

1 hours and provided that milestones for performance, if any, are met.

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

16 D. Consultant represents that Consultant has obtained all
17 necessary information on conditions and circumstances that may affect its
18 performance and has conducted site visits, if necessary.

19 E. CAUTION: Consultant shall not begin work until this
20 Agreement has been signed by both parties and until Consultant's evidence of
21 insurance has been delivered to and approved by the City.

22 2. TERM. The term of this Agreement shall commence at midnight on
23 July 1, 2011, and shall terminate at 11:59 p.m. on June 30, 2014, unless sooner
24 terminated as provided in this Agreement, or unless the services or the Project is
25 completed sooner.

26 3. COORDINATION AND ORGANIZATION.

27 A. Consultant shall coordinate its performance with City's
28 representative, if any, named in Exhibit "C", attached to this Agreement and

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

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

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

24 5. INSURANCE.

25 A. As a condition precedent to the effectiveness of this
26 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
27 duration of this Agreement, from insurance companies that are admitted to write
28 insurance in California and have ratings of or equivalent to A:V by A.M. Best

1 Company or from authorized non-admitted insurance companies subject to
2 Section 1763 of the California Insurance Code and that have ratings of or
3 equivalent to A:VIII by A.M. Best Company the following insurance:

4 (a) Commercial general liability insurance (equivalent in scope to
5 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
6 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
7 coverage shall include but not be limited to broad form contractual liability,
8 cross liability, independent contractors liability, and products and
9 completed operations liability. The City, its boards and commissions, and
10 their officials, employees and agents shall be named as additional
11 insureds by endorsement (on City's endorsement form or on an
12 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20
13 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33
14 07 04 and CG 20 37 07 04), and this insurance shall contain no special
15 limitations on the scope of protection given to the City, its boards and
16 commissions, and their officials, employees and agents. This policy shall
17 be endorsed to state that the insurer waives its right of subrogation
18 against City, its boards and commissions, and their officials, employees
19 and agents.

20 (b) Workers' Compensation insurance as required by the California
21 Labor Code and employer's liability insurance in an amount not less than
22 \$1,000,000. This policy shall be endorsed to state that the insurer waives
23 its right of subrogation against City, its boards and commissions, and their
24 officials, employees and agents.

25 (c) Professional liability or errors and omissions insurance in an
26 amount not less than \$1,000,000 per claim.

27 (d) Commercial automobile liability insurance (equivalent in scope
28 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an

1 amount not less than \$500,000 combined single limit per accident.

2 B. Any self-insurance program, self-insured retention, or
3 deductible must be separately approved in writing by City's Risk Manager or
4 designee and shall protect City, its officials, employees and agents in the same
5 manner and to the same extent as they would have been protected had the policy
6 or policies not contained retention or deductible provisions.

7 C. Each insurance policy shall be endorsed to state that
8 coverage shall not be reduced, non-renewed, or canceled except after thirty (30)
9 days prior written notice to City, shall be primary and not contributing to any other
10 insurance or self-insurance maintained by City, and shall be endorsed to state that
11 coverage maintained by City shall be excess to and shall not contribute to
12 insurance or self-insurance maintained by Consultant. Consultant shall notify the
13 City in writing within five (5) days after any insurance has been voided by the
14 insurer or cancelled by the insured.

15 D. If this coverage is written on a "claims made" basis, it must
16 provide for an extended reporting period of not less than one hundred eighty (180)
17 days, commencing on the date this Agreement expires or is terminated, unless
18 Consultant guarantees that Consultant will provide to the City evidence of
19 uninterrupted, continuing coverage for a period of not less than three (3) years,
20 commencing on the date this Agreement expires or is terminated.

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

25 F. Prior to the start of performance, Consultant shall deliver to
26 City certificates of insurance and the endorsements for approval as to sufficiency
27 and form. In addition, Consultant, shall, within thirty (30) days prior to expiration of
28 the insurance, furnish to City certificates of insurance and endorsements

1 evidencing renewal of the insurance. City reserves the right to require complete
2 certified copies of all policies of Consultant and Consultant's subconsultants and
3 contractors, at any time. Consultant shall make available to City's Risk Manager
4 or designee all books, records and other information relating to this insurance,
5 during normal business hours.

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

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

16 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
17 contemplates the personal services of Consultant and Consultant's employees, and the
18 parties acknowledge that a substantial inducement to City for entering this Agreement
19 was and is the professional reputation and competence of Consultant and Consultant's
20 employees. Consultant shall not assign its rights or delegate its duties under this
21 Agreement, or any interest in this Agreement, or any portion of it, without the prior
22 approval of City, except that Consultant may with the prior approval of the City Manager
23 of City, assign any moneys due or to become due the Consultant under this Agreement.
24 Any attempted assignment or delegation shall be void, and any assignee or delegate
25 shall acquire no right or interest by reason of an attempted assignment or delegation.
26 Furthermore, Consultant shall not subcontract any portion of its performance without the
27 prior approval of the City Manager or designee, or substitute an approved subconsultant
28 or contractor without approval prior to the substitution. Nothing stated in this Section

1 shall prevent Consultant from employing as many employees as Consultant deems
2 necessary for performance of this Agreement.

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

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

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

24 10. TERMINATION. Either party shall have the right to terminate this
25 Agreement for any reason or no reason at any time by giving thirty (30) calendar days
26 prior notice to the other party. In the event of termination under this Section, City shall
27 pay Consultant for services satisfactorily performed and costs incurred up to the effective
28 date of termination for which Consultant has not been previously paid. The procedures

1 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of
2 termination, Consultant shall deliver to City all Data developed or accumulated in the
3 performance of this Agreement, whether in draft or final form, or in process. And,
4 Consultant acknowledges and agrees that City's obligation to make final payment is
5 conditioned on Consultant's delivery of the Data to the City.

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

15 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
16 a 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. ADDITIONAL COSTS AND REDESIGN.

22 A. Any costs incurred by the City due to Consultant's failure to
23 meet the standards required by the scope of work or Consultant's failure to
24 perform fully the tasks described in the scope of work which, in either case,
25 causes the City to request that Consultant perform again all or part of the Scope of
26 Work shall be at the sole cost of Consultant and City shall not pay any additional
27 compensation to Consultant for its re-performance.

28 B. If the Project involves construction and the scope of work

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

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

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

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

20 17. INDEMNITY.

21 A. Consultant shall indemnify, protect and hold harmless City, its
22 Boards, Commissions, and their officials, employees and agents ("Indemnified
23 Parties"), from and against any and all liability, claims, demands, damage, loss,
24 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
25 costs and expenses, including attorneys' fees, court costs, expert and witness
26 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
27 whole or in part, out of or in connection with (1) Consultant's breach or failure to
28 comply with any of its obligations contained in this Agreement, or (2) negligent or

1 willful acts, errors, omissions or misrepresentations committed by Consultant, its
2 officers, employees, agents, subcontractors, or anyone under Consultant's control,
3 in the performance of work or services under this Agreement (collectively "Claims"
4 or individually "Claim").

5 B. In addition to Consultant's duty to indemnify, Consultant shall
6 have a separate and wholly independent duty to defend Indemnified Parties at
7 Consultant's expense by legal counsel approved by City, from and against all
8 Claims, and shall continue this defense until the Claims are resolved, whether by
9 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
10 breach, or the like on the part of Consultant shall be required for the duty to defend
11 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
12 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
13 in the defense.

14 C. If a court of competent jurisdiction determines that a Claim
15 was caused by the sole negligence or willful misconduct of Indemnified Parties,
16 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
17 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
18 percentage of willful misconduct attributed by the court to the Indemnified Parties.

19 D. To the extent this Agreement is a professional service
20 agreement for work or services performed by a design professional (architect,
21 landscape architect, professional engineer or professional land surveyor), the
22 provisions of this Section regarding Consultant's duty to defend and indemnify
23 shall be limited as provided in California Civil Code Section 2782.8, and shall
24 apply only to Claims that arise out of, pertain to, or relate to the negligence,
25 recklessness, or willful misconduct of the Consultant.

26 E. The provisions of this Section shall survive the expiration or
27 termination of this Agreement.

28 18. AMBIGUITY. In the event of any conflict or ambiguity between this

1 Agreement and any Exhibit, the provisions of this Agreement shall govern.

2 19. COSTS. If there is any legal proceeding between the parties to
3 enforce or interpret this Agreement or to protect or establish any rights or remedies under
4 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

5 20. NONDISCRIMINATION.

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

16 B. It is the policy of City to encourage the participation of
17 Disadvantaged, Minority and Women-owned Business Enterprises in City's
18 procurement process, and Consultant agrees to use its best efforts to carry out
19 this policy in its use of subconsultants and contractors to the fullest extent
20 consistent with the efficient performance of this Agreement. Consultant may rely
21 on written representations by subconsultants and contractors regarding their
22 status. Consultant shall report to City in May and in December or, in the case of
23 short-term agreements, prior to invoicing for final payment, the names of all
24 subconsultants and contractors hired by Consultant for this Project and information
25 on whether or not they are a Disadvantaged, Minority or Women-Owned Business
26 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.
27 637).

28 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in

1 accordance with the provisions of the Ordinance, this Agreement is subject to the
2 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
3 Long Beach Municipal Code, as amended from time to time.

4 A. During the performance of this Agreement, the Consultant
5 certifies and represents that the Consultant will comply with the EBO. The
6 Consultant agrees to post the following statement in conspicuous places at its
7 place of business available to employees and applicants for employment:

8 "During the performance of a contract with the City of Long Beach,
9 the Consultant will provide equal benefits to employees with spouses and its
10 employees with domestic partners. Additional information about the City of
11 Long Beach's Equal Benefits Ordinance may be obtained from the City of
12 Long Beach Business Services Division at 562-570-6200."

13 B. The failure of the Consultant to comply with the EBO will be
14 deemed to be a material breach of the Agreement by the City.

15 C. If the Consultant fails to comply with the EBO, the City may
16 cancel, terminate or suspend the Agreement, in whole or in part, and monies due
17 or to become due under the Agreement may be retained by the City. The City
18 may also pursue any and all other remedies at law or in equity for any breach.

19 D. Failure to comply with the EBO may be used as evidence
20 against the Consultant in actions taken pursuant to the provisions of Long Beach
21 Municipal Code 2.93 et seq., Contractor Responsibility.

22 E. If the City determines that the Consultant has set up or used
23 its contracting entity for the purpose of evading the intent of the EBO, the City may
24 terminate the Agreement on behalf of the City. Violation of this provision may be
25 used as evidence against the Consultant in actions taken pursuant to the
26 provisions of Long Beach Municipal Code section 2.93 et seq., Contractor
27 Responsibility.

28 22. NOTICES. Any notice or approval required by this Agreement shall

1 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
2 postage prepaid, addressed to Consultant at the address first stated above, and to the
3 City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager
4 with a copy to the City Engineer at the same address. Notice of change of address shall
5 be given in the same manner as stated for other notices. Notice shall be deemed given
6 on the date deposited in the mail or on the date personal delivery is made, whichever
7 occurs first.

8 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

1 commission, or other monies.

2 25. WAIVER. The acceptance of any services or the payment of any
3 money by City shall not operate as a waiver of any provision of this Agreement or of any
4 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
5 Agreement shall not constitute a waiver of any other or subsequent breach of this
6 Agreement.

7 26. CONTINUATION. Termination or expiration of this Agreement shall
8 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
9 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

10 27. TAX REPORTING. As required by federal and state law, City is
11 obligated to and will report the payment of compensation to Consultant on Form 1099-
12 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
13 resulting from payments under this Agreement. Consultant shall submit Consultant's
14 Employer Identification Number (EIN), or Consultant's Social Security Number if
15 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
16 Financial Management. Consultant acknowledges and agrees that City has no obligation
17 to pay Consultant until Consultant provides one of these numbers.

18 28. ADVERTISING. Consultant shall not use the name of City, its
19 officials or employees in any advertising or solicitation for business or as a reference,
20 without the prior approval of the City Manager or designee.

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


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

28 ///

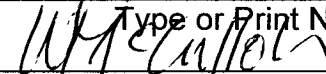
1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

3 ENVIRON ARCHITECTURE, INC., a
4 California corporation

5 8.12., 2011

By 
6 ALAN L. BURNS
7 Type or Print Name

8 8.18, 2011

By 
9 Willette McCulloch
10 Secretary
11 Type or Print Name

12 "Consultant"

13 CITY OF LONG BEACH, a municipal
14 corporation

15 9.14, 2011

By 
16 Assistant City Manager
17 City Manager

18 "City"

19 EXECUTED PURSUANT
20 TO SECTION 301 OF
21 THE CITY CHARTER.

22 This Agreement is approved as to form on 8/23

23 2011.

24 ROBERT E. SHANNON, City Attorney

25 By 
26 Deputy

27 OFFICE OF THE CITY ATTORNEY
28 ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT "A"

Environ Architecture, Inc. Shall perform the following services as requested to the City of Long Beach. The services to be provided shall include but not be limited to:

- Architectural and engineering feasibility studies
- Space utilization programming.
- Master planning services.
- Design review services.
- Sustainability assessments.
- Accessibility assessments.
- Space Planning.
- Interior Design.
- Furniture design and specification.
- Façade improvement design.
- Renderings and 3D visualizations.
- Architectural design.
- Structural engineering.
- Mechanical engineering.
- Electrical engineering.
- Plumbing engineering.

Prepared by:
Alan L. Burks, AIA LEED AP



collaborate :: design :: create

ENVIRON Architecture, Inc.

FEE SCHEDULE

Principal / Architect	\$195.00
Design Principal	\$160.00
Arch III / Des III	\$110.00
Arch II / Des II	\$90.00
Arch I / Des I	\$70.00
Clerical	\$60.00

EXHIBIT “C”

City’s Representative:

Asset Management Bureau Manager or
Designee

EXHIBIT “D”

Materials/Information Furnished: None