

A G R E E M E N T
31203

THIS AGREEMENT is made and entered, in duplicate, as of May 1, 2009 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 March 3, 2009, by and between RD SYSTEMS, INC., a California corporation, with a place of business at 3041 Edinger Avenue, Tustin, California ("Contractor"), 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 the maintenance, repair, and programming of card access systems, alarm equipment and video monitoring systems in the City of Long Beach ("Project"), as described more fully in the Scope of Work; and

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

WHEREAS, City desires to have Contractor perform said specialized services, and Contractor 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:

1.1 Contractor shall furnish specialized services in accordance with the standards of the profession, and City shall pay for said services in the manner described below, not to exceed One Hundred Eighty Thousand Dollars (\$180,000.00). The parties may agree to revise the amount of a given task or shift funds allocated between tasks, provided that no such change shall occur before Contractor requests such change in writing and City consents thereto.

1.2 Contractor may select the time and place of performance

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

1 hereunder provided, however, that access to City documents, records, and the like, if
2 needed by Contractor, shall be available only during City's normal business hours and
3 provided that milestones for performance, if any, are met.

4 1.3 Contractor has requested to receive regular payments. City
5 shall pay Contractor within thirty (30) days following receipt from Contractor and approval
6 by City of invoices showing the services or task performed, the time expended (if billing is
7 hourly), and the name of the Project. Contractor shall certify on the invoices that
8 Contractor has performed the services in full conformance with this Agreement and is
9 entitled to receive payment. Each invoice shall be accompanied by a progress report
10 indicating the progress to date of services performed and covered by said invoice,
11 including a brief statement of any Project problems and potential causes of delay in
12 performance, and listing those services that are projected for performance by Contractor
13 during the next invoice cycle. Where billing is done and payment is made on an hourly
14 basis, the parties acknowledge that such arrangement is either customary practice for
15 Contractor's profession, industry, or business, or is necessary to satisfy audit and legal
16 requirements which may arise due to the fact that City is a municipality.

17 1.4 When Contractor provides proposals for projects to be
18 completed, contractor must provide line-by-line details of charges that will be incurred
19 during the project, e.g. parts, labor, taxes, etc. Proposals with charges simply quoted as
20 "1 Lot" with only the total cost of the project listed, will not be accepted.

21 1.5 Contractor represents that City has obtained all necessary
22 information on conditions and circumstances that may affect performance hereunder and
23 has conducted site visits, if necessary.

24 2. TERM: The term of this Agreement shall commence on April 1,
25 2009, and shall terminate on March 31, 2014, unless sooner terminated as provided in
26 this Agreement, or unless the services to be performed hereunder or the Project is
27 completed sooner.

28 3. COORDINATION AND ORGANIZATION:

1 3.1 The parties acknowledge that a substantial inducement to City
2 for entering this Agreement was and is the reputation and skill of Contractor's key
3 employees. City shall have the right to approve any person proposed by Contractor to
4 replace the originally designated key employees.

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

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

23 5.1 Commercial general liability insurance (equivalent in scope to
24 ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million
25 Dollars (\$1,000,000.00) per each occurrence and Two Million Dollars (\$2,000,000.00)
26 general aggregate. Such coverage shall include but not be limited to broad form
27 contractual liability, cross liability, independent contractors liability, and products and
28 completed operations liability. The City, its officials, employees and agents shall be

1 named as additional insureds by endorsement (on City's endorsement form or on an
2 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and
3 this insurance shall contain no special limitations on the scope of protection given to the
4 City, its officials, employees and agents.

5 5.2 Professional liability or errors and omissions insurance in an
6 amount not less than One Million Dollars (\$1,000,000.00) per claim.

7 5.3 Commercial automobile liability insurance (equivalent in scope
8 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less
9 than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.

10 Any self-insurance program, self-insured retention, or deductible must be
11 separately approved in writing by City's Risk Manager or designee and shall protect City,
12 its officials, employees and agents in the same manner and to the same extent as they
13 would have been protected had the policy or policies not contained retention or
14 deductible provisions. Each insurance policy shall be endorsed to state that coverage
15 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written
16 notice to City, and shall be primary and not contributing to any other insurance or self-
17 insurance maintained by City. Contractor shall notify the City in writing within five (5)
18 days after any insurance required herein has been voided by the insurer or cancelled by
19 the insured. If this coverage is written on a "claims made" basis, it must provide for an
20 extended reporting period of not less than one year, commencing on the date this
21 Agreement expires or is terminated, unless Contractor guarantees that Contractor will
22 provide to the City evidence of uninterrupted, continuing coverage for a period of not less
23 than three (3) years, commencing on the date this Agreement expires or is terminated.

24 Contractor shall require that all contractors and subcontractors which
25 Contractor uses in the performance of services hereunder maintain insurance in
26 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
27 designee. Prior to the start of performance, Contractor shall deliver to City certificates of
28 insurance and required endorsements for approval as to sufficiency and form. In

1 addition, Contractor, shall, within thirty (30) days prior to expiration of the insurance
2 required herein, furnish to City certificates of insurance and endorsements evidencing
3 renewal of such insurance. City reserves the right to require complete certified copies of
4 all policies of Contractor and Contractor's contractors and subcontractors, at any time.
5 Contractor shall make available to City's Risk Manager or designee all books, records
6 and other information relating to the insurance coverage required herein, during normal
7 business hours.

8 Any modification or waiver of the insurance requirements herein shall only
9 be made with the approval of City's Risk Manager or designee. Not more frequently than
10 once a year, the City's Risk Manager or designee may require that Contractor,
11 Contractor's contractors and subcontractors change the amount, scope or types of
12 coverages required herein if, in his or her sole opinion, the amount, scope, or types of
13 coverages herein are not adequate. The procuring or existence of insurance shall not be
14 construed or deemed as a limitation on liability relating to Contractor's performance or as
15 full performance of or compliance with the indemnification provisions of this Agreement.

16 6. ASSIGNMENT AND SUBCONTRACTING: This Agreement
17 contemplates the personal services of Contractor and Contractor'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 Contractor and Contractor's
20 employees. Contractor shall not assign its rights or delegate its duties hereunder, or any
21 interest herein, or any portion hereof, without the prior approval of City, except that
22 Contractor may with the prior approval of the City Manager of City, assign any moneys
23 due or to become due the Contractor hereunder. Any attempted assignment or
24 delegation shall be void, and any assignee or delegate shall acquire no right or interest
25 by reason of such attempted assignment or delegation. Furthermore, Contractor shall
26 not subcontract any portion of the performance required hereunder without the prior
27 approval of the City Manager or designee, nor substitute an approved subcontractor
28 without said prior approval to the substitution. Nothing stated in this Section 6 shall

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

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

9 8. MATERIALS: Contractor 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 Contractor's obligations hereunder

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

23 10. TERMINATION: Either party shall have the right to terminate this
24 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
25 prior notice to the other party. In the event of termination under this Section, City shall
26 pay Contractor for services satisfactorily performed and costs incurred up to the effective
27 date of termination for which Contractor has not been previously paid. The procedures
28 for payment in Section 1.3 with regard to invoices shall apply. On the effective date of

1 termination, Contractor shall deliver to City all Data developed or accumulated in the
2 performance of this Agreement, whether in draft or final form, or in process. And,
3 Contractor acknowledges and agrees that City's obligation to make final payment is
4 conditioned on Contractor's delivery of the Data to the City.

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

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

20 13. ADDITIONAL COSTS AND REDESIGN:

21 13.1 Any costs incurred by the City due to Contractor's failure to
22 meet the standards required by the Scope of Work or Contractor's failure to perform fully
23 the tasks described in the Scope of Work which, in either case, causes the City to
24 request that Contractor perform again all or a part of the Scope of Work shall be at the
25 sole cost of Contractor and City shall not pay any additional compensation to Contractor
26 for such re-performance.

27 13.2 If the Project involves construction and the scope of work or
28 services requires Contractor to prepare plans and specifications with an estimate of the

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

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

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

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

18 17. INDEMNITY: Contractor shall, with respect to services performed in
19 connection with this Agreement, indemnify and hold harmless the City, its Boards,
20 Commissions, and their officials, employees and agents (collectively in this Section,
21 "City") from and against any and all liability, claims, demands, damage, loss, causes of
22 action, proceedings, penalties, costs and expenses (including attorney's fees, court
23 costs, and expert and witness fees) (collectively "Claims" or individually "Claim"). Claims
24 include allegations and include by way of example but are not limited to: Claims for
25 property damage, personal injury or death arising in whole or in part from any negligent
26 act or omission of Contractor, its officers, employees, agents, sub-Contractors, or anyone
27 under Contractor's control (collectively "Indemnitor"); Contractor's breach of this
28 Agreement; misrepresentation; willful misconduct; and Claims by any employee of

1 Indemnitor relating in any way to worker's compensation. Independent of the duty to
2 indemnify and as a free-standing duty on the part of Contractor, Contractor shall defend
3 City and shall continue such defense until the Claim is resolved, whether by settlement,
4 judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on
5 the part of Indemnitor shall be required for the duty to defend to arise. Contractor shall
6 notify the City of any claim within ten (10) days. Likewise, City shall notify Contractor of
7 any claim, shall tender the defense of such claim to Contractor, and shall assist
8 Contractor, as may be reasonably requested, in such defense.

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

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

15 20. NONDISCRIMINATION: In connection with performance of this
16 Agreement and subject to applicable rules and regulations, Contractor shall not
17 discriminate against any employee or applicant for employment because of race, religion,
18 national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status,
19 handicap, or disability. Contractor shall ensure that applicants are employed, and that
20 employees are treated during their employment, without regard to these bases. Such
21 actions shall include, but not be limited to, the following: Employment, upgrading,
22 demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of
23 pay or other forms of compensation, and selection for training, including apprenticeship.
24 It is the policy of City to encourage the participation of Disadvantaged, Minority and
25 Women-owned Business Enterprises in City's procurement process, and Contractor
26 agrees to use its best efforts to carry out this policy in the award of all approved
27 subcontracts to the fullest extent consistent with the efficient performance of this
28 Agreement. Contractor may rely on written representations by subcontractors regarding

1 their status.

2 21. NOTICES: Any notice or approval required hereunder by either
3 party shall be in writing and personally delivered or deposited in the U.S. Postal Service,
4 first class, postage prepaid, addressed to Contractor at the address first stated herein,
5 and to the City at 333 West Ocean Boulevard, Long Beach, California 90802, Attention:
6 City Manager. Notice of change of address shall be given in the same manner as stated
7 herein for other notices. Notice shall be deemed given on the date deposited in the mail
8 or on the date personal delivery is made, whichever first occurs.

9 22. COVENANT AGAINST CONTINGENT FEES: Contractor warrants
10 that Contractor has not employed or retained any entity or person to solicit or obtain this
11 Agreement and that Contractor has not paid or agreed to pay any entity or person any
12 fee, commission, or other monies based on or from the award of this Agreement. If
13 Contractor breaches this warranty, City shall have the right to terminate this Agreement
14 immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to
15 deduct from payments due under this Agreement or otherwise recover the full amount of
16 such fee, commission, or other monies.

17 23. WAIVER: The acceptance of any services or the payment of any
18 money by City shall not operate as a waiver of any provision of this Agreement, or of any
19 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
20 Agreement shall not constitute a waiver of any other or subsequent breach of this
21 Agreement.

22 24. CONTINUATION: Termination or expiration of this Agreement shall
23 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
24 17, 19 and 27 prior to termination or expiration of this Agreement.

25 25. TAX REPORTING: As required by federal and state law, City is
26 obligated to and will report the payment of compensation to Contractor on Form 1099-
27 Misc. Contractor shall be solely responsible for payment of all federal and state taxes
28 resulting from payments under this Agreement. Contractor's Employer Identification

1 Number is _____.

2 26. ADVERTISING: Contractor shall not use the name of City, its
3 officials or employees in any advertising or solicitation for business, nor as a reference,
4 without the prior approval of the City Manager or designee.

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

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

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

RD SYSTEMS, INC., a California corporation

6-15-, 2009

By *J. D. Russell*
President

John D. Russell
Type or Print Name

6-15-, 2009

By *J. D. Russell*
Secretary

John D. Russell
Type or Print Name

"Contractor"

CITY OF LONG BEACH, a municipal corporation

June 29, 2009

By *G.* Assistant City Manager

City Manager **APPROVED PURSUANT TO SECTION 301 OF THE CITY CHARTER.**

"City"

This Agreement is approved as to form on June 23

2009.

ROBERT E. SHANNON, City Attorney

By: *Angie J. Anderson*
Deputy

OFFICE OF THE CITY ATTORNEY
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