

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

1 AGREEMENT

2 **31397**

3 THIS AGREEMENT is made and entered, in duplicate, as of November 2,
4 2009, for reference purposes only, pursuant to a minute order adopted by the City
5 Council of the City of Long Beach at its meeting on August 18, 2009, by and between D.
6 WOOLLEY & ASSOCIATES, INC., a California corporation ("Consultant"), with a place of
7 business at 2832 Walnut Avenue, Suite A, Tustin, California 92780, and the CITY OF
8 LONG BEACH, a municipal corporation ("City").

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

11 WHEREAS, City has selected Consultant in accordance with City's
12 administrative procedures and City has determined that Consultant and its employees
13 are qualified, licensed, if so required, and experienced in performing these specialized
14 services; and

15 WHEREAS, City desires to have Consultant perform these specialized
16 services, and Consultant is willing and able to do so on the terms and conditions in this
17 Agreement;

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

20 1. SCOPE OF WORK OR SERVICES.

21 A. Consultant shall furnish specialized services more particularly
22 described in Exhibit "A", attached to this Agreement and incorporated by this
23 reference, in accordance with the standards of the profession, and City shall pay
24 for these services in the manner described below, not to exceed One Million Five
25 Hundred Thousand Dollars (\$1,500,000), at the rates or charges shown in Exhibit
26 "B".

27 B. Consultant may select the time and place of performance for
28 these services; provided, however, that access to City documents, records and the

1 like, if needed by Consultant, shall be available only during City's normal business
2 hours and provided that milestones for performance, if any, are met.

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

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

23 2. TERM. The term of this Agreement shall commence at midnight on
24 October 31, 2009, and shall terminate at 11:59 p.m. on November 1, 2012, unless sooner

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

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

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

25 5. INSURANCE.

26 A. As a condition precedent to the effectiveness of this
27 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
28 duration of this Agreement, from insurance companies that are admitted to write

E OF THE CITY ATTORNEY
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insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the

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

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

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

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

F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete

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certified copies of all policies of Consultant and Consultant's subconsultants and contractors, at any time. Consultant shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

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

1 necessary for performance of this Agreement.

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

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

12 9. OWNERSHIP OF DATA. All materials, information and data
13 prepared, developed or assembled by Consultant or furnished to Consultant 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 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
21 Data shall not be made available to any person or entity for use without the prior approval
22 of City. This 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 Consultant for services satisfactorily performed and costs incurred up to the effective
27 date of termination for which Consultant has not been previously paid. The procedures
28 for payment in Section 1 B. with regard to invoices shall apply. On the effective date of

1 termination, Consultant 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 Consultant acknowledges and agrees that City's obligation to make final payment is
4 conditioned on Consultant's delivery of the Data to City.

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

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

20 13. ADDITIONAL COSTS AND REDESIGN.

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

27 B. If the Project involves construction and the scope of work
28 requires Consultant to prepare plans and specifications with an estimate of the

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

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

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

16 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
17 constitutes the entire understanding between the parties and supersedes all other

1 Indemnitor relating in any way to workers' compensation. Independent of the duty to
2 indemnify and as a free-standing duty on the part of Consultant, Consultant shall defend
3 City and shall continue this 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. Consultant shall
6 notify City of any Claim within ten (10) days. Likewise, City shall notify Consultant of any
7 Claim, shall tender the defense of the Claim to Consultant, and shall assist Consultant at
8 Consultant's sole expense, as may be reasonably requested, in the 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 under
13 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

14 20. NONDISCRIMINATION.

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

25 B. It is the policy of City to encourage the participation of
26 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
27 procurement process, and Consultant agrees to use its best efforts to carry out
28 this policy in its use of subconsultants and contractors to the fullest extent

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consistent with the efficient performance of this Agreement. Consultant may rely on written representations by subconsultants and contractors regarding their status. City's policy is attached as Exhibit "E" to this Agreement. Consultant shall report to City in May and in December or, in the case of short-term agreements, prior to invoicing for final payment, the names of all subconsultants and contractors hired by Consultant for this Project and information on whether or not

by the City upon request.

These services will supplement the work of the City's Survey Section. All survey services from the firm shall be performed by, or under the direct supervision of a fully qualified California Professional Land Surveyor. Survey plots and calculations will be included in reports to regulatory agencies.

1 whether or not reduced to judgment, arising from any breach or alleged breach of
2 this warranty.

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

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

16 25. CONTINUATION. Termination or expiration of this Agreement shall
17 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
18 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

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1 officials or employees in any advertising or solicitation for business or as a reference,
2 without the prior approval of the City Manager or designee.

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

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

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

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14 November 5, 2009

D. WOOLLEY & ASSOCIATES, a
California corporation

By David E. Woolley
President
David E. Woolley
Type or Print Name

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16
17 November 5, 2009

By David E. Woolley
Secretary
David E. Woolley
Type or Print Name

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22 11. 19, 2009

"Consultant"
CITY OF LONG BEACH, a municipal
corporation

By [Signature] Assistant City Manager
City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

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25 This Agreement is approved as to form on 11/11, 2009

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28 By Robert E. Shannon
Deputy

EXHIBIT “A”

Scope of Work

SCOPE OF SERVICES

1. BACKGROUND

The City of Long Beach provides surveying services for the entire City. This includes field and office surveying services. In addition the City is responsible for the Map Checking of all Parcel Maps, Tract Maps, and Lot Line Adjustment that fall within the city limits.

2. DESCRIPTION OF OUTSIDE SERVICES

The selected firm(s) will be required to provide direct assistance to the City's Survey Staff during times of peak activity. Type of work will include, but not be limited to preliminary design surveys of City streets, construction staking, control surveys, GPS surveys, First Order Level surveys, preparation of Legal Exhibits, and map checking services.

Survey support services will likely include, but not be limited to the following:

- Establishing and maintaining survey control points and bench marks
- Preliminary design surveys of City streets
- Provide construction staking for various types of work including the following: site grading operations, roadway and curb construction, building construction, and utility infrastructure
- Calculation of earthwork quantities
- Topographic surveys in support of Engineering Design
- Preparation of easements, dedications, and leases
- Map Checking services of Tract Maps, Parcel Maps, and Lot Line Adjustment
- GPS field surveys for subsidence studies
- Provide surveying services for the Long Beach Airport
- Attend project meetings and other meetings as requested by the City

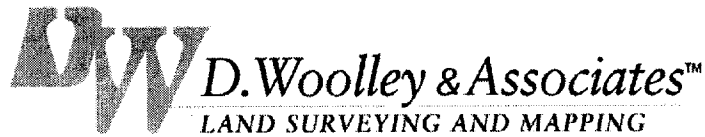
At a minimum, the selected firm will provide:

- Qualified survey personnel, surveying instruments, equipment and materials as needed for the proper performance of the surveys required.
- Provide map checking for subdivision purposes.

~~Maintain complete and accurate survey notes and records of all survey work performed for review.~~

EXHIBIT “B”

Rates or Charges



FEE SCHEDULE

Schedule of Hourly Rates for Services

Effective January 1, 2009 through November 1, 2012

Professional Land Surveyor	\$145.00
Senior Technician	\$115.00
Technician/CAD Operator	\$100.00
Chainman/Technician, Supplemental City Staff	\$ 85.00
One Person Survey Party w/equipment	\$152.00
Two Person Survey Party w/equipment	\$238.00
Three Person Survey Party w/equipment	\$315.00
Expert Witness/Deposition	\$325.00
Mileage	IRS Rate
Clerical	Included in Overhead
Prints, research material & other incidental supplies	Cost + 0% (no mark-up)

1. Rates shown do not include USL&H insurance (United States Longshoremen & Harbor Works Act).
2. Travel time rate will be charged one way only (Portal to Destination).
3. Authorized overtime, evening, or Saturday work authorized by the client will be charged at 1.35 times the rate as shown above.
4. Authorized work on Sundays, holidays or after 12 hours onsite, as authorized by the client, will be charged at 2 times the rates as shown above.
5. A minimum of 4 survey hours will be charged for field crews.
6. Fees charged by cities and other agencies for permits, checking and filing will be billed at cost plus 0% handling fee (no mark-up).
7. Outside consultants, such as engineering or photogrammetry will be billed at cost plus 0% handling fee (no mark-up), per City of Long Beach contract requirements.
8. Other special equipment or services by separate quote or cost estimate.
10. The prices quoted herein are exclusively for the City of Long Beach
11. It is understood that these rates will only be modified by mutual agreement of both parties.

EXHIBIT “C”

City’s Representative:

Kimberley Holtz, Senior Surveyor

(562) 570-6992

EXHIBIT “D”

Materials/Information Furnished: None

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 "E"