



1 B. Consultant may select the time and place of performance hereunder  
2 provided, however, that access to City documents, records, and the like, if needed by  
3 Consultant, 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 by  
7 City of invoices showing the services or task performed, the time expended (if billing is  
8 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 Consultant  
14 during the next invoice cycle. Where billing is done and payment is made on an hourly  
15 basis, the parties acknowledge that such arrangement is either customary practice for  
16 Consultant's profession, industry, or business, or is necessary to satisfy audit and legal  
17 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 and  
20 has conducted site visits, if necessary.

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

25 3. COORDINATION AND ORGANIZATION.

26 A. Consultant shall coordinate performance hereunder with City's  
27 representatives. Consultant shall advise and inform City's representatives of the work in  
28 progress on the Project in sufficient detail so as to assist City's representative in making

1 presentations and in holding meetings for the exchange of information.

2 B. The parties acknowledge that a substantial inducement to City for entering  
3 this Agreement was and is the reputation and skill of Consultant's key employees Kathe  
4 Head, Jim Rabe and Cal Hollis. City shall have the right to approve any person proposed  
5 by Consultant to replace such key employees.

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

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

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

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

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

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

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

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

24 Consultant shall require that all contractors and subcontractors which  
25 Consultant 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.

28 Prior to the start of performance, Consultant shall deliver to City certificates

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

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

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

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

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

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

11 8. MATERIALS. Consultant shall furnish all labor and supervision,  
12 supplies, material, tools, machinery, equipment, appliances, transportation, and services  
13 necessary to or used in the performance of Consultant's obligations hereunder.

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

28 10. TERMINATION. Either party shall have the right to terminate this

1 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days'  
2 prior notice to the other party. In the event of termination under this Section, City shall pay  
3 Consultant for services satisfactorily performed and costs incurred up to the effective date  
4 of termination for which Consultant has not been previously paid. The procedures for  
5 payment in Section 1.B. with regard to invoices shall apply. On the effective date of  
6 termination, Consultant shall deliver to City all Data developed or accumulated in the  
7 performance of this Agreement, whether in draft or final form, or in process.

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

16 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
17 a breach of confidentiality with respect to Data that:

- 18 (a) Consultant demonstrates Consultant knew prior to the time City disclosed  
19 it; or  
20 (b) Is or becomes publicly available without breach of this Agreement by  
21 Consultant; or  
22 (c) A third party who has a right to disclose does so to Consultant without  
23 restrictions on further disclosure; or  
24 (d) Must be disclosed pursuant to subpoena or court order.

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

28 14. LAW. This Agreement shall be governed by and construed pursuant

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

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

8 16. INDEMNITY. With respect to services performed hereunder,  
9 Consultant shall indemnify and hold harmless the City, its Boards, Commissions, and their  
10 officials, employees and agents (collectively in this Section "City") from and against any  
11 and all liability, claims, demands, damage, causes of action, proceedings, penalties, loss,  
12 costs, and expenses (including attorney's fees, court costs, and expert and witness  
13 fees)(collectively "Claims" or individually "Claim"). Claims include allegations and include  
14 Claims for property damage, personal injury or death arising in whole or in part from any  
15 negligent act or omission of Consultant, its officers, employees, agents, sub-consultants,  
16 or anyone under Consultant's control (collectively "Indemnitor"); Consultant's breach of this  
17 Agreement; misrepresentation; willful misconduct; and Claims by any employee of  
18 Indemnitor relating in any way to worker's compensation. Independent of the duty to  
19 indemnify and as a free-standing duty on the part of Consultant, Consultant shall defend  
20 City and shall continue such defense until the Claim is resolved, whether by settlement,  
21 judgment or otherwise. Consultant shall notify the City of any claim within ten (10) days.  
22 Likewise, City shall notify Consultant of any claim, shall tender the defense of such claim  
23 to Consultant, and shall assist Consultant, as may be reasonably requested, in such  
24 defense.

25 17. AMBIGUITY. In the event of any conflict or ambiguity between this  
26 Agreement and any Exhibit, the provisions of this Agreement shall govern.

27 18. COSTS. If there is any legal proceeding between the parties to  
28 enforce or interpret this Agreement or to protect or establish any rights or remedies



1 hereunder, the prevailing party shall be entitled to its costs and expenses, including  
2 reasonable attorneys' fees and court costs (including appeals).

3 19. CHANGES AND EXTRA SERVICES. City may make changes within  
4 the general scope of work under this Agreement. Changes shall be in writing and shall  
5 state the dollar amount of the change, any adjustment in the time for performance and,  
6 when negotiated prices are involved, shall provide for the Consultant's signature indicating  
7 acceptance. If Consultant estimates that the change will cause an increase or decrease  
8 in the cost or time required for performance, Consultant shall so notify City of that fact.  
9 Any notification by Consultant shall be provided within ten (10) calendar days from the date  
10 of receipt by Consultant of the change order. In addition, Consultant shall notify City when  
11 Consultant identifies a condition which may change the initial scope of work or  
12 services. All changes shall be deemed part of this Agreement.

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

23 It is the policy of City to encourage the participation of Disadvantaged,  
24 Minority and Women-owned Business Enterprises in City's procurement process, and  
25 Consultant agrees to use its best efforts to carry out this policy in the award of all approved  
26 subcontracts to the fullest extent consistent with the efficient performance of this  
27 Agreement. Consultant may rely on written representations by subcontractors regarding  
28 their status. City's policy is attached as Exhibit "B" hereto. Consultant shall report to City

1 in May and in December or, in the case of short-term agreements, prior to invoicing for final  
2 payment, the names of all sub-consultants engaged by Consultant for this Project and  
3 information on whether or not they are a Disadvantaged, Minority or Women-Owned  
4 Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.  
5 637).

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

13           22. COPYRIGHTS AND PATENT RIGHTS.

14           A. Consultant shall place the following copyright protection on all final reports  
15 generated by Consultant: © City of Long Beach, California \_\_\_\_\_, inserting the appropriate  
16 year.

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

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

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

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

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

12           25. CONTINUATION. Termination or expiration of this Agreement shall  
13 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
14 16, 18, 22, and 28 prior to termination or expiration of this Agreement, and shall not  
15 extinguish any warranties hereunder.

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

25           27. ADVERTISING. Consultant shall not use the name of City, its officials  
26 or employees in any advertising or solicitation for business, nor as a reference, without the  
27 prior approval of the City Manager or designee. Notwithstanding the above restriction,  
28 Consultant may list City as a client in its current client list and include a brief description

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

1 of the projects and services provided to City under this Agreement, provided that  
2 Consultant does not disclose any information regarding confidential assignments.

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. NO PECULIAR RISK. Consultant acknowledges and agrees that the  
8 services to be performed hereunder do not constitute a peculiar risk of bodily harm and  
9 that no special precautions are required to perform said services.

10 30. THIRD PARTY BENEFICIARY. This Agreement is intended by the  
11 parties to benefit themselves only and is not in any way intended or designed to or entered  
12 for the purpose of creating any benefit or right for any person or entity of any kind that is  
13 not a party to this Agreement.

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

16  
17 12/1, 2005

KEYSER MARSTON ASSOCIATES, INC.  
By *Timothy C. Kelly*  
President  
Timothy C. Kelly  
(Type or Print Name)

18  
19  
20 12/1, 2005

By *Diane M. Chambers*  
Secretary  
DIANE M. CHAMBERS  
(Type or Print Name)

"Consultant"

CITY OF LONG BEACH

21  
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26 Dec 9, 2005


By *[Signature]*  
City Manager

"City"

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This Agreement is approved as to form on December 7, 2005.

ROBERT E. SHANNON, City Attorney

By   
Deputy

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

**EXHIBIT "A"**  
**KEYSER MARSTON ASSOCIATES, INC.**  
**HOURLY FEE SCHEDULE**

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	<u>2005/2006</u>
A. JERRY KEYSER*	\$250.00
MANAGING PRINCIPALS*	\$250.00
PRINCIPALS*	\$240.00
MANAGERS*	\$195.00
SENIOR ASSOCIATES	\$170.00
ASSOCIATES	\$150.00
SENIOR ANALYSTS	\$135.00
ANALYSTS	\$115.00
TECHNICAL STAFF	\$87.50
ADMINISTRATIVE STAFF	\$72.50

Directly related job expenses not included in the above rates are: auto mileage, air fares, hotels and motels, meals, car rentals, taxis, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date. A charge of 1% per month will be added to all past due accounts.

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\* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

## EXHIBIT "B"

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

Yes	( )	No	( )
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If yes, name of certifying agency:

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Certification valid through:

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#### SUBCONTRACTORS