrical Design Documents and development of Outline Specifications or materials lists to establish:
 - .01 Criteria for park lighting, and electrical systems.
 - .02 Approximate sizes and capacities of major components.
 - .03 Preliminary equipment layouts.
 - .04 Required space for equipment.
- 4.05 Irrigation Design/Documentation services consisting of development of irrigation design documents and development of Outline Specifications or equipment materials lists to establish the final scope and preliminary details.
- 4.06 Materials Research/Specifications services during the Design Development Phase consisting of activities by in-house architectural personnel in:
 - .01 Review of the City's General and Supplementary Conditions of the Contract for Construction.
 - .02 Development of architectural outline technical specifications or Itemized lists and



- brief form identification of significant architectural materials, systems and equipment and their criteria and quality standards.
- .03 Coordination of similar activities of other disciplines.
- .04 Production of design manual including design criteria and Outline Specifications or materials lists.
- 4.07 Project Development Scheduling services consisting of reviewing and updating previously established schedules of the Project.
- 4.08 Statement of Probable Construction Costs services consisting of updating and refining the Schematic Design Phase Statement of Probable Construction Cost of the Project.
- 4.09 Presentation services consisting of presentation of Design Development Drawings and other documents by LPA to the following:
 - .01 City Staff.
- 4.10 Design Development deliverables:
 - .01 Preliminary Construction Documents.
 - .02 Outline Specifications.
 - .03 Cost estimate.

5- CONSTRUCTION DOCUMENTS SERVICES

LPA, Inc. shall provide those services designated necessary to prepare, from the approved Design Development Documents, for approval by the City, Construction Documents consisting of Drawings, Specifications and other documents setting forth in detail the requirements for construction of the Project and bidding and contracting for the construction of the Project. The following descriptions shall apply to those services:

- 5.01 Landscape Architectural Design/Documentation services consisting of preparation of Drawings and Specifications based on approved Design Development Documents setting forth in detail the landscape architectural construction requirements for the Project.
- 5.02 Architectural Design/Documentation services consisting of preparation of drawings based on approved Design Development Documents setting forth in detail the architectural construction requirements for the Project.
- 5.03 Structural Design/Documentation services consisting of preparation of final structural

- engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the structural construction requirements for the Project.
- 5.04 Electrical Design/Documentation services consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the electrical construction requirements for the Project.
- 5.05 Irrigation Design/Documentation services consisting of preparation of Drawings and Specifications based on approved Design Development Documents, setting forth in detail irrigation construction requirements for the Project, including coordination of water lines with the civil engineer.
- 5.06 Materials Research/Specifications services consisting of:
 - .01 Development and preparation of architectural technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - .02 Coordination of the development of Specifications by other disciplines.
 - .03 Compilation of Project Manual including Conditions of the Contract, Bidding Documents and Specifications.
- 5.07 Statement of Probable Construction Cost services consisting of updating of the Design Development Phase Statement of Probable Construction Cost when the Construction Documents are approximately 90% complete. A discussion of economic conditions prevalent at that time affecting the potential cost of construction will be conducted to help identify any adjustments to the Construction Documents in preparation of Bidding.
- 5.08 Presentation services consisting of presentations and submittals of Construction Documents by LPA to the following:
 - .01 City Staff.
 - .02 City Council.
- 5.09 Construction Documents Deliverables:
 - .01 Plans and specifications at 50% Construction Document completion.

- .02 Plans and specifications at 95% complete for city plan review
- .03 Bid sets of Construction Documents and project manual at 100% complete
- .04 Final cost estimate.

6 - BIDDING SERVICES

In the Bidding Phase, following the City's approval of the Construction Documents and the most recent Statement of Probable Construction Cost, LPA, Inc. shall provide those services designated necessary for LPA to assist the City in obtaining bid proposals for construction.

- 6.01 Addenda services consisting of preparation and distribution of Addenda as may be required during bidding, including supplementary Drawings, Specifications, instructions and notice(s) of changes in the bidding schedule and procedure.
- 6.02 Bidding services consisting of:
 - .01 Assistance to the City in establishing list of Bidders or proposers.
 - .02 Participation in pre-bid conference(s).
 - .03 Responses to questions from Bidders or proposers and clarifications or interpretations of the Bidding Documents.
 - .04 Attendance at bid opening.
 - .05 Review of bid proposals and schedule of values.
 - .06 Attendance at pre-construction meeting.
- 6.03 Bidding Deliverables:
 - .01 Addenda as required.
 - .02 Revised documents as required; reproducible set of revised sheets for City use for construction sets reproduction.

7 - CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

In the Construction Contract Administration Phase, LPA, Inc. shall provide those services designated necessary for the administration of the construction contract as set forth in the General Conditions of the Contract for Construction.

- 7.01 Construction Administration services consisting of:
 - .01 Processing of submittals, including receipt, review of, and appropriate action on shop drawings, product data, samples and other submittals required by the Contract Documents.
 - .02 Distribution of submittals to the City and Contractor.
 - .03 Maintenance of master file of submittals.
 - .04 Related communications.
- 7.02 Construction Field Observation services consisting of visits to the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents, and preparing related reports and communications. We anticipate that site visits will be performed on a twice-monthly basis (2 per month) for the duration of the construction of the park (assume 9 months = 18 visits).
- 7.03 Supplemental Documents services consisting of:
 - .01 Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Contractor(s) or the City and as required by construction agencies.
- 7.04 Quotation Request/Change Order services consisting of:
 - .01 Preparation of Drawings and Specifications to describe Work to be added, deleted or modified.
 - .02 Review of proposals from Contractor for reasonableness of quantities and costs of labor and materials.
 - .03 Review and recommendations relative to changes in time for Substantial Completion.
 - .04 Coordination of communications, approvals, notifications and record keeping relative to changes in the Work.

- 7.05 Construction Cost Accounting services consisting of evaluation of Applications for general compliance with observed completion of the work. Payment and certification thereof.
- 7.06 Project Closeout services initiated upon notice from the Contractor that the Work, or a designated portion thereof which is acceptable to the City, is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended.
- .01 A detailed review with the City's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Contractor(s) of items to be completed or corrected.
 - .02 Determination of the amounts to be withheld until final completion.
 - .03 Issuance of Certificate(s) of Substantial Completion.
 - .04 Review upon notice by the Contractor that the Work is ready for final review and acceptance.
 - .05 Notification to the City and Contractor of deficiencies found in the follow-up review, if any.
 - .06 Final review with the City's representative to verify final completion of the Work.
 - .07 Receipt and transmittal of Contractor provided warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying the City against liens.
 - .08 Review of final Certificate(s) for Payment.
- 7.07 Record Drawing services consisting of:
- .01 Making arrangements for obtaining from the contractor(s) and other parties final as-built plans containing information certified by them on all changes made during construction from the initial Contract Documents and on the location of concealed systems as installed during construction.
 - .02 Transmittal of documents to the City.



ASSUMPTIONS

1. **SCOPE:** This proposal assumes a scope of services for a 2.3 acre park and a construction cost of approximately \$1,400,000. It is assumed that the project will be programmed and designed within these general parameters. If it is determined after programming and schematic design that the scope and cost will exceed these parameters, additional services may be required.
2. **APPROVAL:** The City's verbal request to commence each task constitutes approval of prior work. Changes in subsequent work will be considered additional services, documented and billed on an hourly basis.
3. **CONSULTANTS:** The work of the architect, structural engineer, electrical engineer, irrigation consultant and the aquatic consultant are included as part of this contract. Any other necessary consultants are in addition to the contract and will be billed at a factor of 1.25.
4. **SOIL SUITABILITY & FERTILITY TEST:** The owner shall provide an agronomic soils test and analysis (if required) with recommendations for soil amendment by a soils testing laboratory prior to the commencement of the Design Development Phase.
5. **TRAFFIC ENGINEERING STUDIES** is not a part of this proposal.
6. **GEOTECHNICAL INVESTIGATION** is not a part of this proposal
7. **EXISTING TOPOGRAPHIC, BOUNDARY AND UTILITY SURVEYS** are not a part of this proposal.
8. **OFF-SITE DESIGN WORK** is not a part of this proposal.
9. **UTILITY COMPLIANCE:** Design of utilities to site including relocation of existing utilities is assumed to be by utility providers and is not a part of this proposal.
10. **ADDITIONAL SERVICES:** Tasks not included in the scope of services, but requested by the City shall be identified as such and billed at an hourly rate, unless a detailed scope of services proposal is requested. LPA's standard hourly rates are attached in this proposal.
11. **PROJECT PHASES:** This proposal is based on the assumption that the project shall be installed in one phase. Additional phasing of the project shall require changes to the Construction Documentation, Bid Negotiation and Construction Administration phases of work. Additional work due to phasing of the project shall be considered as additional services.
12. **MAPPING:** Mapping will be based on available local agency vertical datum and assumed horizontal datum, unless specifically requested otherwise.
13. **WATER RETENTION:** No on-site water retention is anticipated.
14. **SPECIFICATIONS:** The Client shall provide the standard General Conditions, Special Conditions, and Bidding Instructions.
15. **FEES:** The City shall pay all government fees, permits, assessments, etc.



BASIC HOURLY RATE SCHEDULE

Principal	\$195.00
Senior Project Director	\$175.00
Project Director	\$155.00
Senior Project Manager	\$145.00
Managing Professional	\$135.00
Senior Professional	\$120.00
Professional	\$110.00
Professional Staff	\$100.00
Intermediate Staff	\$ 90.00
Staff	\$ 80.00
Support Specialist	\$ 70.00
Clerical Staff	\$ 65.00
Intern	\$ 55.00

NOTE: These rates became effective January 1, 2008 and are subject to change annually.

REIMBURSABLES: Reimbursable expenses are in addition to compensation and typically run approximately 10% of a total project fee. They include costs for renderings, reproduction, plotting, express mailing, delivery charges, and mileage for LPA and its consultants. These expenses are invoiced at cost times 1.10 the invoice amount.

FEE SCHEDULE

LPA is pleased to present this fee proposal for Design Services for the city park in the City of Brentwood.

LPA's proposal is based on providing a level of service we believe will result in a new park that addresses the needs of the community using an inclusive, community based process to deliver a responsive design that is embraced and valued by the community.

We have provided our fee broken down into two categories.

- a. Basic Architectural / Engineering Services--includes Landscape Architecture, Architecture, Structural, and Electrical Engineering Services for the described scope of work.
- b. Community Consensus Building Workshop(s)-as described in the Scope of Services.

PROPOSED COMPENSATION

LPA proposes the following fee structure for Tasks 1 and 3 through 7:

1. Preliminary Site Evaluation and Documentation	\$3,360
3. Schematic Design Services	\$21,840
4. Design Development Services	\$33,600
5. Construction Document Services	\$75,600
6. Bidding	\$8,400
7. Construction Administration Services	\$25,200
TOTAL	\$168,000

Suggested Task:

2. Master Plan Development-including workshop preparation and attendance	\$13,000
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Reimbursable Expenses not to exceed \$18,000, billed per occurrence at actual cost multiplied by 1.10.

Workshop: Additional workshop preparation and attendance can be provided on an as-requested basis at \$5,000 per workshop.

Water Play Feature Design Documentation Services for design and mechanical drawings for an interactive water play feature can be provided as an extra service in the range of \$28,000 to \$43,750, pending the final design features.