

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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AGREEMENT
31706

THIS AGREEMENT is made and entered, in duplicate, as of April 28, 2010 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on April 20, 2010, by and between the CITY OF SEAL BEACH, a municipal corporation, whose address is 211 Eighth Street, Seal Beach, California 90740 ("Seal Beach"), and the CITY OF LONG BEACH, a municipal corporation ("Long Beach").

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

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

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

1. TERM.

A. This Agreement shall commence at midnight on January 1, 2010 and will remain in effect until such time as either Long Beach or Seal Beach wishes to terminate the Agreement.

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

2. DEFINITIONS. The following definitions shall apply to this

Agreement:

A. "Collection" shall mean collecting coins from parking meters twice weekly from March through October and once per week from November through February. Long Beach will place the coins in a secured collection cart

1 provided by Seal Beach and leave said cart at the Seal Beach Finance
2 Department.

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

10 C. "Repair Service" shall mean cleaning, painting, performing
11 major repairs (that take over two (2) days to repair) and returning meters to the
12 factory.

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

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

25 Parts, except batteries, required for preventive maintenance are included in
26 the annual service fee. Long Beach will invoice Seal Beach for parts that cost more than
27 one hundred dollars (\$100), at the actual cost of the part plus twenty percent (20%).

28 4. ANNUAL SERVICE FEE.

1 A. Seal Beach shall pay to Long Beach for maintenance and
2 collection services the sum of Twelve Thousand Dollars (\$12,000) annually in
3 quarterly payments of Three Thousand Dollars (\$3,000) each within fifteen (15)
4 days after receipt of an invoice from Long Beach.

5 B. Long Beach may, in its sole discretion, annually increase the
6 fee for maintenance and collection services by the consumer price index, but such
7 increase shall not exceed five percent (5%) of the previous years' fee.

8 C. If Seal Beach requests services in addition to those identified
9 herein, Seal Beach shall pay to Long Beach for the parts and labor related to
10 those services the actual cost of the parts plus twenty percent (20%) and labor at
11 the rate of Fifty Dollars (\$50) per hour.

12 D. If this Agreement is terminated pursuant to Section 1.B.
13 above, then Seal Beach shall not be entitled to any refund of any quarterly
14 payment already paid but Seal Beach shall have no further obligation to pay any
15 subsequent quarterly payment. Seal Beach shall pay Long Beach for additional
16 services performed prior to the effective date of termination for which Long Beach
17 has not been previously paid.

18 5. WARRANTY.

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

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

25 6. RESPONSIBILITIES OF SEAL BEACH.

26 A. Within three (3) business days following the commencement
27 date of this Agreement, Seal Beach shall deliver to Long Beach a list containing
28 the names of individuals who are authorized by Seal Beach to request additional

1 services. That list shall also contain the name, address and telephone number of
2 the person who will serve as Administrator of this Agreement.

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

6 7. ASSIGNMENT. Neither party shall assign its rights or delegate its
7 duties hereunder, or any interest herein, or any portion hereof, without the prior written
8 approval of the other party. Any attempted assignment or delegation shall be void, and
9 any assignee or delegate shall acquire no right or interest by reason of such attempted
10 assignment or delegation. However, Long Beach may as it deems necessary
11 subcontract the performance of services hereunder.

12 8. NOTICE. Notice shall be in writing and personally delivered or
13 deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Seal
14 Beach at the address first stated herein and to Long Beach at 333 West Ocean
15 Boulevard, Long Beach, California 90802 Attn: City Manager. Notice shall be deemed
16 given on the date of personal deliver or on the date of deposit in the mail, whichever first
17 occurs.

18 9. MUTUAL INDEMNITY. In accordance with Sections 895 through
19 895.8 of the California Government Code, each party hereby assumes the liability
20 imposed on it, its officials, and employees for injury (as defined in Section 810 of the
21 California Government Code) caused by a negligent or wrongful act or omission
22 occurring in performance of each party as required in this Agreement to the same extent
23 that such liability would be imposed on the absence of these Sections. To that end, each
24 party shall defend, indemnify and hold harmless the other party for any claim, demand,
25 cause of action, loss, liability, damage, cost, or expense that may be imposed on such
26 party solely by virtue of Section 895.2 of the California Government Code.

27 10. MISCELLANEOUS.

28 A. This Agreement shall not be amended, nor any provision or

1 breach hereof waived, except in writing signed by the parties which expressly
2 refers to this Agreement.

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

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

10 D. 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 E. This Agreement shall be governed by and construed pursuant
15 to the laws of the State of California (except those provisions of California law
16 pertaining to conflicts of laws).

17 F. In connection with performance of this Agreement, neither
18 party shall discriminate against on the basis of race, religion, national origin, color,
19 age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
20 disability.

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

CITY OF SEAL BEACH, a municipal corporation

June 14, 2010

By [Signature]

Approved as to form:

Title City Manager

[Signature]
City Attorney Seal Beach

"Seal Beach"

CITY OF LONG BEACH, a municipal corporation

7.6, 2010

By [Signature]
City Manager
Assistant City Manager

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

"Long Beach"

This Agreement is approved as to form on 6-22, 2010.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy