

1 **AGREEMENT**

2 **30624**

3 THIS AGREEMENT is made and entered, in duplicate, as of March 17,
4 2008 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 July 10, 2007, by and between SAPPHIRE
6 TECHNOLOGIES, LLC, a Delaware limited liability company ("SAPPHIRE") located at
7 300 N. Continental Blvd, Suite 510, El Segundo, CA 90245 and the CITY OF LONG
8 BEACH, a municipal corporation ("Client").

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

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

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

17 1. AMOUNT: The amount of this Agreement shall not exceed \$150,000
18 during the term. SAPPHIRE has already been paid approximately \$45,000 under
19 Purchase Order Number BPTS07000025. As a result, the total contract amount (not to
20 exceed \$150,000) was reduced by actual accumulated payments under that Purchase
21 Order.

22 2. TERM: The term of this Agreement shall commence at midnight on
23 March 12, 2008, and shall terminate at 11:59 p.m. on March 12, 2009. The term of this
24 Agreement may be extended on mutual written agreement of the parties for two
25 additional 12-month terms. This Agreement may be terminated by Client for cause or
26 convenience on two weeks' prior notice without penalty or further obligation after Client
27 has paid for services rendered through the date of termination.

28 3. SERVICES: SAPPHIRE shall provide to Client one or more Workers as

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

1 requested by Client from time to time. Such Workers shall provide the services described
2 in Exhibit "A", attached to this Agreement and incorporated by reference, in accordance
3 with the standards of the profession, and Client shall pay for said services at the rates or
4 charges described in Exhibit "A".

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

15 5. INVOICES: SAPPHIRE shall submit monthly invoices to Client for
16 services rendered by Workers for the number of hours that services were provided by
17 Workers in the previous calendar month.

18 6. PAYMENT DEFAULT: Client agrees to pay the invoices of SAPPHIRE
19 within thirty (30) days after receipt of a valid invoice by having such payment delivered to
20 SAPPHIRE at 300 N. Continental Blvd, Suite 510, El Segundo, CA 90245 or such other
21 location or manner as SAPPHIRE shall hereafter direct in writing.

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

1 Notwithstanding the above paragraph, if at any time Client wishes to hire
2 any SAPPHIRE 's Worker directly or indirectly as an employee of Client or independent
3 contractor (without the participation of a placement agency other than SAPPHIRE), Client
4 may request that SAPPHIRE release the SAPPHIRE's Worker from his/her employment
5 contract or other engagement with SAPPHIRE in order to permit such desired
6 engagement provided, however, Client acknowledges and agrees that SAPPHIRE, in its
7 sole and absolute discretion, has the right to accept or refuse such request of Client.

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

19 9. CLIENT PROPERTY:

20 a. Work Product: All work product of every kind performed by any
21 SAPPHIRE Worker on behalf of Client shall be the sole and exclusive property of Client.

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

1 10. TIME RECORDS: A SAPPHIRE time card shall be the official time
2 record for purposes of payment.

3 11. NOTICES:

4 11.1 Manner: Any notice or other communication required or
5 permitted under this Agreement shall be in writing and either delivered
6 personally or sent by overnight courier, or U.S. certified or registered mail,
7 postage prepaid, return. receipt requested.

8 11.2 Addressee: Notice shall be addressed to:

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10 MEWA: SAPPHIRE TECHNOLOGIES, LLC
 300 N. Continental Blvd, Suite 510
 El Segundo, CA 90245

11
12 Client: City of Long Beach
 333 W. Ocean Boulevard
13 Long Beach, CA 90802
14 Attn: City Manager

15 With a copy to: City of Long Beach
 333 W. Ocean Boulevard, 12th Floor
16 Long Beach, CA 90802
 Attn: Jack Ciulla

17 11.3 Delivery: Notice delivered personally shall be deemed given
18 only if acknowledged in writing by the person to whom it is given. Notice
19 sent by overnight courier shall be deemed given on the date shown on the
20 courier's records. Notice that is sent by U.S. certified mail or registered mail
21 shall be deemed given on the date shown on the return receipt.

22 11.4. Changes: Either party may designate, by notice to the other,
23 substitute addressees, addresses for notices, and thereafter, notices are to
24 be directed to those substitute addresses.

25 12. INSURANCE: As a condition precedent to the effectiveness of this
26 Agreement, SAPPHIRE shall procure and maintain at SAPPHIRE 's expense for the
27 duration of this Agreement from an insurance company that is admitted to write insurance
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1 in California or from authorized non-admitted insurance companies that have ratings of or
2 equivalent to A:VIII by A.M. Best Company:

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

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

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

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

26 Any self-insurance program, self-insured retention, or deductible must be
27 separately approved in writing by Client's Risk Manager or designee and shall protect the
28 City of Long Beach, its officials, employees and agents in the same manner and to the

1 same extent as they would have been protected had the policy or policies not contained
2 retention provisions. Each insurance policy shall be endorsed to state that coverage shall
3 not be suspended, voided or canceled by either party except after thirty (30) days prior
4 written notice to Client, and shall be primary and not contributing to any other insurance
5 or self-insurance maintained by the City of Long Beach, its officials, employees and
6 agents.

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

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

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

1 The procuring or existence of insurance shall not be construed or deemed
2 as a limitation on liability relating to SAPPHIRE 's performance of services or as full
3 performance of or compliance with the indemnification provisions herein.

4 **13. MISCELLANEOUS:**

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

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

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

20 13.4 This Agreement constitutes the entire understanding between
21 the parties hereto and supersedes all other agreements, whether oral or written,
22 with respect to the subject matter herein.

23 13.5 SAPPHIRE shall defend, indemnify and hold the City of Long
24 Beach, its officials, employees and agents harmless from and against all claims,
25 demands, damage, causes of action, proceedings, loss, costs and expenses
26 (including reasonable attorney's fees), and liability, of any kind whatsoever
27 (collectively in this Section "claim"), alleging (a) injury to or death of persons or
28 damage to property, including property owned by or under the care and custody of

1 Client or its boards and (b) that such injury, death or damage arises from or is
2 attributable to or caused by a negligent act or omission, misrepresentation, or
3 willful misconduct of SAPPHIRE, its employees, or agents in the performance of
4 services, except to the extent that the injury, death, or damage was caused by the
5 negligence of Client, its boards, or their officials or employees. SAPPHIRE shall
6 notify Client of any claim within ten (10) days. Likewise, Client shall notify
7 SAPPHIRE of any claim, shall tender the defense of such claim to SAPPHIRE,
8 and shall assist SAPPHIRE, as may be reasonably requested, in such defense.

9 13.6 In the event that there is any legal proceeding between the
10 parties to enforce or interpret this Agreement or to protect or establish any rights
11 or remedies hereunder, the prevailing party shall be entitled to its costs and
12 expenses, including reasonable attorneys' fees.

13 13.7 Subject to applicable laws, rules, and regulations, neither Client
14 nor SAPPHIRE shall discriminate in the performance of this Agreement on the
15 basis of race, color, religion, national origin, sex, sexual orientation, AIDS, and
16 AIDS related condition, age, disability or handicap, disabled or veteran status.

17 13.8 The acceptance of the services or the payment of any money
18 by Client shall not operate as a waiver of any provision of, this Agreement, or of
19 any right to damages or indemnity stated in this Agreement. The waiver of any
20 breach of this Agreement shall not constitute a waiver of any other or subsequent
21 breach of this Agreement.

22 13.9 Termination or expiration of this Agreement shall not affect
23 rights or liabilities of the parties which accrued pursuant prior to such termination
24 or expiration.

25 13.10 SAPPHIRE shall not use the name of the City of Long Beach,
26 its officials or employees in any advertising or solicitation for business, nor as a
27 reference, without the prior approval of Client's City Manager or designee.

28 13.11 Client represents that it is in compliance with all applicable

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

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laws relating to occupational safety and health requirements of the workplace.
SAPPHIRE shall provide general job safety instruction to Workers it places with
Client. Client shall provide specific safety training for all Workers if the nature of
the job so requires.

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

SAPPHIRE TECHNOLOGIES, LLC
a Delaware limited liability company

4/4, 2008

By [Signature]

Officer's Title Regional Manager

4/9/08, 2008

By [Signature]

Officer's Title Senior Vice President

"SAPPHIRE"

CITY OF LONG BEACH, a municipal
corporation

April 21, 2008

By [Signature] Assistant City Manager

"Client" [Signature] City Manager
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form on 4/16, 2008.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

GJA:ikm
A08-00899

EXHIBIT A

CHARGES/FEEES

This Exhibit A is issued pursuant to an Agreement dated 3/17/08 between City of Long Beach and Sapphire Technologies, LLC 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

Job Title	Regular Hourly Rate	Overtime Hourly Rate
Business Analyst	\$85/HR	\$85/HR
Project Manager	\$65/HR	\$65/HR
Legacy System Programmer	\$65/HR	\$65/HR