

1 **AGREEMENT**

2 **30220**

3 THIS AGREEMENT is made and entered, in duplicate, as of July 25, 2007
4 for reference purposes only, pursuant to a minute order adopted by the City Council of
5 the City of Long Beach at its meeting on July 10, 2007, by and between LOGIN
6 CONSULTING SERVICES, Inc, a California corporation ("LOGIN"), and the CITY OF
7 LONG BEACH, a municipal corporation ("Client").

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

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

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

16 1. AMOUNT: The amount of this Agreement shall not exceed \$208,000
17 during the term. LOGIN has already been paid approximately \$95,000 under Purchase
18 Order Number BPTS07000026. As a result, the total contract amount (not to exceed
19 \$208,000) was reduced by actual accumulated payments under that Purchase Order.

20 2. TERM: The term of this Agreement shall commence at midnight on
21 March 12, 2007, and shall terminate at 11:59 p.m. on March 12, 2008. The term of this
22 Agreement may be extended on mutual agreement of the parties and execution of a
23 written amendment to this Agreement. This Agreement may be terminated by Client for
24 cause or convenience on two weeks' prior notice without penalty or further obligation
25 after Client has paid for services rendered through the date of termination.

26 3. SERVICES: LOGIN shall provide to Client one or more Workers as
27 requested by Client from time to time. Such Workers shall provide the services described
28 in Exhibit "A", attached to this Agreement and incorporated by reference, in accordance

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

1 with the standards of the profession, and Client shall pay for said services at the rates or
2 charges described in Exhibit "A".

3 4. INDEPENDENT CONTRACTOR STATUS: With respect to the services
4 provided by LOGIN, LOGIN is and shall act as an independent contractor and not an
5 employee, representative, or agent of Client. LOGIN acknowledges and agrees that: a)
6 Client will not withhold taxes of any kind from LOGIN's compensation; b) Client will not
7 secure workers' compensation or pay unemployment insurance to, for or on LOGIN's
8 behalf; and c) Client will not provide and LOGIN is not entitled to any of the usual and
9 customary rights, benefits or privileges of Client's employees. LOGIN expressly warrants
10 that neither LOGIN nor any of LOGIN's employees or agents shall represent themselves
11 to be employees or agents of Client.

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

15 6. PAYMENT DEFAULT: Client agrees to pay the invoices of LOGIN within
16 thirty (30) days after receipt of a valid invoice by having such payment delivered to
17 LOGIN at 300 N. Continental Blvd. #530, El Segundo, CA 90245 or such other location or
18 manner as LOGIN shall hereafter direct in writing.

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

26 Notwithstanding the above paragraph, if at any time Client wishes to hire
27 any LOGIN's Worker directly or indirectly as an employee of Client or independent
28 contractor (without the participation of a placement agency other than LOGIN), Client

1 may request that LOGIN release the LOGIN's Worker from his/her employment contract
2 or other engagement with LOGIN in order to permit such desired engagement provided,
3 however, Client acknowledges and agrees that LOGIN, in its sole and absolute
4 discretion, has the right to accept or refuse such request of Client.

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

16 9. CLIENT PROPERTY:

17 a. Work Product: All work product of every kind performed by any
18 LOGIN's Worker on behalf of Client shall be the sole and exclusive property of Client.

19 b. Confidentiality: LOGIN recognizes that while performing its duties
20 under this Agreement, LOGIN and its Workers may be granted access to certain
21 proprietary and confidential information regarding client's business, customers, and
22 employees. LOGIN shall keep such information confidential (unless compelled to reveal
23 such information by court), and the obligations of this paragraph will survive the
24 termination of this Agreement. This paragraph does not apply to information that was
25 previously known or information that is available in the public domain.

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

28 11. NOTICES:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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:

LOGIN: Login Consulting Services, Inc
300 N. Continental Blvd., #530
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, LOGIN shall procure and maintain at LOGIN'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

1 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars
2 (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate.
3 Such coverage shall include but not be limited to broad form contractual liability, cross
4 liability, independent contractors liability, and products and completed operations liability.
5 The City of Long Beach, its officials, employees and agents shall be named as additional
6 insureds by endorsement.(on Clients endorsement form or on an endorsement equivalent
7 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall
8 contain no special limitations on the scope of protection given to the City of Long Beach,
9 its officials, employees and agents.

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

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

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

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

23 Any self-insurance program, self-insured retention, or deductible must be
24 separately approved in writing by Client's Risk Manager or designee and shall protect the
25 City of Long Beach, its officials, employees and agents in the same manner and to the
26 same extent as they would have been protected had the policy or policies not contained
27 retention provisions. Each insurance policy shall be endorsed to state that coverage shall
28 not be suspended, voided or canceled by either party except after thirty (30) days prior

1 written notice to Client, and shall be primary and not contributing to any other insurance
2 or self-insurance maintained by the City of Long Beach, its officials, employees and
3 agents.

4 LOGIN shall require that all contractors and subcontractors which LOGIN
5 uses in the performance of services under this Agreement maintain insurance in
6 compliance with this Section unless otherwise agreed in writing by Client's Risk Manager
7 or designee.

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

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

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

28 ///

1 13. MISCELLANEOUS:

2 13.1 No party shall transfer or assign any or all of its rights or
3 interests under this Agreement or delegate any of its obligations without the prior
4 written consent of the other party; which consent shall not be unreasonably
5 withheld.

6 13.2 Client will provide direct supervision to LOGIN' Workers, who
7 will be assigned to work on Client's premises. LOGIN' Workers shall not be
8 permitted to, without advance written approval by an officer of LOGIN, either (a)
9 engage in travel or otherwise to operate a motor vehicle on behalf of Client; (b)
10 handle cash, negotiable instruments, valuables or securities, or (c) be permitted
11 unsupervised or uncontrolled access to areas where confidential information or
12 valuables are kept.

13 13.3 This Agreement shall be governed by and construed pursuant
14 to the laws of the State of California (except those provisions of California law
15 pertaining to conflicts of laws). Any action involving this Agreement shall be
16 brought in the Los Angeles County Superior Court, Long Beach Judicial District.

17 13.4 This Agreement constitutes the entire understanding between
18 the parties hereto and supersedes all other agreements, whether oral or written,
19 with respect to the subject matter herein.

20 13.5 LOGIN shall defend, indemnify and hold the City of Long
21 Beach, its officials, employees and agents harmless from and against all claims,
22 demands, damage, causes of action, proceedings, loss, costs and expenses
23 (including reasonable attorney's fees), and liability, of any kind whatsoever
24 (collectively in this Section "claim"), alleging (a) injury to or death of persons or
25 damage to property, including property owned by or under the care and custody of
26 Client or its boards and (b) that such injury, death or damage arises from or is
27 attributable to or caused by a negligent act or omission, misrepresentation, or
28 willful misconduct of LOGIN, its employees, or agents in the performance of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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. LOGIN shall notify Client of any claim within ten (10) days. Likewise, Client shall notify LOGIN of any claim, shall tender the defense of such claim to LOGIN, and shall assist LOGIN, 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 LOGIN 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 LOGIN 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.

///
///
///
///

EXHIBIT A

CHARGES/FEES

This Exhibit A is issued pursuant to an Agreement dated 7/25/07 between City of Long Beach and Login Consulting Services, 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 , 12th floor
Long Beach, CA 90802

<u>Category</u>	<u>Straight time</u>	<u>Overtime</u>	<u>Weekends/Holidays</u>
Business Analyst	\$75/Hr	\$75/Hr	\$75/Hr
Project Manager	\$100/Hr	\$100/Hr	\$100/Hr
Legacy Systems Programmer	\$75/Hr	\$75/Hr	\$75/Hr