

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

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

18 D. Consultant represents that Consultant has obtained all necessary
19 information on conditions and circumstances that may affect performance hereunder
20 and has conducted site visits, if necessary.

21 2. TERM AND TERMINATION. A. The term of this Agreement shall
22 commence at midnight on May 1, 2006, and shall terminate at 11:59 p.m. on
23 December 31, 2008, unless sooner terminated as provided in this Agreement, or unless
24 the services to be performed hereunder or the Project is completed sooner.

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

1 termination for which Consultant has not been previously paid. The procedures for
2 payment in Section 1.C 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 **3. COORDINATION AND ORGANIZATION.**

8 A. Consultant shall coordinate performance hereunder with City's
9 representative, **Angela Reynolds**. Consultant shall advise and inform City's
10 representative of the work in progress on the Project in sufficient detail so as to assist
11 City's representative in making presentations and in holding meetings for the exchange
12 of information. City shall furnish to Consultant information or materials, if any,
13 described in Exhibit "B" attached hereto and incorporated herein by this reference, and
14 shall perform any other tasks described therein.

15 B. The parties acknowledge that a substantial inducement to City for
16 entering this Agreement was and is the reputation and skill of Consultant's key
17 employee **Glenn Lajoie**. City shall have the right to approve any person proposed by
18 Consultant to replace that key employee.

19 **4. INDEPENDENT CONTRACTOR.** In performing services hereunder,
20 Consultant is and shall act as an independent contractor and not an employee,
21 representative, or agent of City. Consultant shall have control of Consultant's work and
22 the manner in which it is performed. Consultant shall be free to contract for similar
23 services to be performed for others during this Agreement provided, however, that
24 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
25 Consultant acknowledges and agrees that a) City will not withhold taxes of any kind
26 from Consultant's compensation, b) City will not secure workers' compensation or pay
27 unemployment insurance to, for or on Consultant's behalf, and c) City will not provide
28 and Consultant is not entitled to any of the usual and customary rights, benefits or

1 privileges of City employees. Consultant expressly warrants that neither Consultant nor
2 any of Consultant's employees or agents shall represent themselves to be employees
3 or agents of City.

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

9 (a) Commercial general liability insurance (equivalent in scope to
10 ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than
11 One Million Dollars (\$1,000,000) per each occurrence and Two Million
12 Dollars (\$2,000,000) general aggregate. Such coverage shall include but
13 not be limited to broad form contractual liability, cross liability,
14 independent contractors liability, and products and completed operations
15 liability. The City, its officials, employees and agents shall be named as
16 additional insureds by endorsement (on City's endorsement form or on an
17 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20
18 26 11 85), and this insurance shall contain no special limitations on the
19 scope of protection given to the City, its officials, employees and agents.

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

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

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

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

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

15 Prior to the start of performance, Consultant shall deliver to City
16 certificates of insurance and required endorsements for approval as to sufficiency and
17 form. The certificate and endorsements for each insurance policy shall contain the
18 original signature of a person authorized by that insurer to bind coverage on its behalf.
19 In addition, Consultant, shall, within thirty (30) days prior to expiration of the insurance
20 required herein, furnish to City certificates of insurance and endorsements evidencing
21 renewal of such insurance. City reserves the right to require complete certified copies
22 of all policies of Consultant and Consultant's contractors and subcontractors, at any
23 time. Consultant shall make available to City's Risk Manager or designee all books,
24 records and other information relating to the insurance coverage required herein, during
25 normal business hours.

26 Any modification or waiver of the insurance requirements herein shall only
27 be made with the approval of City's Risk Manager or designee. Not more frequently
28 than once a year, the City's Risk Manager or designee may require that Consultant,

1 Consultant's contractors and subcontractors change the amount, scope or types of
2 coverages required herein if, in his or her sole opinion, the amount, scope, or types of
3 coverages herein are not adequate.

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

7 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
8 contemplates the personal services of Consultant and Consultant's employees, and the
9 parties acknowledge that a substantial inducement to City for entering this Agreement
10 was and is the professional reputation and competence of Consultant and Consultant's
11 employees. Consultant shall not assign its rights or delegate its duties hereunder, or
12 any interest herein, or any portion hereof, without the prior approval of City, except that
13 Consultant may with the prior approval of the City Manager of City, assign any moneys
14 due or to become due the Consultant hereunder. Any attempted assignment or
15 delegation shall be void, and any assignee or delegate shall acquire no right or interest
16 by reason of such attempted assignment or delegation. Furthermore, Consultant shall
17 not subcontract any portion of the performance required hereunder without the prior
18 approval of the City Manager or designee, nor substitute an approved subcontractor
19 without said prior approval to the substitution. Nothing stated in this Section 6 shall
20 prevent Consultant from employing as many employees as Consultant deems
21 necessary for performance of this Agreement.

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

28 8. MATERIALS. Consultant shall furnish all labor and supervision,

1 supplies, materials, tools, machinery, equipment, appliances, transportation, and
2 services necessary to or used in the performance of Consultant's obligations
3 hereunder, except as stated in Exhibit "B".

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

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

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

1 Must be disclosed pursuant to subpoena or court order.

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

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

10 14. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
11 constitutes the entire understanding between the parties and supersedes all other
12 agreements, oral or written, with respect to the subject matter herein.

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

1 within ten (10) days. Likewise, City shall notify Consultant of any claim, shall tender the
2 defense of such claim to Consultant, and shall assist Consultant, as may be reasonably
3 requested, in such defense.

4 16. AMBIGUITY. In the event of any conflict or ambiguity between this
5 Agreement and any Exhibit, the provisions of this Agreement shall govern.

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

10 18. NONDISCRIMINATION. In connection with performance of this
11 Agreement and subject to federal and state laws, rules and regulations, Consultant
12 shall not discriminate in employment or in the performance of this Agreement on the
13 basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV
14 status, handicap, or disability.

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

26 19. 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

1 to the City at 333 West Ocean Boulevard, Long Beach, California 90802, Attention:
2 City Manager. Consultant shall also send a copy to the City Engineer at the same
3 address but, for purposes of satisfying the requirement for notice under this Section,
4 notice to the City Manager shall be sufficient. Notice of change of address shall be
5 given in the same manner as stated herein for other notices. Notice shall be deemed
6 given on the date deposited in the mail or on the date personal delivery is made,
7 *whichever first occurs.*

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

16 21. COPYRIGHTS AND PATENT RIGHTS. A. Consultant shall place
17 the following copyright protection on all Data: © City of Long Beach, California _____,
18 inserting the appropriate year.

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

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

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

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

14 24. CONTINUATION. Termination or expiration of this Agreement shall
15 not affect rights or liabilities of the parties which accrued prior to termination or
16 expiration of this Agreement, and shall not extinguish any warranties hereunder.

17 25. TAX REPORTING. As required by federal and state law, City is
18 obligated to and will report the payment of compensation to Consultant on Form 1099-
19 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
20 resulting from payments under this Agreement.

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

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

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Blvd., 11th Floor
Long Beach, California 90802-4664
Telephone (562) 570-2200


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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


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

RBF CONSULTING, a California corporation

March 15, 2006

By 
Michael Burke
Executive Vice-President

march 15, 2006

By 
Glenn Lajoie
Vice-President

"Consultant"

CITY OF LONG BEACH, a municipal corporation

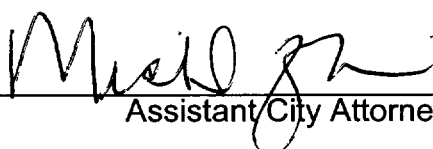
4/4, 2006

By 
City Manager

"City"

This Agreement is approved as to form on MARCH 28, 2006.

ROBERT E. SHANNON, City Attorney

By 
Assistant City Attorney

MJM:kjm 2/21/06 #06-00518
L:\APPS\CtyLaw32\WPDOCS\D021\PO04\00085861.WPD

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

- 1 Exhibit A SCOPE OF WORK OR SERVICES.
- 2 Exhibit B City shall furnish to Consultant information or materials (Section 3)
- 3 Exhibit C City's Policy re Disadvantaged, Minority and Women-owned Business
4 Enterprises
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT “A”

Services to be rendered:

As-needed environmental services include, but are not limited to, the following services or documents:

- Background Data Reviews
- Notices of Exemption
- Initial Studies
- Negative Declarations and Mitigated Negative Declarations
- Environmental Impact Reports
- Mitigation Monitoring and Reporting Programs
- Environmental Assessments
- Findings of No Significant Impact
- Environmental Impact Statements and
- Other environmental documentation as required.

Prepare the above environmental documents in accordance with all applicable federal, state and local environmental laws, regulations, and guidelines, including but not limited to the following:

- California Environmental Quality Act (Statutes and Guidelines)
- National Environmental Policy Act
- Council on Environmental Quality Regulations
- Clean Water Act
- Clean Air Act
- National Historic Preservation Act
- Resource Conservation and Recovery Act
- Endangered Species Act and
- Archaeological and Historic Preservation Act.

Interface with City and Agency and represent the City and Agency in meetings with other agencies for the purpose of developing, managing and implementing all actions required for the preparation of the environmental documents in order to support certification of the environmental documents and approval of the associated redevelopment projects. Participate in community meetings, as required by City and Agency.

Specific tasks to be performed on behalf of the City and Agency include:

- Project Planning
- Community Meeting Support
- CEQA/NEPA Document Preparation
- Schedule Development
- Document Formatting Requirements
- Meetings.



VI. RATE SCHEDULE

RBF HOURLY RATE SCHEDULE

Effective January 2006

<u>OFFICE PERSONNEL</u>	<u>\$ / Hr.</u>
Senior Principal	\$215.00
Principal	195.00
Project Director.....	175.00
Project Manager	152.00
Structural Engineer.....	152.00
Electrical Engineer	134.00
Senior Engineer/Senior Planner	135.00
Landscape Architect.....	123.00
Project Engineer/Project Planner	116.00
Environmental Specialist	112.00
Corrosion Engineer	112.00
Design Engineer/Senior Designer/Mapper	108.00
Designer/Planner.....	94.00
GIS Analyst.....	90.00
Graphic Artist.....	80.00
Environmental Analyst/Staff Planner	80.00
Design Technician	78.00
Assistant Engineer/Planner	74.00
Engineering Aid/Planning Aid.....	60.00
<u>FIELD PERSONNEL</u>	
2-Person Survey Crew	\$200.00
1-Person Survey Crew	145.00
Field Supervisor	138.00
<u>CONSTRUCTION MANAGEMENT PERSONNEL</u>	
Construction Manager	\$150.00
Resident Engineer/Project Manager.....	127.00
Senior Construction Inspector	98.00
Construction Inspector	95.00
Field Office Engineer.....	90.00
Construction Technician.....	78.00
<u>OTHER SERVICES AND FEES</u>	
Permit Processor.....	\$95.00
Clerical/Word Processing.....	50.00
Consultation Relative to Legal Actions.....	270.00
Vehicle Mileage	0.50/mile

Note:

Blueprinting, reproduction, messenger service and other direct expenses will be charged as an additional cost plus 15%. A Sub-consultant Management Fee of fifteen-percent (15%) will be added to the direct cost of all sub-consultant services to provide for the cost of administration, sub-consultant consultation and insurance.

EXHIBIT "B"

There is no Exhibit "B" to this Agreement

CITY'S POLICY FOR DISADVANTAGED, MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

The City of Long Beach is an equal opportunity employer and requires all Consultants to comply with policies and regulations concerning equal employment opportunity.

The City of Long Beach subscribes to the following goals concerning awards for equipment, material, supplies, and services.

Fifteen percent (15%) DBE/MBE Participation
Fifteen percent (15%) WBE Participation

Whenever possible, the CONSULTANT should seek to accomplish these goals.

MINORITY OUTREACH PROGRAM

To assist the Purchasing Bureau in maintaining records of the City's outreach to Minority-owned and/or Women-owned Business Enterprises (MBE/WBE), Consultants are requested to provide the following information. Answers are optional, and failure to answer will not disqualify the proposal.

Composition of Ownership (MORE THAN 51%)

Ethnic Factors of Ownership:

Black	()	American Indian	()
Hispanic	()	Other Non-white	()
Asian	()	Caucasian	()

Non-ethnic Factors of Ownership:

Male	()	Female	()
------	-----	--------	-----

Has firm previously been certified as a Minority-owned or Woman-owned Business by any other agency:

Yes	()	No	()
-----	-----	----	-----

If yes, name of certifying agency:

Certification valid through:

EXHIBIT "C"

NOT APPLICABLE TO RBF CONSULTING


Glenn Lajoie, AICP

Vice President, Planning/Environmental Services