

AGREEMENT

32500

THIS AGREEMENT is made and entered, in duplicate, as of February 13, 2012 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on January 24, 2012, by and between THE RYTE PROFESSIONALS, a corporation, located at 4141 Ball Road, #517, Cypress, California 90630 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires specialized services requiring unique skills to be performed on an as-needed basis in connection with Professional Computer Services; and

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

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Two Hundred Thousand Dollars (\$200,000.00), at the rates or charges shown in Exhibit "A".

B. Consultant may select the time and place of performance for these services provided, however, that access to City documents, records, and the

1 like, if needed by Consultant, shall be available only during City's normal business  
2 hours and provided that milestones for performance, if any, are met.

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

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

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

23 2. TERM. The term of this Agreement shall commence on January 25,  
24 2012, and shall terminate on January 25, 2014, unless sooner terminated as provided in  
25 this Agreement, or unless the services or the Project is completed sooner.

26 3. COORDINATION AND ORGANIZATION. Consultant shall  
27 coordinate its performance with City's representative. Consultant shall advise and inform  
28 City's representative of the work in progress on the Project in sufficient detail so as to

1 assist City's representative in making presentations and in holding meetings on the  
2 Project.

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

16 5. INSURANCE.

17 A. As a condition precedent to the effectiveness of this  
18 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
19 duration of this Agreement, from insurance companies that are admitted to write  
20 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
21 Company or from authorized non-admitted insurance companies subject to  
22 Section 1763 of the California Insurance Code and that have ratings of or  
23 equivalent to A:VIII by A.M. Best Company the following insurance:

24 (a) Commercial general liability insurance (equivalent in scope to  
25 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
26 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
27 coverage shall include but not be limited to broad form contractual liability,  
28 cross liability, independent contractors liability, and products and

1 completed operations liability. The City, its boards and commissions, and  
2 their officials, employees and agents shall be named as additional  
3 insureds by endorsement (on City's endorsement form or on an  
4 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20  
5 26 11 85), and this insurance shall contain no special limitations on the  
6 scope of protection given to the City, its boards and commissions, and  
7 their officials, employees and agents. This policy shall be endorsed to  
8 state that the insurer waives its right of subrogation against City, its boards  
9 and commissions, and their 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  
12 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
13 its right of subrogation against City, its boards and commissions, and their  
14 officials, employees and agents.

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

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

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

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



1 coverage maintained by City shall be excess to and shall not contribute to  
2 insurance or self-insurance maintained by Consultant. Consultant shall notify the  
3 City in writing within five (5) days after any insurance has been voided by the  
4 insurer or cancelled by the insured.

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

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

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

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

1 opinion, the amount, scope, or types of coverages are not adequate.

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

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

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

27 8. MATERIALS. Consultant shall furnish all labor and supervision,  
28 supplies, materials, tools, machinery, equipment, appliances, transportation, and services

1 necessary to or used in the performance of Consultant's obligations under this  
2 Agreement.

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

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

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

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

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

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

19 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
20 amended, nor any provision or breach waived, except in writing signed by the parties  
21 which expressly refers to this Agreement.

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

27 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
28 constitutes the entire understanding between the parties and supersedes all other

1 agreements, oral or written, with respect to the subject matter in this Agreement.

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

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

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

17 20. NONDISCRIMINATION.

18 A. In connection with performance of this Agreement and subject  
19 to applicable rules and regulations, Consultant shall not discriminate against any  
20 employee or applicant for employment because of race, religion, national origin,  
21 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or  
22 disability. Consultant shall ensure that applicants are employed, and that  
23 employees are treated during their employment, without regard to these bases.  
24 These actions shall include, but not be limited to, the following: employment,  
25 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or  
26 termination, rates of pay or other forms of compensation, and selection for training,  
27 including apprenticeship.

28 B. It is the policy of City to encourage the participation of

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

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

19 22. COPYRIGHTS AND PATENT RIGHTS.

20 A. Consultant shall place the following copyright protection on all  
21 Data: © City of Long Beach, California \_\_\_\_\_, inserting the appropriate year.

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

26 C. Consultant warrants that the Data does not violate or infringe  
27 any patent, copyright, trade secret or other proprietary right of any other party.  
28 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials

1 and employees harmless from any and all claims, demands, damages, loss,  
2 liability, causes of action, costs or expenses (including reasonable attorneys' fees)  
3 whether or not reduced to judgment, arising from any breach or alleged breach of  
4 this warranty.

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

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

18 25. CONTINUATION. Termination or expiration of this Agreement shall  
19 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
20 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

21 26. TAX REPORTING. As required by federal and state law, City is  
22 obligated to and will report the payment of compensation to Contractor on Form 1099-  
23 Misc. Contractor shall be solely responsible for payment of all federal and state taxes  
24 resulting from payments under this Agreement. Contractor shall submit Contractor's  
25 Employer Identification Number (EIN), or Contractor's Social Security Number if  
26 Contractor does not have an EIN, in writing to City's Accounts Payable, Department of  
27 Financial Management. Contractor acknowledges and agrees that City has no obligation  
28 to pay Contractor until Contractor provides one of these numbers.

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

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

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

8           29. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
9 designed to or entered for the purpose of creating any benefit or right for any person or  
10 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 February 29, 2012

By Wende

President

Wende Monshige  
Type or Print Name

7 February 29, 2012

By Steven  
Senior Partner Secretary

Steven Gjestrom  
Type or Print Name

"Consultant"

11 CITY OF LONG BEACH, a municipal  
12 corporation

13 3-11, 2012

By [Signature] Assistant City Manager

City Manager PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

"City"

17 This Agreement is approved as to form on March 12  
18 2012.

20 ROBERT E. SHANNON, City Attorney

21 By [Signature]  
22 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.

<u>Resource Type</u>	<u>On-site Hourly Rate</u>	<u>Off-site Hourly Rate</u>
Business Analyst	\$65.00 - \$ 80.00	same as hourly rate
Project Manager	\$85.00 - \$100.00	same as hourly rate
Legacy Programmer	\$65.00 - \$ 70.00	same as hourly rate
Applications / Web Developer	\$65.00 - \$ 85.00	same as hourly rate
Website Graphic Designer	\$50.00 - \$ 70.00	same as hourly rate
Data Administrator	\$80.00 - \$ 95.00	same as hourly rate
Lotus Notes Support Specialist	\$70.00 - \$ 85.00	same as hourly rate
Systems Support	\$50.00 - \$ 75.00	same as hourly rate
Production Support Specialist		
IPhone Developer	\$75.00 - \$ 95.00	same as hourly rate