

1 AGREEMENT

2 **31542**

3 THIS AGREEMENT is made and entered, in duplicate, as of February 13,  
4 2010 for reference purposes only, pursuant to a minute order adopted by the City Council  
5 of the City of Long Beach at its meeting on February 9, 2010, by and between THE RYTE  
6 PROFESSIONALS, a corporation, located at 4141 Ball Road, #417, Cypress, California  
7 90630 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

8 WHEREAS, the City requires specialized services requiring unique skills to  
9 be performed in connection with Professional Computer Services; and

10 WHEREAS, City has selected Consultant in accordance with City's  
11 administrative procedures and City has determined that Consultant and its employees  
12 are qualified, licensed, if so required, and experienced in performing these specialized  
13 services; and

14 WHEREAS, City desires to have Consultant perform these specialized  
15 services, and Consultant is willing and able to do so on the terms and conditions in this  
16 Agreement;

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

19 1. SCOPE OF WORK OR SERVICES.

20 A. Consultant shall furnish specialized services more particularly  
21 described in Exhibit "A", attached to this Agreement and incorporated by this  
22 reference, in accordance with the standards of the profession, and City shall pay  
23 for these services in the manner described below, not to exceed One-Hundred  
24 Fifty Thousand Dollars (\$150,000.00), at the rates or charges shown in Exhibit "A".

25 B. Consultant may select the time and place of performance for  
26 these services provided, however, that access to City documents, records, and the  
27 like, if needed by Consultant, shall be available only during City's normal business  
28 hours and provided that milestones for performance, if any, are met.

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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C. Consultant has requested to receive regular payments. City shall pay Consultant thirty (30) days following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry, or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

D. Consultant represents that Consultant has obtained all necessary information on conditions and circumstances that may affect its performance and has conducted site visits, if necessary.

E. CAUTION: Consultant shall not begin work until this Agreement has been signed by both parties and until Consultant's evidence of insurance has been delivered to and approved by the City.

2. TERM. The term of this Agreement shall commence on March 1, 2010, and shall terminate on February 28, 2011, unless sooner terminated as provided in this Agreement, or unless the services or the Project is completed sooner.

3. COORDINATION AND ORGANIZATION.

Consultant shall coordinate its performance with City's representative. Consultant shall advise and inform City's representative of the work in progress on the Project in sufficient detail so as to assist City's representative in making presentations and in holding meetings on the

1 Project.

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

15 5. INSURANCE.

16 A. As a condition precedent to the effectiveness of this  
17 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
18 duration of this Agreement, from insurance companies that are admitted to write  
19 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
20 Company or from authorized non-admitted insurance companies subject to  
21 Section 1763 of the California Insurance Code and 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  
24 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
25 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
26 coverage shall include but not be limited to broad form contractual liability,  
27 cross liability, independent contractors liability, and products and  
28 completed operations liability. The City, its boards and commissions, and

1 their officials, employees and agents shall be named as additional  
2 insureds by endorsement (on City's endorsement form or on an  
3 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20  
4 26 11 85), and this insurance shall contain no special limitations on the  
5 scope of protection given to the City, its boards and commissions, and  
6 their officials, employees and agents. This policy shall be endorsed to  
7 state that the insurer waives its right of subrogation against City, its boards  
8 and commissions, and their officials, employees and agents.

9 (b) Workers' Compensation insurance as required by the California  
10 Labor Code and employer's liability insurance in an amount not less than  
11 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
12 its right of subrogation against City, its boards and commissions, and their  
13 officials, employees and agents.

14 (c) Professional liability or errors and omissions insurance in an  
15 amount not less than \$1,000,000 per claim and aggregate.

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

19 B. Any self-insurance program, self-insured retention, or  
20 deductible must be separately approved in writing by City's Risk Manager or  
21 designee and shall protect City, its officials, employees and agents in the same  
22 manner and to the same extent as they would have been protected had the policy  
23 or policies not contained retention or deductible provisions.

24 C. Each insurance policy shall be endorsed to state that  
25 coverage shall not be reduced, non-renewed, or canceled except after thirty (30)  
26 days prior written notice to City, shall be primary and not contributing to any other  
27 insurance or self-insurance maintained by City, and shall be endorsed to state that  
28 coverage maintained by City shall be excess to and shall not contribute to

1 insurance or self-insurance maintained by Consultant. Consultant shall notify the  
2 City in writing within five (5) days after any insurance has been voided by the  
3 insurer or cancelled by the insured.

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

10 E. Consultant shall require that all subconsultants or contractors  
11 which Consultant uses in the performance of these services maintain insurance in  
12 compliance with this Section unless otherwise agreed in writing by City's Risk  
13 Manager or designee.

14 F. Prior to the start of performance, Consultant shall deliver to  
15 City certificates of insurance and the endorsements for approval as to sufficiency  
16 and form. In addition, Consultant, shall, within thirty (30) days prior to expiration of  
17 the insurance, furnish to City certificates of insurance and endorsements  
18 evidencing renewal of the insurance. City reserves the right to review complete  
19 certified copies of all policies of Consultant and Consultant's subconsultants and  
20 contractors, at any time. Consultant shall make available to City's Risk Manager  
21 or designee all books, records and other information relating to this insurance,  
22 during normal business hours.

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

1 H. The procuring or existence of insurance shall not be  
2 construed or deemed as a limitation on liability relating to Consultant's  
3 performance or as full performance of or compliance with the indemnification  
4 provisions of this Agreement.

5 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
6 contemplates the personal services of Consultant and Consultant's employees, and the  
7 parties acknowledge that a substantial inducement to City for entering this Agreement  
8 was and is the professional reputation and competence of Consultant and Consultant's  
9 employees. Consultant shall not assign its rights or delegate its duties under this  
10 Agreement, or any interest in this Agreement, or any portion of it, without the prior  
11 approval of City, except that Consultant may with the prior approval of the City Manager  
12 of City, assign any moneys due or to become due the Consultant under this Agreement.  
13 Any attempted assignment or delegation shall be void, and any assignee or delegate  
14 shall acquire no right or interest by reason of an attempted assignment or delegation.  
15 Furthermore, Consultant shall not subcontract any portion of its performance without the  
16 prior approval of the City Manager or designee, or substitute an approved subconsultant  
17 or contractor without approval prior to the substitution. Nothing stated in this Section  
18 shall prevent Consultant from employing as many employees as Consultant deems  
19 necessary for performance of this Agreement.

20 7. CONFLICT OF INTEREST. Consultant, by executing this  
21 Agreement, certifies that, at the time Consultant executes this Agreement and for its  
22 duration, Consultant does not and will not perform services for any other client which  
23 would create a conflict, whether monetary or otherwise, as between the interests of City  
24 and the interests of that other client. And, Consultant shall obtain similar certifications  
25 from Consultant's employees, subconsultants and contractors.

26 8. MATERIALS. Consultant shall furnish all labor and supervision,  
27 supplies, materials, tools, machinery, equipment, appliances, transportation, and services  
28 necessary to or used in the performance of Consultant's obligations under this

1 Agreement.

2 9. OWNERSHIP OF DATA. All materials, information and data  
3 prepared, developed, or assembled by Consultant or furnished to Consultant in  
4 connection with this Agreement, including but not limited to documents, estimates,  
5 calculations, studies, maps, graphs, charts, computer disks, computer source  
6 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,  
7 information, material, and memorandum ("Data") shall be the exclusive property of City.  
8 Data shall be given to City, and City shall have the unrestricted right to use and disclose  
9 the Data in any manner and for any purpose without payment of further compensation to  
10 Consultant. Reuse of Data by City for other purposes shall be at City's sole risk. Copies  
11 of Data may be retained by Consultant but Consultant warrants that Data shall not be  
12 made available to any person or entity for use without the prior approval of City. This  
13 warranty shall survive termination of this Agreement for five (5) years.

14 10. TERMINATION. Either party shall have the right to terminate this  
15 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
16 prior notice to the other party. In the event of termination under this Section, City shall  
17 pay Consultant for services satisfactorily performed and costs incurred up to the effective  
18 date of termination for which Consultant has not been previously paid. The procedures  
19 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of  
20 termination, Consultant shall deliver to City all Data developed or accumulated in the  
21 performance of this Agreement, whether in draft or final form, or in process. And,  
22 Consultant acknowledges and agrees that City's obligation to make final payment is  
23 conditioned on Consultant's delivery of the Data to the City.

24 11. CONFIDENTIALITY. Consultant shall keep the Data confidential  
25 and shall not disclose the Data or use the Data directly or indirectly other than in the  
26 course of performing its services, during the term of this Agreement and for five (5) years  
27 following expiration or termination of this Agreement. In addition, Consultant shall keep  
28 confidential all information, whether written, oral, or visual, obtained by any means

1 whatsoever in the course of performing its services for the same period of time.  
2 Consultant shall not disclose any or all of the Data to any third party, or use it for  
3 Consultant's own benefit or the benefit of others except for the purpose of this  
4 Agreement.

5 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
6 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
7 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
8 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
9 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
10 disclosed pursuant to subpoena or court order.

11 13. ADDITIONAL COSTS AND REDESIGN.

12 A. Any costs incurred by the City due to Consultant's failure to  
13 meet the standards required by the scope of work or Consultant's failure to  
14 perform fully the tasks described in the scope of work which, in either case,  
15 causes the City to request that Consultant perform again all or part of the Scope of  
16 Work shall be at the sole cost of Consultant and City shall not pay any additional  
17 compensation to Consultant for its re-performance.

18 B. If the Project involves construction and the scope of work  
19 requires Consultant to prepare plans and specifications with an estimate of the  
20 cost of construction, then Consultant may be required to modify the plans and  
21 specifications, any construction documents relating to the plans and specifications,  
22 and Consultant's estimate, when the lowest bid for construction received by City  
23 exceeds by more than ten percent (10%) Consultant's estimate. This modification  
24 shall be submitted in a timely fashion to allow City to receive new bids within four  
25 (4) months after the date on which the original plans and specifications were  
26 submitted by Consultant.

27 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
28 amended, nor any provision or breach waived, except in writing signed by the parties



1 which expressly refers to this Agreement.

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

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

10           17. INDEMNITY. Consultant shall, with respect to services performed in  
11 connection with this Agreement, indemnify, hold harmless and defend the City, its  
12 Boards, Commissions, and their officials, employees and agents (collectively in this  
13 Section, "City") from and against any and all liability, claims, demands, damage, loss,  
14 causes of action, proceedings, penalties, costs and expenses (including attorney's fees,  
15 court costs, and expert and witness fees) (collectively "Claims" or individually "Claim").  
16 Claims include allegations and include Claims for property damage, personal injury or  
17 death arising from any negligent act or omission of Consultant, its officers, employees,  
18 agents, sub-consultants, or anyone under Consultant's control (collectively "Indemnitor");  
19 recklessness; and willful misconduct.

20           18. AMBIGUITY. In the event of any conflict or ambiguity between this  
21 Agreement and any Exhibit, the provisions of this Agreement shall govern.

22           19. COSTS. If there is any legal proceeding between the parties to  
23 enforce or interpret this Agreement or to protect or establish any rights or remedies under  
24 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

25           20. NONDISCRIMINATION.

26           A. In connection with performance of this Agreement and subject  
27 to applicable rules and regulations, Consultant shall not discriminate against any  
28 employee or applicant for employment because of race, religion, national origin,

1 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or  
2 disability. Consultant shall ensure that applicants are employed, and that  
3 employees are treated during their employment, without regard to these bases.  
4 These actions shall include, but not be limited to, the following: employment,  
5 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or  
6 termination, rates of pay or other forms of compensation, and selection for training,  
7 including apprenticeship.

8 B. It is the policy of City to encourage the participation of  
9 Disadvantaged, Minority and Women-owned Business Enterprises in City's  
10 procurement process, and Consultant agrees to use its best efforts to carry out  
11 this policy in its use of subconsultants and contractors to the fullest extent  
12 consistent with the efficient performance of this Agreement. Consultant may rely  
13 on written representations by subconsultants and contractors regarding their  
14 status. Consultant shall report to City in May and in December or, in the case of  
15 short-term agreements, prior to invoicing for final payment, the names of all  
16 subconsultants and contractors hired by Consultant for this Project and information  
17 on whether or not they are a Disadvantaged, Minority or Women-Owned Business  
18 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.  
19 637).

20 21. NOTICES. Any notice or approval required by this Agreement shall  
21 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
22 postage prepaid, addressed to Consultant at the address first stated above, and to the  
23 City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager.  
24 Notice of change of address shall be given in the same manner as stated for other  
25 notices. Notice shall be deemed given on the date deposited in the mail or on the date  
26 personal delivery is made, whichever occurs first.

27 22. COPYRIGHTS AND PATENT RIGHTS.

28 A. Consultant shall place the following copyright protection on all

1 Data: © City of Long Beach, California \_\_\_\_\_, inserting the appropriate year.

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

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

13 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
14 that Consultant has not employed or retained any entity or person to solicit or obtain this  
15 Agreement and that Consultant has not paid or agreed to pay any entity or person any  
16 fee, commission, or other monies based on or from the award of this Agreement. If  
17 Consultant breaches this warranty, City shall have the right to terminate this Agreement  
18 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct  
19 from payments due under this Agreement or otherwise recover the full amount of the fee,  
20 commission, or other monies.

21 24. WAIVER. The acceptance of any services or the payment of any  
22 money by City shall not operate as a waiver of any provision of this Agreement or of any  
23 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
24 Agreement shall not constitute a waiver of any other or subsequent breach of this  
25 Agreement.

26 25. CONTINUATION. Termination or expiration of this Agreement shall  
27 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
28 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

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

1           26.   TAX REPORTING. As required by federal and state law, City is  
2 obligated to and will report the payment of compensation to Consultant on Form 1099-  
3 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
4 resulting from payments under this Agreement. Consultant's Employer Identification  
5 Number is [REDACTED] If Consultant has a Social Security Number rather than an  
6 Employer Identification Number, then Consultant shall submit that Social Security  
7 Number in writing to City's Accounts Payable, Department of Financial Management.  
8 Consultant acknowledges and agrees that City has no obligation to pay Consultant until  
9 Consultant provides one of these numbers.

10           27.   ADVERTISING. Consultant shall not use the name of City, its  
11 officials or employees in any advertising or solicitation for business or as a reference,  
12 without the prior approval of the City Manager or designee.

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

17           29.   THIRD PARTY BENEFICIARY. This Agreement is not intended or  
18 designed to or entered for the purpose of creating any benefit or right for any person or  
19 entity of any kind that is not a party to this Agreement.

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

3 THE RYTE PROFESSIONALS, a  
4 California corporation

5 March 1, 2010

By Wende M  
President

Wende Morishige  
Type or Print Name

7 March 15 2010

By Steven Siostran  
Secretary

Steven Siostran  
Type or Print Name

10 "Consultant"

11 CITY OF LONG BEACH, a municipal  
12 corporation Assistant City Manager

13 March 23 2010

By [Signature]  
City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

14 "City"

15 This Agreement is approved as to form on March 18  
16 2010.

18 ROBERT E. SHANNON, City Attorney

19 By [Signature]  
20 Deputy

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

## EXHIBIT A

### CHARGES/FEES

This Exhibit A is issued pursuant to an Agreement between City of Long Beach and The RYTE Professionals. 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 , 12<sup>th</sup> floor  
Long Beach, CA 90802

#### **1. Business Analyst**

Hourly rate: \$75.00  
Overtime rate: \$75.00

#### **2. Project Manager**

Hourly rate: \$85.00  
Overtime rate: \$85.00

#### **2. Legacy Systems Programmer**

Hourly rate: \$65.00  
Overtime rate: \$97.50