

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

1 AGREEMENT

2 **30089**

3 THIS AGREEMENT is made and entered, in duplicate, as of January 29,
4 2007 for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting held on January 23, 2007, by and between the
6 CITY OF SEAL BEACH, a municipal corporation, whose address is 211 Eighth Street, Seal
7 Beach, California 90740 ("Seal Beach"), and the CITY OF LONG BEACH, a municipal
8 corporation ("Long Beach").

9 WHEREAS, Seal Beach installed parking meters in three (3) municipal
10 parking lots located in the 100 block of Main, the southwest corner of Main and Electric,
11 and the southeast corner of Main and Electric, which require maintenance and collection
12 services; and

13 WHEREAS, Long Beach is willing and able to provide maintenance and
14 collection services as described in and in accordance with this Agreement, and Seal Beach
15 is willing to pay for said services;

16 NOW, THEREFORE, in consideration of the mutual terms and conditions
17 contained herein, the parties agree as follows:

18 1. Term.

19 A. This Agreement shall commence at midnight on January 1, 2007, and
20 shall terminate at 11:59 p.m. on December 31, 2009.

21 B. Either party may terminate this Agreement, with or without cause, by
22 giving sixty (60) days' notice of termination to the other party.

23 2. Definitions. The following definitions shall apply to this Agreement:

24 A. "Collection" shall mean collecting coins from parking meters twice weekly
25 from March through October and once per week from November through February. Long
26 Beach will place the coins in a secured collection cart provided by Seal Beach, and leave
27 said cart at the Seal Beach Finance Department.

28 B. "Maintenance" shall mean visually checking every parking meter, once

1 daily, between 7:00 a.m. and 3:00 p.m. (on regular Long Beach workdays) for jam-ups,
2 broken parts, graffiti, etc. Long Beach will make repairs immediately. If a parking meter
3 cannot be repaired in the field, Long Beach will install a replacement meter supplied by
4 Seal Beach. Seal Beach will also provide batteries. Emergency repairs and repairs due
5 to vandalism are not considered routine maintenance.

6 "Repair Service" shall mean cleaning, painting, performing major repairs (that
7 take over two [2] days to repair) and returning meters to the factory.

8 C. "Immediate and free access" shall mean unobstructed entrance and exit
9 to the parking lot where the parking meters are located and free parking for Long Beach
10 vehicles twenty-four (24) hours a day.

11 3. Services. Long Beach shall perform maintenance on and collection from
12 seventy-six (76) Duncan Electronic (Model 90) parking meters located at three (3) parking
13 lots at the 100 block of Main Street, the southwest corner of Main and Electric Streets, and
14 the southeast corner of Main and Electric Streets. Maintenance may be performed where
15 the parking meters are located or, at the sole discretion of Long Beach, at Long Beach
16 facilities or at facilities selected by Long Beach. Seal Beach shall give immediate and free
17 access to Long Beach while Long Beach is performing services hereunder. Long Beach
18 shall not be liable for any delays caused by difficulties that it experiences when attempting
19 to gain immediate and free access.

20 Parts, except batteries, required for preventive maintenance are included in
21 the annual service fee. Long Beach will invoice Seal Beach for parts that cost more than
22 \$100.00, at the actual cost of the part plus twenty percent (20%).

23 4. Annual Service Fee.

24 A. Seal Beach shall pay to Long Beach for maintenance and collection
25 services the sum of Twelve Thousand Dollars (\$12,000.00) annually in quarterly payments
26 of Three Thousand Dollars (\$3,000.00) each within fifteen (15) days after receipt of an
27 invoice from Long Beach.

28 B. Long Beach may, in its sole discretion, annually increase the fee for

1 maintenance and collection services by the consumer price index, but such increase shall
2 not exceed five percent (5%) of the previous years' fee.

3 C. If Seal Beach requests services in addition to those identified herein, Seal
4 Beach shall pay to Long Beach for the parts and labor related to those services the actual
5 cost of the parts plus twenty percent (20%) and labor at the rate of Fifty Dollars (\$50.00)
6 per hour.

7 D. If this Agreement is terminated pursuant to Section 1(B) above, then Seal
8 Beach shall not be entitled to any refund of any quarterly payment already paid but Seal
9 Beach shall have no further obligation to pay any subsequent quarterly payment. Seal
10 Beach shall pay Long Beach for additional services performed prior to the effective date
11 of termination for which Long Beach has not been previously paid.

12 5. Warranty.

13 A. Seal Beach warrants that the parking meters are in good working order
14 as of the commencement date of this Agreement.

15 B. Long Beach makes no warranty or guarantee with respect to
16 maintenance. Any parts used in maintenance shall carry the warranty, if any, of the
17 manufacturer and Seal Beach shall look solely to the manufacturer if a part fails or is
18 defective.

19 6. Responsibilities of Seal Beach.

20 A. Within three (3) business days following the commencement date of this
21 Agreement, Seal Beach shall deliver to Long Beach a list containing the names of
22 individuals who are authorized by Seal Beach to request additional services. That list shall
23 also contain the name, address and telephone number of the person who will serve as
24 Administrator of this Agreement.

25 B. If any parking meter cannot be maintained at its normal location so that
26 it must be removed, Seal Beach shall provide a replacement meter.

27 7. Assignment. Neither party shall assign its rights or delegate its duties

28 hereunder, or any interest herein, or any portion hereof, without the prior written approval

1 of the other party. Any attempted assignment or delegation shall be void, and any
2 assignee or delegate shall acquire no right or interest by reason of such attempted
3 assignment or delegation. However, Long Beach may as it deems necessary subcontract
4 the performance of services hereunder.

5 8. Notice. Notice shall be in writing and personally delivered or deposited
6 in the U.S. Postal Service, first class, postage prepaid, addressed to Seal Beach at the
7 address first stated herein and to Long Beach at 333 West Ocean Boulevard, Long Beach,
8 CA 90802 Attn: City Manager. Notice shall be deemed given on the date of personal
9 delivery or on the date of deposit in the mail, whichever first occurs.

10 9. Mutual Indemnity. In accordance with Sections 895 through 895.8 of the
11 California Government Code, each party hereby assumes the liability imposed on it, its
12 officials, and employees for injury (as defined in Section 810 of the California Government
13 Code) caused by a negligent or wrongful act or omission occurring in performance of each
14 party as required in this Permit to the same extent that such liability would be imposed on
15 the absence of these Sections. To that end, each party shall defend, indemnify and hold
16 harmless the other party for any claim, demand, cause of action, loss, liability, damage,
17 cost, or expense that may be imposed on such party solely by virtue of Section 895.2 of
18 the California Government Code.

19 10. Miscellaneous.

20 A. This Agreement shall not be amended, nor any provision or breach hereof
21 waived, except in writing signed by the parties which expressly refers to this Agreement.

22 B. This Agreement constitutes the entire understanding between the parties
23 and supersedes all other agreements, oral or written, with respect to the subject matter
24 herein.

25 C. This Agreement is intended by the parties to benefit themselves only and
26 is not in any way intended or designed to or entered for the purpose of creating any benefit
27 or right for any person or entity of any kind that is not a party to this Agreement.

28 D. If there is any legal proceeding between the parties to enforce or interpret

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1 this Agreement or to protect or establish any rights or remedies hereunder, the prevailing
2 party shall be entitled to its costs and expenses, including reasonable attorney's fees.

3 E. This Agreement shall be governed by and construed pursuant to the laws
4 of the State of California (except those provisions of California law pertaining to conflicts
5 of laws).

6 F. In connection with performance of this Agreement, neither party shall
7 discriminate against on the basis of race, religion, national origin, color, age, sex, sexual
8 orientation, AIDS, HIV status, handicap or disability.

9 IN WITNESS WHEREOF, the parties hereto have caused these present to
10 be duly executed with all of the formalities required by law as of the date first stated above.

11 CITY OF SEAL BEACH, a municipal corporation

12 March 12th, 2007

13 By Greg Beaulieu

14 Title Interim City Manager
15 "Seal Beach"

16 CITY OF LONG BEACH, a municipal corporation

17 4/6, 2007

18 By Mark Stuever
19 City Manager

20 "Long Beach"

21 This Agreement is approved as to form on 3/29, 2007.

22 ROBERT E. SHANNON, City Attorney

23 By Rowena Conway
24 Deputy City Attorney

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