

1 AGREEMENT

2 30379

3 THIS AGREEMENT is made and entered, in duplicate, as of March 18,  
4 2005, pursuant to a Resolution adopted by the City Council of the City of Long Beach at  
5 its meeting of June 20, 2006, by and between VERIZON CALIFORNIA INC. a California  
6 Corporation ("Contractor"), with a place of business at 7352 Slater Ave., Huntington  
7 Beach, California 92647, and the CITY OF LONG BEACH, a municipal corporation  
8 ("City").

9 WHEREAS, the City requires specialized construction services requiring  
10 unique skills to be performed in connection with the relocation of secondary demarcation  
11 points at the Long Beach Marinas ("Project"); and

12 WHEREAS, Verizon owns the system and must perform work on its own  
13 system; and

14 WHEREAS, the City has ascertained that Contractor and its employees are  
15 qualified, licensed, if so required, and experienced in performing such specialized  
16 services; and

17 WHEREAS, the City desires to have Contractor perform said specialized  
18 services, and Contractor is willing and able to do so on the terms herein;

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

21 1. SCOPE OF WORK OR SERVICES.

22 A. Contractor shall furnish specialized services more particularly set forth in  
23 Exhibit "A", attached hereto and incorporated herein by this reference, in accordance with  
24 the standards of the profession, and the City shall pay for said services in the manner  
25 described below, not to exceed \$750,000, plus an additional ten (10) percent contingency  
26 at the rates or charges described in Exhibit "B", attached hereto and incorporated herein  
27 by this reference. If Contractor anticipates that Contractor will exceed \$825,000  
28 (\$750,000 plus 10%), then Contractor shall immediately give notice to the Director of

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

1 Parks, Recreation and Marine of the City ("Director"). Contractor's failure to notify the  
2 Director shall be deemed a waiver of all of Contractor's claims for additional  
3 compensation. After receipt of such notice, the Director will notify Contractor whether or  
4 not to proceed after authorization from the Long Beach City Council to amend this  
5 Agreement.

6 B. Contractor may select the time and place of performance hereunder  
7 provided, however, that access to documents, records, and the like, if needed by  
8 Contractor, shall be available only during normal business hours of the Long Beach  
9 Department of Parks, Recreation and Marine ("Department") and provided that  
10 milestones for performance, if any, are met.

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

24 D. Contractor represents that Contractor has obtained all necessary  
25 information on conditions and circumstances that may affect performance hereunder and  
26 has conducted site visits, if necessary.

27 2. TERM. The term of this Agreement shall commence at midnight on  
28 March 18, 2005, and shall terminate at 11:59 p.m. on December 31, 2015, unless sooner

1 terminated as provided in this Agreement, or unless the services to be performed  
2 hereunder or the Project is completed sooner.

3 3. COORDINATION AND ORGANIZATION.

4 A. Contractor shall coordinate performance hereunder with the City's  
5 representative named in Exhibit "C", attached hereto and incorporated herein by this  
6 reference. Contractor shall advise and inform the City's representative of the work in  
7 progress on the Project in sufficient detail so as to assist the City's representative in  
8 making presentations and in holding meetings for the exchange of information.

9 B. Any directives from the City representative identified in Exhibit "C" which  
10 changes the Scope of Services must be expressed as a written amendment to this  
11 Agreement, and authorized by the City. Contractor agrees that the City shall not be  
12 obligated to pay for any services changing the Scope of Services unless there is such  
13 amendment.

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

25 5. INSURANCE. As a condition precedent to the effectiveness of this  
26 Agreement, Contractor shall procure and maintain at Contractor's expense for the  
27 duration of this Agreement from insurance companies that are admitted to write  
28 insurance in California or from authorized non-admitted insurance companies that have

1 ratings of or equivalent to A:VIII by A.M. Best Company:

2 (a) Commercial general liability insurance (equivalent in scope to ISO form  
3 CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million  
4 Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general  
5 aggregate. Such coverage shall include but not be limited to broad form  
6 contractual liability, cross liability, independent contractors liability, and products  
7 and completed operations liability. City, and their officials, employees and agents  
8 shall be named as additional insureds by endorsement (on the City's endorsement  
9 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or to  
10 both CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain no  
11 special limitations on the scope of protection given to the City, and their officials,  
12 employees and agents.

13 (b) Workers' Compensation insurance as required by the Labor Code of the  
14 State of California and employer's liability insurance in an amount not less than  
15 One Million Dollars (\$1,000,000)/each accident/disease/policy limit.

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

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

22 Any self-insurance program, self-insured retention, or deductible must be  
23 separately approved in writing by the Director and shall protect City, their officials,  
24 employees and agents in the same manner and to the same extent as they would have  
25 been protected had the policy or policies not contained retention or deductible provisions.  
26 Each insurance policy shall be endorsed to state that Contractor shall provide thirty days  
27 prior written notice of cancellation, non-renewal or material adverse change to City, and  
28 shall be primary and not contributing to any other insurance or self-insurance maintained

1 by the City, their officials, employees and agents.

2 Contractor shall require that all contractors and subcontractors which  
3 Contractor uses in the performance of services hereunder maintain insurance in  
4 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or  
5 designee.

6 Prior to the start of performance, Contractor shall deliver to the Director  
7 certificates of insurance and required endorsements for approval as to sufficiency and  
8 form. The certificates and endorsements for each insurance policy shall contain the  
9 original signature of a person authorized by that insurer to bind coverage on its behalf.  
10 In addition, Contractor shall, within thirty (30) days prior to expiration of the insurance  
11 required hereunder, furnish to the City certificates of Insurance and endorsements  
12 evidencing renewal of such insurance. The City reserves the right to require complete  
13 certified copies of all policies of Contractor and Contractor's contractors and  
14 subcontractors at any time. Contractor shall make available to the City's Risk Manager  
15 or designee all books, records and other information relating to the insurance required  
16 herein during normal business hours.

17 Any modification or waiver of the insurance requirements herein shall only  
18 be made at the request of Director and with the written approval of the City Risk Manager  
19 or designee. Not more frequently than once a year, the City's Risk Manager or designee  
20 may require that Contractor and Contractor's contractors and subcontractors change the  
21 amount, scope or types of coverages required herein if, in his or her sole opinion, the  
22 amount, scope, or types of coverages herein are not adequate.

23 The procuring or existence of insurance shall not be construed or deemed  
24 as a limitation on liability relating to Contractor's performance or as full performance of or  
25 compliance with the indemnification provisions of this Agreement.

26 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
27 contemplates the personal services of Contractor and Contractor's employees, and the  
28 parties acknowledge that a substantial inducement to the City for entering this Agreement

1 was and is the professional reputation and competence of Contractor and Contractor's  
2 employees. Contractor shall not assign its rights or delegate its duties hereunder, or any  
3 interest herein, or any portion hereof, without the prior approval of the Director, except  
4 that Contractor may with the prior approval of the Director, assign any moneys due or to  
5 become due the Contractor hereunder. Any attempted assignment or delegation shall be  
6 void, and any assignee or delegate shall acquire no right or interest by reason of such  
7 attempted assignment or delegation. Nothing stated in this Section 6 shall prevent  
8 Contractor from employing as many employees as Contractor deems necessary for  
9 performance of this Agreement.

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

16 8. MATERIALS. Contractor shall furnish all labor and supervision,  
17 supplies, material, tools, machinery, equipment, appliances, transportation, and services  
18 necessary to or used in the performance of Contractor's obligations hereunder.

19 9. TERMINATION. Either party shall have the right to terminate this  
20 Agreement for any reason or no reason at any time by giving thirty (30) calendar days'  
21 prior notice to the other party. In the event of termination under this Section, the City  
22 shall pay Contractor for services satisfactorily performed and costs incurred up to the  
23 effective date of termination for which Contractor has not been previously paid. The  
24 procedures for payment in Section 1 with regard to invoices shall apply. On the effective  
25 date of termination, Contractor shall deliver to the Director all Data developed or  
26 accumulated in the performance of this Agreement, whether in draft or final form, or in  
27 process.

28 10. AMENDMENT. This Agreement, including all Exhibits, shall not be

1 amended, nor any provision or breach hereof waived, except in writing signed by the  
2 parties which expressly refers to this Agreement.

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

8 12. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
9 constitutes the entire understanding between the parties and supersedes all other  
10 agreements, oral or written, with respect to the subject matter herein.

11 13. INDEMNITY. Contractor shall defend, indemnify and hold harmless  
12 the City, its employees and agents from and against all claims, demands, damage,  
13 causes of action, proceedings, loss, liability, cost and expense (including reasonable  
14 attorney's fees) of any kind whatsoever (collectively in this Section "claim") alleging (a)  
15 injury to or death of persons or damage to property, including property owned by or under  
16 the care and custody of the City, its employees or officers and (b) that such injury, death  
17 or damage arises from or is attributable to or caused by a negligent act or omission, any  
18 misrepresentation, or the willful misconduct of Contractor, its employees, agents, or  
19 subcontractors in the performance of services hereunder for the City, its employees or  
20 officers, except to the extent that the injury, death, or damage was caused by the  
21 negligence of the City. Contractor shall notify the City of any claim within ten (10) days.  
22 Likewise, City shall notify Contractor of any claim, shall tender the defense of such claim  
23 to Contractor, and shall assist Contractor, as may be reasonably requested, in such  
24 defense. The foregoing is not applicable to matters attributable to the negligence of  
25 willful misconduct of City, its employees, officers or agents.

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

28 15. COSTS. If there is any legal proceeding between the parties to

1 enforce or interpret this Agreement or to protect or establish any rights or remedies  
2 hereunder, the prevailing party shall be entitled to its costs and expenses, including  
3 reasonable attorneys' fees and court costs (including appeals).

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

14           17.    NONDISCRIMINATION. In connection with performance of this  
15 Agreement and subject to applicable laws, rules and regulations, Contractor shall not  
16 discriminate in rendering services hereunder on the basis of race, color, religion, national  
17 origin, sex, sexual orientation, AIDS, HIV status, age, disability, handicap or veteran  
18 status.

19           18.    NOTICES. Any notice or approval required hereunder by either  
20 party shall be in writing and personally delivered or deposited in the U.S. Postal Service,  
21 first class, postage prepaid, addressed to Contractor at the address first stated herein,  
22 and to the City at 2760 Studebaker Road, Long Beach, California 90815, Attention:  
23 Director. Notice of change of address shall be given in the same manner as stated  
24 herein for other notices. Notice shall be deemed given on the date deposited in the mail  
25 or on the date personal delivery is obtained, whichever first occurs.

26           19.    COVENANT AGAINST CONTINGENT FEES. Contractor warrants  
27 that Contractor has not employed or retained any entity or person to solicit or obtain this  
28 Agreement and that Contractor has not paid or agreed to pay any entity or person any



1 fee, commission, or other monies based on or from the award of this Agreement. If  
2 Contractor breaches this warranty, the City shall have the right to terminate this  
3 Agreement immediately notwithstanding the provisions of Section 9 hereof or, in its  
4 discretion, to deduct from payments due under this Agreement or otherwise recover the  
5 full amount of such fee, commission, or other monies.

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

11 21. CONTINUATION. Termination or expiration of this Agreement shall  
12 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 9, 10,  
13 11, 16, 18, and 27 prior to termination or expiration of this Agreement, and shall not  
14 extinguish any warranties hereunder.

15 22. TAX REPORTING. As required by federal and state law, City is  
16 obligated to and will report the payment of compensation to Contractor on Form 1099-  
17 Misc. Contractor shall be solely responsible for payment of all federal and state taxes  
18 resulting from payments under this Agreement. Contractor's Employer Identification  
19 Number is [REDACTED]

20 23. ADVERTISING. Contractor shall not use the name of the City, its  
21 officials or employees in any advertising or solicitation for business, nor as a reference,  
22 without the prior approval of the Director or designee.

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

27 25. NO PECULIAR RISK. Contractor acknowledges and agrees that the  
28 services to be performed hereunder do not constitute a peculiar risk of bodily harm and

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

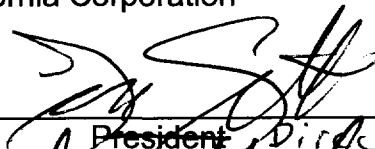
1 that no special precautions are required to perform said services.

2 26. THIRD PARTY BENEFICIARY. This Agreement is intended by the  
3 parties to benefit themselves only and is not in any way intended or designed to or  
4 entered for the purpose of creating any benefit or right of any kind for any person or entity  
5 that is not a party to this Agreement.

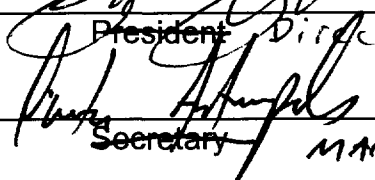
6 IN WITNESS WHEREOF, the parties hereto have caused these presents to  
7 be duly executed with all of the formalities required by law as of the date first stated  
8 herein.

9 VERIZON CALIFORNIA INC.  
10 a California Corporation

11 8/9/07, 2007

By   
President Director

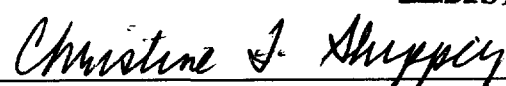
12 8/24/07, 2007

By   
Secretary MANAGER

13 "Contractor"

14 CITY OF LONG BEACH,  
15 a municipal corporation

16 10/18, 2007

17 **ASSISTANT**  
By   
City Manager

18 "CITY"

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

19 This Agreement is approved as to form on 9/28, 2007.

20 ROBERT E. SHANNON City Attorney

21 By   
Principal Deputy

## EXHIBIT "A"

### Scope of Service

Verizon shall relocate Secondary Demarcation Points as necessary to assist the City with the improvements currently underway at the Long Beach Marinas.

Scope of services for improvements in the Shoreline and Rainbow Marinas are further defined in Verizon Work Orders 843-8P001FV, GE, GF, GG, GH, and GJ.

Scope of services for improvements in the Alamitos Bay Marina will be defined in Verizon Work Orders upon completion of rebuild plans.

## EXHIBIT "B"

Verizon shall receive as payment for the services described in Exhibit A, Verizon's actual cost of the work to relocate Verizon Secondary Demarcation Points at the Long Beach Marinas. Said payments by City shall be made pursuant to Section 1 of the Agreement.

Total Payments for said services shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00) plus an additional ten (10) percent contingency without the approval of the Long Beach City Council.

EXHIBIT "C"

**City Representative:**

Mark Sandoval  
Marine Bureau Manager  
City of Long Beach Department of Parks, Recreation and Marine  
205 Marina Drive  
Long Beach, CA 90803

**Consultant Representatives:**

Steven Schmucker  
Vice President  
Concept Marine Associates, a Division of Transystems Corporation  
6700 E. Pacific Coast Highway Suite #201  
Long Beach, CA 90803

Gordon R. Fulton  
Regional Vice President  
Concept Marine Associates, a Division of Transystems Corporation  
6700 E. Pacific Coast Highway Suite #201  
Long Beach, CA 90803