

AGREEMENT

29641

THIS AGREEMENT is made and entered, in duplicate, as of June 15, 2006 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on June 13, 2006 , by and between RBF CONSULTING, INC., a California corporation, with a place of business at 14725 Alton Parkway, Irvine, California 92618 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

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

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has ascertained that Consultant and its employees are qualified, licensed, if so required, and experienced in performing such specialized services; and

WHEREAS, City desires to have Consultant perform said specialized services, and Consultant is willing and able to do so on the terms herein;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly set forth in Exhibit "A", attached hereto and incorporated herein by this reference, in accordance with the standards of the profession, and City shall pay for said services in the manner described below, not to exceed \$1,500,000.00.

B. Consultant may select the time and place of performance hereunder provided, however, that access to City documents, records, and the like, if needed by Consultant, shall be available only during City's normal business hours and provided that milestones for performance, if any, are met.

C. Consultant has requested to receive regular payments. City shall pay

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

13 D. Consultant represents that Consultant has obtained all necessary
14 information on conditions and circumstances that may affect performance hereunder and
15 has conducted site visits, if necessary.

16 2. TERM. The term of this Agreement shall commence at midnight on July
17 1, 2006, and shall terminate at 11:59 p.m. on July 1, 2009, unless sooner terminated as
18 provided in this Agreement, or unless the services to be performed hereunder or the
19 Project is completed sooner. City shall have the option to extend the term of this
20 Agreement for two, separate consecutive periods of one (1) year each.

21 3. COORDINATION AND ORGANIZATION.

22 A. Consultant shall coordinate performance hereunder with City's
23 representative, if any, named in Exhibit "B", attached hereto and incorporated herein by
24 this reference. Consultant shall advise and inform City's representative of the work in
25 progress on the Project in sufficient detail so as to assist City's representative in making
26 presentations and in holding meetings for the exchange of information. City shall furnish
27 to Consultant information or materials, if any, described in Exhibit "C" attached hereto and
28 incorporated herein by this reference, and shall perform any other tasks described therein.

1 B. The parties acknowledge that a substantial inducement to City for entering
2 this Agreement was and is the reputation and skill of Consultant's key employee
3 Gary Miller. City shall have the right to approve any person proposed by Consultant to
4 replace that key employee.

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

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

22 (a) Commercial general liability insurance (equivalent in scope to ISO
23 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One
24 Million Dollars (\$1,000,000) per each occurrence and Two Million Dollars
25 (\$2,000,000) general aggregate. Such coverage shall include but not be
26 limited to broad form contractual liability, cross liability, independent
27 contractors liability, and products and completed operations liability. The
28 City, its officials, employees and agents shall be named as additional

1 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and
2 this insurance shall contain no special limitations on the scope of protection
3 given to the City, its officials, employees and agents.

4 (b) Workers' Compensation insurance as required by the Labor Code
5 of the State of California and employer's liability insurance in an amount not
6 less than One Million Dollars (\$1,000,000).

7 (c) Professional liability or errors and omissions insurance in an
8 amount not less than One Million Dollars (\$1,000,000) per claim.

9 (d) Commercial automobile liability insurance (equivalent in scope to
10 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount
11 not less than Five Hundred Thousand Dollars (\$500,000) combined single
12 limit per accident.

13 Any self-insurance program, self-insured retention, or deductible must be
14 separately approved in writing by City's Risk Manager or designee and shall protect City,
15 its officials, employees and agents in the same manner and to the same extent as they
16 would have been protected had the policy or policies not contained retention or deductible
17 provisions. Each insurance policy shall be endorsed to state that coverage shall not be
18 reduced, non-renewed, or canceled except after thirty (30) days prior written notice to City,
19 and shall be primary and not contributing to any other insurance or self-insurance
20 maintained by City. Consultant shall notify the City in writing within five (5) days after any
21 insurance required herein has been voided by the insurer or cancelled by the insured.

22 Consultant shall require that all contractors and subcontractors which
23 Consultant uses in the performance of services hereunder maintain insurance in
24 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
25 designee.

26 Prior to the start of performance, Consultant shall deliver to City certificates
27 of insurance and required endorsements for approval as to sufficiency and form. The
28 certificate and endorsements for each insurance policy shall contain the original signature

1 certificate and endorsements for each insurance policy shall contain the original signature
2 of a person authorized by that insurer to bind coverage on its behalf. In addition,
3 Consultant, shall, within thirty (30) days prior to expiration of the insurance required herein,
4 furnish to City certificates of insurance and endorsements evidencing renewal of such
5 insurance. City reserves the right to require complete certified copies of all policies of
6 Consultant and Consultant's contractors and subcontractors, at any time. Consultant shall
7 make available to City's Risk Manager or designee all books, records and other information
8 relating to the insurance coverage required herein, during normal business hours.

9 Any modification or waiver of the insurance requirements herein shall only
10 be made with the approval of City's Risk Manager or designee. Not more frequently than
11 once a year, the City's Risk Manager or designee may require that Consultant,
12 Consultant's contractors and subcontractors change the amount, scope or types of
13 coverages required herein if, in his or her sole opinion, the amount, scope, or types of
14 coverages herein are not adequate.

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

18 **6. ASSIGNMENT AND SUBCONTRACTING.** This Agreement contemplates
19 the personal services of Consultant and Consultant's employees, and the parties
20 acknowledge that a substantial inducement to City for entering this Agreement was and is
21 the professional reputation and competence of Consultant and Consultant's employees.
22 Consultant shall not assign its rights or delegate its duties hereunder, or any interest
23 herein, or any portion hereof, without the prior approval of City, except that Consultant may
24 with the prior approval of the City Manager of City, assign any moneys due or to become
25 due the Consultant hereunder. Any attempted assignment or delegation shall be void, and
26 any assignee or delegate shall acquire no right or interest by reason of such attempted
27 assignment or delegation. Furthermore, Consultant shall not subcontract any portion of
28 the performance required hereunder without the prior approval of the City Manager or

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1 designee, nor substitute an approved subcontractor without said prior approval to the
2 substitution. Nothing stated in this Section 6 shall prevent Consultant from employing as
3 many employees as Consultant deems necessary for performance of this Agreement.

4 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
5 certifies and shall obtain similar certifications from Consultant's employees and approved
6 subcontractors that, at the time Consultant executes this Agreement and for its duration,
7 Consultant does not and will not perform services for any other client which would create
8 a conflict, whether monetary or otherwise, as between the interests of City hereunder and
9 the interests of such other client.

10 8. MATERIALS. Consultant shall furnish all labor and supervision, supplies,
11 materials, tools, machinery, equipment, appliances, transportation, and services necessary
12 to or used in the performance of Consultant's obligations hereunder, except as stated in
13 Exhibit "C".

14 9. OWNERSHIP OF DATA. All materials, information and data prepared,
15 developed, or assembled by Consultant or furnished to Consultant in connection with this
16 Agreement, including but not limited to documents, estimates, calculations, studies, maps,
17 graphs, charts, computer disks, computer source documentation, samples, models,
18 reports, summaries, drawings, designs, notes, plans, information, material, and
19 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
20 and City shall have the unrestricted right to use and disclose the Data in any manner and
21 for any purpose without payment of further compensation to Consultant. Copies of Data
22 may be retained by Consultant but Consultant warrants that Data shall not be made
23 available to any person or entity for use without the prior approval of City. Said warranty
24 shall survive termination of this Agreement for five (5) years.

25 10. TERMINATION. Either party shall have the right to terminate this
26 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days'
27 prior notice to the other party. In the event of termination under this Section, City shall pay
28 Consultant for services satisfactorily performed and costs incurred up to the effective date

1 of termination for which Consultant has not been previously paid. The procedures for
2 payment in Section 1.B. with regard to invoices shall apply. On the effective date of
3 termination, Consultant shall deliver to City all Data developed or accumulated in the
4 performance of this Agreement, whether in draft or final form, or in process. And,
5 Consultant acknowledges and agrees that City's obligation to make final payment is
6 conditioned on Consultant's delivery of the Data to the City.

7 11. CONFIDENTIALITY. Consultant shall keep the Data confidential and
8 shall not disclose the Data or use the Data directly or indirectly other than in the course of
9 services provided hereunder during the term of this Agreement and for five (5) years
10 following expiration or termination of this Agreement. In addition, Consultant shall keep
11 confidential all information, whether written, oral, or visual, obtained by any means
12 whatsoever in the course of Consultant's performance hereunder for the same period of
13 time. Consultant shall not disclose any or all of the Data to any third party, nor use it for
14 Consultant's own benefit or the benefit of others except for the purpose of this Agreement.

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

21 13. WARRANTY. If, in the opinion of City, the Data or services performed
22 by Consultant requires correction during a period of twelve (12) months following expiration
23 or termination of this Agreement, Consultant shall make said corrections at no additional
24 charge or cost to City. The corrective action required hereunder shall be in addition to any
25 other rights or remedies that City may have.

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

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

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

9 17. INDEMNITY. Consultant shall, with respect to services performed in
10 connection with this Agreement, indemnify and hold harmless the City, its Boards,
11 Commissions, and their officials, employees and agents (collectively in this Section, "City")
12 from and against any and all liability, claims, demands, damage, loss, causes of action,
13 proceedings, penalties, costs and expenses (including attorney's fees, court costs, and
14 expert and witness fees)(collectively "Claims" or individually "Claim"). Claims include
15 allegations and Claims for property damage, personal injury or death arising in whole or
16 in part from any negligent act or omission of Consultant, its officers, employees, agents,
17 sub-consultants, or anyone under Consultant's control (collectively "Indemnitor");
18 Consultant's breach of this Agreement; misrepresentation; willful misconduct; and Claims
19 by any employee of Indemnitor relating in any way to worker's compensation. Independent
20 of the duty to indemnify and as a free-standing duty on the part of Consultant, Consultant
21 shall defend City and shall continue such defense until the Claim is resolved, whether by
22 settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or
23 the like on the part of Indemnitor shall be required for the duty to defend to arise.
24 Consultant shall notify the City of any claim within ten (10) days. Likewise, City shall notify
25 Consultant of any claim, shall tender the defense of such claim to Consultant, and shall
26 assist Consultant, as may be reasonably requested, in such defense.

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

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

5 20. NONDISCRIMINATION. In connection with performance of this
6 Agreement and subject to applicable rules and regulations, Consultant shall not
7 discriminate against any employee or applicant for employment because of race, religion,
8 national origin, color, age, sex, sexual orientation, AIDS, AIDS related condition, handicap,
9 disability, or Vietnam Era veteran status. Consultant shall ensure that applicants are
10 employed, and that employees are treated during their employment, without regard to
11 these bases. Such actions shall include, but not be limited to, the following: Employment,
12 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or
13 termination, rates of pay or other forms of compensation, and selection for training,
14 including apprenticeship.

15 It is the policy of City to encourage the participation of Disadvantaged,
16 Minority and Women-owned Business Enterprises in City's procurement process, and
17 Consultant agrees to use its best efforts to carry out this policy in the award of all approved
18 subcontracts to the fullest extent consistent with the efficient performance of this
19 Agreement. Consultant may rely on written representations by subcontractors regarding
20 their status. City's policy is attached as Exhibit "D" hereto. Consultant shall report to City
21 in May and in December or, in the case of short-term agreements, prior to invoicing for final
22 payment, the names of all sub-consultants engaged by Consultant for this Project and
23 information on whether or not they are a Disadvantaged, Minority or Women-Owned
24 Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.
25 637).

26 21. NOTICES. Any notice or approval required hereunder by either party
27 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
28 class, postage prepaid, addressed to Consultant at the address first stated herein, and to

1 the City at 333 West Ocean Boulevard, Long Beach, California 90802, Attention: City
2 Manager with a copy to the City Engineer at the same address. Notice of change of
3 address shall be given in the same manner as stated herein for other notices. Notice shall
4 be deemed given on the date deposited in the mail or on the date personal delivery is
5 made, whichever first occurs.

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

14 23. COPYRIGHTS AND PATENT RIGHTS. A. Consultant shall place the
15 following copyright protection on all Data: © City of Long Beach, California ____, inserting
16 the appropriate year.

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

21 C. Consultant warrants that the Data does not violate or infringe any patent,
22 copyright, trade secret or other proprietary right of any other party. Consultant agrees to
23 and shall protect, defend, indemnify and hold City, its officials and employees harmless
24 from any and all claims, demands, damages, loss, liability, causes of action, costs or
25 expenses (including reasonable attorneys' fees) whether or not reduced to judgment,
26 arising from any breach or alleged breach of this warranty.

27 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants that
28 Consultant has not employed or retained any entity or person to solicit or obtain this

1 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
2 commission, or other monies based on or from the award of this Agreement. If Consultant
3 breaches this warranty, City shall have the right to terminate this Agreement immediately
4 notwithstanding the provisions of Section 10 hereof or, in its discretion, to deduct from
5 payments due under this Agreement or otherwise recover the full amount of such fee,
6 commission, or other monies.

7 25. WAIVER. The acceptance of any services or the payment of any money
8 by City shall not operate as a waiver of any provision of this Agreement, or of any right to
9 damages or indemnity stated in this Agreement. The waiver of any breach of this
10 Agreement shall not constitute a waiver of any other or subsequent breach of this
11 Agreement.

12 26. CONTINUATION. Termination or expiration of this Agreement shall not
13 affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 17,
14 19, 23, and 29 prior to termination or expiration of this Agreement, and shall not extinguish
15 any warranties hereunder.

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

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

28 29. AUDIT. City shall have the right at all reasonable times during the term

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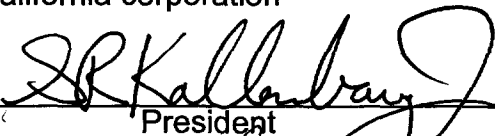
1 of this Agreement and for a period of five (5) years after termination or expiration of this
2 Agreement to examine, audit, inspect, review, extract information from, and copy all books,
3 records, accounts, and other documents of Consultant relating to this Agreement.

4 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
5 designed to or entered for the purpose of creating any benefit or right for any person or
6 entity of any kind that is not a party to this Agreement.

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

9 RBF CONSULTING, INC.
10 a California corporation

11 May 26, 2006

By 
President


12 May 26, 2006

By 
Secretary

14 "Consultant"

15 CITY OF LONG BEACH,
16 a municipal corporation

17 June 22, 2006

By  ASSISTANT
City Manager

19 "City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

20 This Agreement is approved as to form on 6/16, 2006.

21 ROBERT E. SHANNON, City Attorney

22
23 By 
Senior Deputy

EXHIBIT “A”

Scope of Work

Consultant shall perform civil engineering and landscape architectural services for the design and preparation of construction documents for projects such as pavement restructuring and reconstruction on public streets, including correction of surface drainage deficiencies, storm drain improvements, alley repair and repaving, and streetscape improvements with curb alignment modifications, raised roadway medians, landscaping, and irrigation, and any appurtenant services related to the projects including, but not limited to, assistance in resolving issues during construction.

EXHIBIT “B”

City’s representative is Barbara Munoz.

EXHIBIT “C”

(There is no Exhibit “C”)

**CITY OF LONG BEACH POLICY FOR DISADVANTAGED, MINORITY-OWNED
AND WOMEN-OWNED BUSINESS ENTERPRISES**

It is the policy of the City of Long Beach to utilize Disadvantaged, Minority-owned and Women-owned Business Enterprises in all aspects of contracting including construction, the purchase of materials and services, including professional services, leases and the granting of concessions.

EXHIBIT D