

1 AGREEMENT

2 **32501**

3 THIS AGREEMENT is made and entered, in duplicate, as of February 13,
4 2012 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 January 24, 2012, by and between BAKER
6 CREW CONSULTING, INC., a corporation, located at 5422 Plantain Circle, Orangevale,
7 CA 95662 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation
8 ("City").

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

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

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

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

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly
23 described in Exhibit "A", attached to this Agreement and incorporated by this
24 reference, in accordance with the standards of the profession, and City shall pay
25 for these services in the manner described below, not to exceed Seven Hundred
26 Fifteen Thousand Dollars (\$715,000.00), at the rates or charges shown in Exhibit
27 "A".

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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
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B. Consultant may select the time and place of performance for these services provided, however, that access to City documents, records, and the like, if needed by Consultant, shall be available only during City's normal business hours and provided that milestones for performance, if any, are met.

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 January 25, 2012, and shall terminate on January 25, 2014, unless sooner terminated as provided in this Agreement, or unless the services or the Project is completed sooner.

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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 Project.

4. INDEPENDENT CONTRACTOR.

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

5. INSURANCE.

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

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than

1 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
2 coverage shall include but not be limited to broad form contractual liability,
3 cross liability, independent contractors liability, and products and
4 completed operations liability. The City, its boards and commissions, and
5 their officials, employees and agents shall be named as additional
6 insureds by endorsement (on City's endorsement form or on an
7 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20
8 26 11 85), and this insurance shall contain no special limitations on the
9 scope of protection given to the City, its boards and commissions, and
10 their officials, employees and agents. This policy shall be endorsed to
11 state that the insurer waives its right of subrogation against City, its boards
12 and commissions, and their officials, employees and agents.

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

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

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

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

28 C. Each insurance policy shall be endorsed to state that

1 coverage shall not be reduced, non-renewed, or canceled except after thirty (30)
2 days prior written notice to City, shall be primary and not contributing to any other
3 insurance or self-insurance maintained by City, and shall be endorsed to state that
4 coverage maintained by City shall be excess to and shall not contribute to
5 insurance or self-insurance maintained by Consultant. Consultant shall notify the
6 City in writing within five (5) days after any insurance has been voided by the
7 insurer or cancelled by the 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 Consultant guarantees that Consultant will provide to the City evidence of
12 uninterrupted, continuing coverage for a period of not less than three (3) years,
13 commencing on the date this Agreement expires or is terminated.

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

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

27 G. Any modification or waiver of these insurance requirements
28 shall only be made with the approval of City's Risk Manager or designee. Not

1 more frequently than once a year, the City's Risk Manager or designee may
2 require that Consultant, Consultant's subconsultants and contractors change the
3 amount, scope or types of coverages required in this Section if, in his or her sole
4 opinion, the amount, scope, or types of coverages are not adequate.

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

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

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

1 from Consultant's employees, subconsultants and contractors.

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

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

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

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

1 11. CONFIDENTIALITY. Consultant shall keep the Data confidential
2 and shall not disclose the Data or use the Data directly or indirectly other than in the
3 course of performing its services, during the term of this Agreement and for five (5) years
4 following expiration or termination of this Agreement. In addition, Consultant shall keep
5 confidential all information, whether written, oral, or visual, obtained by any means
6 whatsoever in the course of performing its services for the same period of time.
7 Consultant shall not disclose any or all of the Data to any third party, or use it for
8 Consultant's own benefit or the benefit of others except for the purpose of this
9 Agreement.

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

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

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

26 15. LAW. This Agreement shall be governed by and construed pursuant
27 to the laws of the State of California (except those provisions of California law pertaining
28 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and

1 regulations of and obtain all permits, licenses, and certificates required by all federal,
2 state and local governmental authorities.

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

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

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

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

21 20. NONDISCRIMINATION.

22 A. In connection with performance of this Agreement and subject
23 to applicable rules and regulations, Consultant shall not discriminate against any
24 employee or applicant for employment because of race, religion, national origin,
25 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
26 disability. Consultant shall ensure that applicants are employed, and that
27 employees are treated during their employment, without regard to these bases.

28 These actions shall include, but not be limited to, the following: employment,

1 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or
2 termination, rates of pay or other forms of compensation, and selection for training,
3 including apprenticeship.

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

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

23 22. COPYRIGHTS AND PATENT RIGHTS.

24 A. Consultant shall place the following copyright protection on all
25 Data: © City of Long Beach, California _____, inserting the appropriate year.

26 B. City reserves the exclusive right to seek and obtain a patent
27 or copyright registration on any Data or other result arising from Consultant's
28 performance of this Agreement. By executing this Agreement, Consultant assigns

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1 any ownership interest Consultant may have in the Data to the City.

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

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

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

22 25. CONTINUATION. Termination or expiration of this Agreement shall
23 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
24 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

25 26. TAX REPORTING. As required by federal and state law, City is
26 obligated to and will report the payment of compensation to Contractor on Form 1099-
27 Misc. Contractor shall be solely responsible for payment of all federal and state taxes
28 resulting from payments under this Agreement. Contractor shall submit Contractor's

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1 Employer Identification Number (EIN), or Contractor's Social Security Number if
2 Contractor does not have an EIN, in writing to City's Accounts Payable, Department of
3 Financial Management. Contractor acknowledges and agrees that City has no obligation
4 to pay Contractor until Contractor provides one of these numbers.

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

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

12 29. THIRD PARTY BENEFICIARY. This Agreement is not intended or
13 designed to or entered for the purpose of creating any benefit or right for any person or
14 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 BAKER CREW CONSULTING, INC., a
4 corporation

5 March 16, 2012

By Sandra Baker
6 President

Sandra Baker
7 Type or Print Name

8 March 16, 2012

By Byron E. Baker
9 Secretary Vice President

BYRON E. BAKER
10 Type or Print Name

11 "Consultant"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 3.14, 2012

By [Signature] Assistant City Manager
15 City Manager

16 "City"

17 EXECUTED PURSUANT
18 TO SECTION 301 OF
19 THE CITY CHARTER.

20 This Agreement is approved as to form on March 12,
21 2012.

22 ROBERT E. SHANNON, City Attorney

By [Signature]
23 Deputy

EXHIBIT A

CHARGES/FEES

This Exhibit A is issued pursuant to an Agreement between City of Long Beach and BakerCrew Consulting, 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.

<u>Resource Type</u>	<u>On-site Hourly Rate</u> (inclusive of travel/expenses)	<u>Off-site Hourly Rate</u>
Project Manager / Technical Lead	\$185.00	\$160.00
Business Analyst	\$155.00	\$130.00
Configuration Specialist	\$155.00	\$130.00
Report Developer	\$155.00	\$130.00
Trainer	\$155.00	\$130.00
Conversion Developer	\$155.00	\$130.00
Interface Developer	\$155.00	\$130.00