

PURCHASE AGREEMENT

30288

THIS AGREEMENT (this "Agreement") is made and entered, in duplicate, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on September 4, 2007, by and between PITNEY BOWES INC., a Delaware corporation with a place of business at 1 Elmcroft Road, Stamford, Connecticut 06926-0700 ("Seller"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City seeks to purchase an Inserter Mailing System; and

WHEREAS, Seller has agreed to sell City the Inserter Mailing System;

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

1. Equipment.

A. The Inserter Mailing System (referred to as "Equipment") that is the subject matter of this Agreement is identified and described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. In consideration of City's payment hereunder, Seller shall provide and install the Equipment on a date to be specified by City.

2. Acceptance. Following installation by Seller, City shall have ten (10) days to inspect the Equipment and notify Seller of any deficiencies therein. Equipment not rejected during this ten (10) day period shall be deemed accepted. Seller shall have a reasonable amount of time to correct any deficiencies identified by City. Upon notification by Seller that all deficiencies have been corrected, City shall have an additional ten (10) days to inspect and, if applicable, accept the Equipment or notify Seller of additional deficiencies.

3. Cancellation. City may not cancel the order for Equipment under this Agreement after it has been notified that the Equipment is ready for delivery. If City cancels an order before delivery but after notification, City shall reimburse Seller for expenses actually incurred (including labor) up to but not to exceed the purchase price

1 set forth in this Agreement. No refunds for deposits or prepaid amounts shall be payable.

2 4. Purchase Price.

3 A. The total amount of this Agreement shall not exceed One
4 Hundred Seventy Thousand Dollars (\$170,000.00).

5 B. City shall pay Seller net forty-five (45) days after delivery,
6 installation and acceptance of the Equipment.

7 5. Warranty.

8 A. City shall have the benefit of the manufacturer's warranties on
9 the Equipment.

10 B. Seller warrants that Seller owns the Equipment and has the
11 right to transfer title of the Equipment to City. Seller shall defend, indemnify and
12 hold City harmless from any breach of this warranty.

13 C. Seller warrants that the Equipment delivered and installed
14 shall conform to the specifications described in Exhibit "A". Seller warrants that
15 the Equipment will, under normal use, and when used in the specified operating
16 environment, be free from material operating defects for a period of ninety (90)
17 days from the date of City's acceptance of the Equipment (the "Warranty Period").
18 If during the Warranty Period City notifies Seller in writing that the Equipment is
19 not performing in accordance with the specifications described in Exhibit "A",
20 Seller shall repair, recalibrate or replace the Equipment to City's satisfaction and at
21 no cost to City.

22 D. Seller expressly disclaims any warranty relative to
23 consumable parts or supplies.

24 **E. THE WARRANTIES SET FORTH IN THIS SECTION ARE**
25 **THE ONLY WARRANTIES APPLICABLE TO THE EQUIPMENT, EXPRESS OR**
26 **IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY,**
27 **FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY.**
28 **REPAIR, RECALIBRATION OR REPLACEMENT OF THE EQUIPMENT IS**

1 **CITY'S SOLE REMEDY FOR BREACH OF WARRANTY.**

2 **6. LIMITATION OF LIABILITY. SELLER'S TOTAL LIABILITY FOR**
3 **ANY COST, LOSS, DAMAGE OR OTHER POTENTIAL OR ACTUAL EXPENSES**
4 **ARISING DIRECTLY OR INDIRECTLY OUT OF THE EXECUTION, PERFORMANCE**
5 **OR SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE TOTAL**
6 **AMOUNT OF THE PURCHASE PRICE FOR THE EQUIPMENT. REGARDLESS OF**
7 **THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE,**
8 **SELLER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES FOR LOSS OF**
9 **BUSINESS PROFITS, BUSINESS INTERRUPTION OR FOR INCIDENTAL,**
10 **CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF**
11 **THIS AGREEMENT, EVEN IF SELLER HAD BEEN ADVISED OF THE POSSIBILITY**
12 **OF SUCH DAMAGES.**

13 7. Time is of the Essence. If at any time Seller believes that it cannot
14 deliver and install the Equipment as scheduled, Seller shall immediately give written
15 notice to City stating the cause of the delay and the expected date of delivery and
16 installation. If in City's sole and reasonable discretion the cause of the delay is not
17 justified, City may deem the delay a breach of this Agreement and may immediately
18 terminate this Agreement with no obligation to Seller.

19 8. Confidentiality. Seller shall keep confidential and not disclose or use
20 in any way confidential business or technical information that City may disclose in
21 conjunction with this Agreement or Seller may learn as a result of entering City property
22 to deliver and install the Equipment.

23 9. Insurance.

24 A. As a condition precedent to the effectiveness of this
25 Agreement, Seller shall procure and maintain, at Seller's expense for the duration
26 of this Agreement, from insurance companies that are admitted to write insurance
27 in California and have ratings of or equivalent to A:VII by A.M. Best Company or
28 from authorized non-admitted insurance companies subject to Section 1763 of the

1 California Insurance Code and that have ratings of or equivalent to A:VII by A.M.
2 Best Company, the following insurance:

3 (1) Commercial general liability insurance (equivalent
4 in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an
5 amount not less than \$1,000,000 per each occurrence and
6 \$2,000,000 general aggregate. City, its boards and commissions,
7 and their officials, employees and agents shall be named as
8 additional insureds by endorsement (on City's endorsement form or
9 on an endorsement equivalent in scope to ISO form CG 20 10 11
10 85 or CG 20 26 11 85). This policy shall be endorsed to state that
11 the insurer waives its right of subrogation against City, its boards
12 and commissions, and their officials, employees and agents.

13 (2) Workers' Compensation insurance as required by
14 the California Labor Code and employer's liability insurance in an
15 amount not less than \$1,000,000. This policy shall be endorsed to
16 state that the insurer waives its right of subrogation against City, its
17 boards and commissions, and their officials, employees and
18 agents.

19 (3) Professional liability or errors and omissions
20 insurance in an amount not less than \$1,000,000 per claim.

21 (4) Commercial automobile liability insurance
22 (equivalent in scope to ISO form CA 00 01 06 92), covering Auto
23 Symbol 1 (Any Auto) in an amount not less than \$500,000
24 combined single limit per accident.

25 B. Any self-insurance program or self-insured retention shall
26 protect City, its officials, employees and agents in the same manner and to the
27 same extent as they would have been protected had the policy or policies not
28 contained retention or deductible provisions.

1 C. Certificates of insurance shall state that coverage shall not be
2 canceled except after the insurer affording coverage endeavors to provide thirty
3 (30) days prior written notice to City, shall be primary and not contributing to any
4 other insurance or self-insurance maintained by City, and shall be endorsed to
5 state that coverage maintained by City shall be excess to and shall not contribute
6 to insurance or self-insurance maintained by Seller with respect to City's rights as
7 an additional insured.

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

14 E. Seller shall require that all subcontractors that Seller uses in
15 the performance of these services maintain insurance in compliance with this
16 Section unless otherwise agreed in writing by City's Risk Manager or designee.

17 F. Prior to the start of performance, Seller shall deliver to City
18 certificates of insurance and the endorsements for approval as to sufficiency and
19 form. In addition, Seller shall, within thirty (30) days of expiration of the insurance,
20 furnish to City certificates of insurance and endorsements evidencing renewal of
21 the insurance.

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

28 H. The procuring or existence of insurance shall not be

1 construed or deemed as a limitation on liability relating to Seller's performance or
2 as full performance of or compliance with the indemnification provisions of this
3 Agreement.

4 10. Notice. Notice shall be in writing and personally delivered or
5 deposited in the U.S. Postal Service, first class, registered or certified, return receipt,
6 postage prepaid, to Seller at the address first stated above, and to City at 333 West
7 Ocean Boulevard, Long Beach, California 90802 Attn: City Manger. Notice shall be
8 deemed given on the date of personal deliver or on the date shown on the return receipt,
9 whichever first occurs. Notice of change of address shall be given as other notices.

10 11. Assignment; Subcontracting. Seller shall not, except for moneys due
11 and payable hereunder, assign its rights or delegate its duties hereunder, or any interest
12 herein, or any portion hereof, without the prior written approval of City. Any attempted
13 assignment or delegation shall be void, and any assignee or delegate shall acquire no
14 right or interest by reason of such attempted assignment or delegation. Furthermore,
15 Seller shall not subcontract any portion of the performance required hereunder without
16 the prior written approval of City.

17 12. Force Majeure. Seller shall not be responsible for delays in delivery
18 of the Equipment beyond Seller's reasonable control, including but not limited to, delays
19 caused by City and/or changes to this Agreement requested by City.

20 13. Miscellaneous.

21 A. In connection with performance of this Agreement and federal
22 laws, rules and regulations, Seller shall not discriminate in employment or in the
23 performance of this Agreement on the basis of race, religion, national origin, color,
24 age, sex, sexual orientation, AIDS, HIV status, handicap or disability.

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

28 C. This Agreement shall be governed by and construed pursuant

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

4 D. This Agreement, including Exhibits, constitutes the entire
5 understanding between the parties and supersedes all other agreements, oral or
6 written, to the extent they are inconsistent with this Agreement, with respect to the
7 subject matter herein.

8 E. In the event of any conflict or ambiguity between this
9 Agreement and any Exhibit, the provisions of this Agreement shall govern.

10 F. If there is any legal proceeding between the parties to enforce
11 or interpret this Agreement or to protect or establish any rights or remedies
12 hereunder, the prevailing party shall be entitled to its costs and expenses,
13 including reasonable attorney's fees.

14 G. The acceptance of any services or the payment of any money
15 by City shall not operate as a waiver of any provision of this Agreement, or of any
16 right to damages or indemnity stated herein. The waiver of any breach of this
17 Agreement shall not constitute a waiver of any other or subsequent breach of this
18 Agreement.

19 H. Termination of this Agreement shall not affect rights or
20 liabilities of the parties which accrued prior to termination and shall not extinguish
21 any warranties.

22 I. Seller shall not use the name of City, its officials or employees
23 in any advertising or solicitation for business nor as a reference without the prior
24 written approval of City's City Manager.

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

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

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

PITNEY BOWES INC., a Delaware corporation

Sept. 27, 2007

By Sandra Torony 9/27/07
Sandra Torony
(Type or Print Name)

_____, 2007

By _____

(Type or Print Name)

"Seller"

CITY OF LONG BEACH, a municipal corporation

10/11, 2007

By [Signature]
City Manager

"City"

This Agreement is approved as to form on 10/4, 2007.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

EXHIBIT "A"

**Scope of Work
Pitney Bowes 8 Series Inserting System**

Cost

Hardware: 8 Series Inserter with 6 enclosures, freight cost, uncrating, moving to desired location, installation, and disassembly and removal of old machine included	\$154,947
Software, and software upgrades	No additional cost
Technical Support	Documentation provided to City to build appropriate OMR coding upon contract award, including format and specifications for placing this code at no additional cost.

Inserting System Features

- Inserter must handle up to 15,000 single page statements per day, with a minimum speed of 4K per hour.
- Inserter should read OMR bar codes on correspondence that will signal zip code breaks, two-page bills, and determine inserts.
- Inserter processing will include folding and inserting correspondence with a weight of 18 lb to 24 lb, along with inserts, into #10 envelopes.
- Inserter should be able to handle up to 200 multiple page documents per day, containing 2 sheets, and interspersed in the mail-out, and include multiple inserts into a #10 envelope.
- Inserter must provide statistical reports on all jobs processed. Reports will include faults/stops/idle time of Inserter(s)/chassis halts, number of pieces processed, number of inserts, job changes. Instruction guide on using the reporting process should be provided.
- Inserter is required to insert documents with the address appearing at the top or bottom of the document without changes to the existing envelope.
- Inserter is required to run both diagonal and side seam #10 mailing envelopes, with a paperweight of 24-pound white woven.
- The Inserter must insert correspondence, bills, and checks into our current envelope without modifications to the construction of our #10 envelopes.

Scope of Work
Pitney Bowes 8 Series Inserting System

- The inserter should have a divert bin for problems, including bad scans and misfeeds. In addition over weight pieces of mail should be diverted from the final mail stream.
- Inserter will mark envelopes to indicate changes in zip code.
- Inserter to include the DM Infinity Series Digital Mailing System postal meter with Controlled Acceptance Indicia.
- Inserter should be programmable to provide for at multiple preset jobs.
- Envelope holder should have a minimum capacity of 250.
- Inserter must meet all Federal, State and OSHA safety requirements.

Space Requirements and Installation:

- The machine size is 26 feet X 9 feet, and working space around the inserter should be 3 feet..
- A Pitney Bowes service team will do a site survey prior to installation to confirm that the site is adequately prepared. This site visit is included in the cost of the machine.
- The Pitney Bowes installation team will be composed of Certified Pitney Bowes full time employees.

Training

- Training provided at the time of installation. In addition follow-up training will be scheduled at no additional cost.
- The vendor is required to provide training and operation manuals that review operator adjustments/maintenance required to be done daily, weekly, and monthly.
- The vendor must provide operator training for a minimum of 4 operators, and training will be split up to two sessions, one at installation, and the second during the first month.

Use Tax Accrual

- The contractor will submit the appropriate document to accrue the use tax on this equipment purchase to the City of Long Beach

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