

AGREEMENT

30152

THIS AGREEMENT is made and entered, in duplicate, as of March 5, 2007 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on February 13, 2007, by and between ISPACE, Inc., a California corporation ("ISPACE"), and the CITY OF LONG BEACH, a municipal corporation ("Client").

WHEREAS, Client desires to engage ISPACE to provide professional computer services to Client, and ISPACE desires to be engaged by Client, all on the terms and conditions of this Agreement; and

WHEREAS, Client selected ISPACE in accordance with the Client's policies and procedures, after evaluation of its proposal submitted in response to Client's Request for Proposals;

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

1. **AMOUNT:** The amount of this Agreement shall not exceed \$670,000 during the term. ISPACE has already been paid approximately \$95,000 under Purchase Order Number BPTS06000070. As a result, the total contract amount (not to exceed \$670,000) was reduced by actual accumulated payments under that Purchase Order.
2. **TERM:** The term of this Agreement shall commence at midnight on September 1, 2006, and shall terminate at 11:59 p.m. on March 31, 2009. The term of this Agreement may be extended for two additional periods of one year each on mutual agreement of the parties and execution of a written amendment to this Agreement. This Agreement may be terminated by Client for cause or convenience on two weeks' prior notice without penalty or further obligation after Client has paid for services rendered through the date of termination.
3. **SERVICES:** ISPACE shall provide to Client one or more Workers as requested by Client from time to time. Such Workers shall provide the services described in Exhibit "A", attached to this Agreement and incorporated by reference, in accordance with the standards of the profession, and Client shall pay for said services at the rates or charges described in Exhibit "A".
4. **INDEPENDENT CONTRACTOR STATUS:** With respect to the services provided by ISPACE, ISPACE is and shall act as an independent contractor and not an employee, representative, or agent of Client. ISPACE acknowledges and agrees that: a) Client will not withhold taxes of any kind from ISPACE's compensation; b) Client will not secure workers' compensation or pay unemployment insurance to, for or on ISPACE behalf; and c) Client will not provide and ISPACE is not entitled to any of the usual and customary rights, benefits or privileges of Client's employees. ISPACE expressly warrants that neither ISPACE nor any of ISPACE's employees or agents shall represent themselves to be employees or agents of Client.

5. **INVOICES:** ISPACE shall submit monthly invoices to Client for services rendered by Workers for the number of hours that services were provided by Workers in the previous calendar month.

6. **PAYMENT DEFAULT:** Client agrees to pay the invoices of ISPACE within thirty (30) days after receipt of a valid invoice by having such payment delivered to ISPACE at 2141 Rosecrans Avenue #5175, El Segundo, CA 90245 or such other location or manner as ISPACE shall hereafter direct in writing.

7. **RESTRICTIVE COVENANT CONVERSION:** Client acknowledges that ISPACE incurs great expense in providing services to its clients, including without limitation recruiting, screening and training costs. In consideration thereof, during the period that ISPACE's Workers perform services for Client under this Agreement and for a period of six months following the date in which an ISPACE's Worker last performed services for the Client under this Agreement, Client agrees that it will not hire or engage such ISPACE's Worker as an employee of Client.

Notwithstanding the above paragraph, if at any time Client wishes to hire any ISPACE's Worker directly or indirectly as an employee of Client or independent contractor (without the participation of a placement agency other than ISPACE), Client may request that ISPACE release the ISPACE's Worker from his/her employment contract or other engagement with ISPACE in order to permit such desired engagement provided, however, Client acknowledges and agrees that ISPACE, in its sole and absolute discretion, has the right to accept or refuse such request of Client.

8. **LIMITATION OF LIABILITY:** ISPACE does not warrant or guarantee that the Workers placed with Client pursuant to this Agreement will produce any particular result or any solution to Client's particular needs. Accordingly, Client acknowledges and agrees that ISPACE is not responsible for any aspects of the Worker's work or the Client's project, including, without limitation, compliance with any deadlines or work product requirements. ISPACE shall not be liable for (i) any claims, costs, expenses, damages, obligations or losses arising from or in connection with the acts or omission of any Worker, including, but not limited to, work on engineering or design concepts or calculations or related drawings, software programs, designs or documentation, or (ii) any indirect, special or consequential damages (including, but not limited to, loss of profits, interest, earnings or use) whether arising in contract, tort or otherwise.

9. **CLIENT PROPERTY:**

- a. **Work Product:** All work product of every kind performed by any ISPACE's Worker on behalf of Client shall be the sole and exclusive property of Client.
- b. **Confidentiality:** ISPACE recognizes that while performing its duties under this Agreement, ISPACE and its Workers may be granted access to certain proprietary and confidential information regarding client's business, customers, and employees. ISPACE shall keep such

information confidential (unless compelled to reveal such information by court), and the obligations of this paragraph will survive the termination of this Agreement. This paragraph does not apply to information that was previously known or information that is available in the public domain.

10. TIME RECORDS: An ISPACE time card shall be the official time record for purposes of payment.

11. NOTICES:

11.1 Manner: Any notice or other communication required or permitted under this Agreement shall be in writing and either delivered personally or sent by overnight courier, or U.S. certified or registered mail, postage prepaid, return receipt requested.

11.2 Addressee: Notice shall be addressed to:

ISPACE: ISPACE, INC.
2141 Rosecrans Avenue
#5175
El Segundo, CA 90245

Client: City of Long Beach
333 W. Ocean Boulevard
Long Beach, CA 90802
Attn: City Manager

With a copy to: City of Long Beach
333 W. Ocean Boulevard, 12th Floor
Long Beach, CA 90802
Attn: Jack Ciulla

11.3 Delivery: Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. Notice sent by overnight courier shall be deemed given on the date shown on the courier's records. Notice that is sent by U.S. certified mail or registered mail shall be deemed given on the date shown on the return receipt.

11.4. Changes: Either party may designate, by notice to the other, substitute addressees, addresses for notices, and thereafter, notices are to be directed to those substitute addresses.

12. **INSURANCE:** As a condition precedent to the effectiveness of this Agreement, ISPACE shall procure and maintain at ISPACE's expense for the duration of this Agreement from an insurance company that is admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company:

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City of Long Beach, its officials, employees and agents shall be named as additional insureds by endorsement. (on Clients 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 the City of Long Beach, its officials, employees and agents.

(b) Workers' compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident.

(c) Professional liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence.

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

(e) Blanket honesty bond in the amount not less than Two Hundred Fifty Thousand Dollars (\$250,000) insuring against any loss which may result from the dishonesty or fraudulent act of employees, officers, or directors of ISPACE. This Bond shall include a loss payee endorsement naming the City of Long Beach, its officials and employees as additional insureds.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by Client's Risk Manager or designee and shall protect the City of Long Beach, 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 provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) days prior written notice to Client, and shall be primary and not contributing to any other insurance or self-insurance maintained by the City of Long Beach, its officials, employees and agents.

ISPACE shall require that all contractors and subcontractors which ISPACE

uses in the performance of services under this Agreement maintain insurance in compliance with this Section unless otherwise agreed in writing by Client's Risk Manager or designee.

Prior to the start of performance under this Agreement, ISPACE shall deliver to Client certificates of insurance and required endorsements, including any insurance required of ISPACE' contractors and subcontractors, for approval as to sufficiency and form. The certificates and endorsements shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, ISPACE shall, at least thirty (30) days prior to expiration of the insurance required hereunder, furnish to Client certificates of insurance and endorsements evidencing renewal of such insurance. Client reserves the right to require complete certified copies of all policies of ISPACE or ISPACE's contractors or subcontractors, at any time. ISPACE shall make available to Client all books, records and other information relating to the insurance coverage required herein during normal business hours.

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

The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to ISPACE's performance of services or as full performance of or compliance with the indemnification provisions herein.

13. MISCELLANEOUS:

13.1 No party shall transfer or assign any or all of its rights or interests under this Agreement or delegate any of its obligations without the prior written consent of the other party; which consent shall not be unreasonably withheld.

13.2 Client will provide direct supervision to ISPACE' Workers, who will be assigned to work on Client's premises. ISPACE' Workers shall not be permitted to, without advance written approval by an officer of ISPACE, either (a) engage in travel or otherwise to operate a motor vehicle on behalf of Client; (b) handle cash, negotiable instruments, valuables or securities, or (c) be permitted unsupervised or uncontrolled access to areas where confidential information or valuables are kept.

13.3 This Agreement shall be governed by and construed pursuant to

the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Any action involving this Agreement shall be brought in the Los Angeles County Superior Court, Long Beach Judicial District.

- 13.4 This Agreement constitutes the entire understanding between the parties hereto and supersedes *all other agreements, whether oral or written, with respect to the subject matter herein.*
- 13.5 ISPACE shall defend, indemnify and hold the City of Long Beach, its officials, employees and agents harmless from and against all claims, demands, damage, causes of action, proceedings, loss, costs and expenses (including reasonable attorney's fees), and liability, of any kind whatsoever (collectively in this Section "claim"), alleging (a) injury to or death of persons or damage to property, including property owned by or under the care and custody of Client or its boards and (b) that such injury, death or damage arises from or is attributable to or caused by a negligent act or omission, misrepresentation, or willful misconduct of ISPACE, its employees, or agents in the performance of services, except to the extent that the injury, death, or damage was caused by the negligence of Client, its boards, or their officials or employees. ISPACE shall notify Client of any claim within ten (10) days. Likewise, Client shall notify ISPACE of any claim, shall tender the defense of such claim to ISPACE, and shall assist ISPACE, as may be reasonably requested, in such defense.
- 13.6 In the event that there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.
- 13.7 Subject to applicable laws, rules, and regulations, neither Client nor ISPACE shall discriminate in the performance of this Agreement on the basis of race, color, religion, national origin, sex, sexual orientation, AIDS, and AIDS related condition, age, disability or handicap, disabled or veteran status.
- 13.8 The acceptance of the services or the payment of any money by Client shall not operate as a waiver of any provision of, this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

13.9 Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant prior to such termination or expiration.

13.10 ISPACE shall not use the name of the City of Long Beach, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of Client's City Manager or designee.

13.11 Client represents that it is in compliance with all applicable laws relating to occupational safety and health requirements of the workplace. ISPACE shall provide general job safety instruction to Workers it places with Client. Client shall provide specific safety training for all Workers if the nature of the job so requires.

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

ISPACE, INC.
a California corporation

May 11th, 2007

By *Carole De*

Officer's Title _____

May 25th, 2007

By *Shunt*

Officer's Title CEO

"ISPACE"

CITY OF LONG BEACH, a municipal corporation

June 5, 2007

By *Christine J. Shippis* **ASSISTANT**
City Manager

"Client"

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

This Agreement is approved as to form on May 22, 2007.

ROBERT E. SHANNON, City Attorney

By *Dan J. Anderson*
Deputy

EXHIBIT A

CHARGES/FEEES

This Exhibit A is issued pursuant to an Agreement dated 3/5/07 between City of Long Beach and iSpace, Inc. This is an at will contract, and either party may terminate at their discretion without penalty or cost. Any term not otherwise defined herein shall have the meaning ascribed to it in such Agreement.

Client: City of Long Beach

Client Site: 333 West Ocean
Long Beach, CA 90802

1. Business Analyst

Cost Analysis of a Business Analyst contractor

Hourly Bill Rate: \$75.00

**Overtime Hourly Rate: \$112.50 for any hours over 8/day
\$150.00 for any hours over 12/day.**

2. Project Manager

Cost Analysis of a Project Manager contractor

Hourly Bill Rate: \$85.00

**Overtime Hourly Rate: \$127.50 for any hours over 8/day
\$170.00 for any hours over 12/day.**

3. Legacy System Programmer

Cost Analysis of a Legacy Programmer contractor

Hourly Bill Rate: \$75.00

**Overtime Hourly Rate: \$112.50 for any hours over 8/day
\$150.00 for any hours over 12/day.**