

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

AGREEMENT FOR PURCHASE OF SOFTWARE AND RELATED SERVICES

29377

THIS AGREEMENT is made and entered, in duplicate, as of November 17, 2005 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on November 15, 2005, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and BUSINESS OBJECTS AMERICAS, a Delaware corporation, with a place of business at 3030 Orchard Parkway, San Jose, CA 95134 ("BOA").

WHEREAS, pursuant to City's Request for Proposal for furnishing software and related services to extract, scrub, reformat and deposit data into an existing City software system, BOA submitted its Proposal which was accepted by the City; and

WHEREAS, City wishes to obtain said software and related services and equipment from BOA and BOA is willing and able to furnish them;

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

1. Recitals. The above recitals are true and correct.
2. Performance. BOA shall furnish to and install at the City software to extract, scrub, reformat and deposit data into the City's existing Hansen software and shall perform related services in accordance with the Scope of Work on Exhibit "A", attached to this Agreement and incorporated by this reference, and shall grant a license to the City to use the software as described in Exhibit "B", attached to this Agreement and incorporated by this reference. [City is identified as "Licensee" in the software license.] The products provided by BOA to the City are further identified on Exhibit "C", attached to this Agreement and incorporated by this reference. The City may, at any time, request changes to the Scope of Work of an open task and BOA shall provide to the City, in writing, the cost for the changes. If the parties agree to the revised scope of the task and the cost of the revised task, then they shall sign an amendment to this Agreement that reflects the changes. If there is no increase or decrease in the cost as a result of the revised task,

1 then Exhibit "A" shall simply be revised, and the new Exhibit shall be designated as  
2 Revised Exhibit "A". Revised Exhibit "A" shall be substituted for Exhibit "A" and the City will  
3 file Revised Exhibit "A" with the City Clerk.

4 BOA shall perform the services related to the software with qualified  
5 personnel in a professional manner conforming to generally accepted standards and  
6 practices in the computer industry.

7 3. Term. Notwithstanding anything to the contrary in any exhibit, the term  
8 of this Agreement shall commence at midnight on November 1, 2005 and shall terminate  
9 at 11:59 p.m. on April 30, 2006 provided, however, that the license granted in Section 5  
10 below shall be perpetual unless specifically terminated by either party.

11 4. Payment. The City shall pay to BOA for the software and related services  
12 the costs, per task, shown on Exhibit "A", within thirty (30) days after delivery (FOB origin)  
13 and receipt of an invoice from BOA that reflects the City's purchase order number, in an  
14 amount not to exceed \$231,000.00, excluding sales tax. The City shall be responsible for  
15 the payment or self-accrual of applicable sales or use tax. The amounts shown on Exhibit  
16 "A" are "not to exceed" amounts, identified per task, and the City will pay no more than the  
17 amounts shown. If the services extend beyond the estimates outlined in Exhibit "A", then  
18 BOA shall notify the City and the City may elect to terminate or continue the services.

19 5. License. A. At no additional cost to the City, BOA hereby grants to the  
20 City a non-exclusive, perpetual, non-transferable license to use BOA's software on the  
21 terms described in Exhibit "B".

22 B. BOA may terminate the license if the City breaches the terms of the  
23 license, provided that BOA gives notice to the City of the breach and the City does not  
24 correct the breach within thirty (30) days following receipt of notice or if the City makes an  
25 assignment for the benefit of creditors or proceedings are commenced by or for Licensee  
26 under any bankruptcy, insolvency, or debtor's relief law. The City may terminate the  
27 license by giving thirty (30) days' notice to BOA but any license fees are not refundable.

28 C. BOA shall retain all rights title and interest in the software, including

1 without limitation data, plans, specifications, reports, designs, technological "know how",  
2 documentation and other information related to the software. On termination of the  
3 license, whatever the reason, the software and any copies of it shall be returned to BOA.

4 D. If the license is terminated, the City will certify in writing to BOA that the  
5 City has uninstalled and destroyed all copies of the software to which the license pertains  
6 within thirty (30) days after the termination.

7 E. BOA or its designated agent may, on five (5) days prior notice to the City,  
8 inspect any facility of the City where software provided under this Agreement is used by  
9 the City and may audit records pertaining to the software for the purpose of confirming the  
10 City's compliance with those portions of this Agreement relating to the license. BOA may  
11 perform only one audit per 12-month period unless a previous audit reveals a discrepancy.  
12 BOA's audit shall be performed at BOA's sole expense provided, however, that if, as a  
13 result of the audit, BOA determines that the City owes additional fees to BOA, then the City  
14 shall pay one-half (1/2) of the costs of the audit plus all past-due fees.

15 6. No Waiver. The acceptance of any item or any work or the payment of  
16 money by the City shall not operate as a waiver of any provision of this Agreement, or of  
17 any power reserved to the City, or of any right of the City under this Agreement. The  
18 waiver of any breach of this Agreement shall not be deemed a waiver of any other or  
19 subsequent breach.

20 7. Notice. Any notice given under this Agreement shall be in writing and  
21 personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid,  
22 addressed to BOA at the address first stated above Attn: Contracts Manager and to the  
23 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.  
24 Change of address shall be given as provided herein for other notices. Notice shall be  
25 effective on the date of mailing or on the date personal service is obtained, whichever  
26 occurs first.

27 8. Warranty. A. During the warranty period, BOA warrants that the software  
28 will operate in conformity with the applicable Documentation at that term is defined in

1 Exhibit "B". BOA does not warrant that the software will be uninterrupted or free of errors,  
2 and the warranty does not cover defects resulting from accident, abuse, misapplication or  
3 unauthorized repair, modifications, or enhancements. BOA AND BOA ON BEHALF OF  
4 ITS THIRD PARTY SUPPLIERS DISCLAIMS ALL OTHER WARRANTIES, INCLUDING  
5 WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR  
6 FITNESS FOR A PARTICULAR PURPOSE.

7 During the warranty period and following notice from the City that the  
8 software does not operate in conformity with the Documentation, BOA at its option shall  
9 (i) repair or replace the software; or (ii) refund the fees paid for the software in exchange  
10 for return of the software by the City to BOA. This Section 8(A) is the Cit's exclusive  
11 remedy for breach of warranty.

12 B. If the City detects a defect in the software's "physical media", then the City  
13 may return the software and BOA shall immediately send a replacement at no charge.

14 C. In addition, with respect to the software, BOA warrants that it owns or has  
15 the right to use the software and that the software does not infringe or violate any  
16 copyright, patent, license, trade secret, trademark, or other proprietary right of any third  
17 party. BOA's sole liability and the City's sole remedy for breach of the warranty in this sub-  
18 Section 8(C) shall be the indemnity described in the following paragraph.

19 BOA shall at its expense defend (or, at its option, settle) the City, its officials  
20 and employees from all third party claims, demands, and causes of action (collectively in  
21 this Section, "claims"), arising from any alleged infringement of any copyright, patent,  
22 license, trade secret, trademark, or other proprietary right related to the software. BOA  
23 shall indemnify and hold the City harmless against and pay those costs and damages  
24 awarded against the City (including court costs and reasonable attorney's fees) which are  
25 attributable to any such claim (including any settlement approved by BOA), but such  
26 defense and payments are conditioned on the following: (1) that BOA shall be promptly  
27 notified in writing by the City following City's receipt of any such claim; (2) that BOA shall  
28 have sole control of the defense of any action on such claim and all negotiations for its

1 settlement or compromise except to the extent that principles of municipal law are involved;  
2 (3) City reasonably cooperates with BOA in the defense of the claim; and (4) if the  
3 software becomes, or in BOA's opinion is likely to become, the subject of a claim of  
4 infringement, then the City shall permit BOA at its option and expense, either to (i) procure  
5 for the City a license to use the software or part affected by the claim; (ii) replace the  
6 software or part affected by the claim with other suitable software; (iii) modify the software  
7 or part affected by the claim to make it non-infringing; or (iv) refund to the City a pro-rated  
8 portion of the fees paid by the City to BOA for the software, based on a 36-month period.  
9 BOA shall have no obligation under this Section to the extent that the claim is based on (i)  
10 failure to use an Update (as that term is defined in Exhibit "B") if infringement could have  
11 been avoided by using that Update; (ii) a combination, operation, or use of the software  
12 with other products not provided by BOA if such infringement could have been avoided if  
13 that combination, operation or use were not present; (iii) the City's use of the software in  
14 a manner inconsistent with the license granted in this Agreement; or (iv) modification,  
15 alteration, or enhancement of the software which is not performed or authorized by BOA.  
16 The foregoing provisions of this Section state the entire liability and obligation of BOA for  
17 infringement and the exclusive remedy of the City for claims of infringement of third party  
18 rights.

19 D. The warranty period of the software shall extend for thirty (30) days after  
20 the date of delivery to the City.

21 9. No Assignment. Neither this Agreement nor any money due BOA  
22 hereunder may be assigned by BOA or the City without the prior written approval of the  
23 other party, which approval shall not be unreasonably withheld. Any attempted assignment  
24 or delegation shall be void, and any assignee or delegate shall acquire no right or interest  
25 by reason of such attempted assignment or delegation.

26 11 No Discrimination. BOA agrees, to the extent required by applicable  
27 laws, rules, and regulations, that no person shall be subjected to discrimination in the  
28 performance of this Agreement on the basis of race, color, religion, national origin, sex,

1 sexual orientation, AIDS, HIV status, age, disability, or handicap.

2 12. No Third Party Benefit. This Agreement is intended by the parties to  
3 benefit themselves only and is not in any way intended or designed to or entered for the  
4 purpose of creating any benefit or right for any person or entity of any kind that is not a  
5 party to this Agreement.

6 13. Joint Effort. This Agreement was created as a joint effort of both parties  
7 and neither it nor any part of it shall be construed against one party as the drafter.

8 14. Non-Disclosure and Confidentiality. A. The City agrees that it will hold  
9 the software and related materials in confidence and will not disclose it to others without  
10 the prior written consent of the BOA. This obligation to hold in confidence does not apply  
11 to any portion of the software that: (i) is, at the time of disclosure or subsequently, publicly  
12 available through no breach of confidentiality by the City; (ii) becomes known to the City  
13 prior to disclosure by BOA to the City through no breach of confidentiality by the City; (iii)  
14 is independently developed by the City; (iv) is lawfully disclosed to the City pursuant to  
15 applicable law or a court order provided that BOA is given reasonable notice of such law  
16 or court order and an opportunity to prevent or limit the disclosure.

17 B. The City may copy, in whole or in part, any Documentation relating to the  
18 software which is provided by BOA, for City's sole use.

19 15. Limitation of Liability. BOA's and its suppliers liability for direct  
20 damages however caused shall be limited to the cumulative fees and costs paid by the  
21 City to BOA under this Agreement. To the maximum extent permitted by applicable  
22 law, in no event will BOA or its suppliers be liable to the City for any indirect, special,  
23 incidental, consequential or punitive damages, including without limitation, any lost  
24 profits or data, or cost of substitute goods, regardless of the theory of liability and even  
25 if BOA has been advised of the possibility of such damages.

26 16. Force Majeure. Except with respect to the obligation to pay fees and  
27 costs for the software and related services, neither party shall be deemed in default of  
28 this Agreement because of delay or failure in performance of its obligations which delay

1 or failure results from any cause beyond that party's reasonable control ("Force  
2 Majeure") provided that the party gives prompt notice of the Force Majeure to the other  
3 party and uses its best efforts to mitigate the delay or failure and to commence perform  
4 at the earliest opportunity.

5 17. Press Release. Except when the parties have agreed otherwise in  
6 writing, neither party shall issue press releases or make public statements or  
7 announcements without the other party's advance consent.

8 18. Miscellaneous. A. In the event of any conflict or ambiguity between  
9 this Agreement and any exhibit, the provisions of this Agreement shall govern.

10 B. This Agreement shall be governed by and construed pursuant to the  
11 laws of the State of California, except those provisions of California law pertaining to  
12 conflicts of laws.

13 C. This Agreement, including all exhibits, constitutes the entire  
14 understanding between the parties and supersedes all other agreements, whether oral  
15 or written, with respect to the subject matter herein.

16 D. This Agreement, including all exhibits, shall not be amended, nor any  
17 provision or breach hereof waived, except in writing signed by the parties which  
18 expressly refers to this Agreement.

19 E. If there is any legal proceeding between the parties to enforce or  
20 interpret this Agreement or to protect or establish any rights or remedies hereunder, the  
21 prevailing party shall be entitled to its costs and expenses, including reasonable  
22 attorney's fees.

23 F. Termination or expiration of this Agreement shall not affect rights or  
24 liabilities of the parties which accrued prior to termination or expiration, and shall not  
25 extinguish any warranties that may be in effect on the date of termination or expiration.

26 G. BOA shall comply with all applicable federal, state and local laws and  
27 regulations during performance of this Agreement.

28 H. The division of provisions into sections and the captions on those

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sections is for convenience only and shall not be considered in construing this Agreement.

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.

November 17, 2005



BUSINESS OBJECTS AMERICAS, a  
Delaware corporation

By [Signature]

BUSINESS OBJECTS AMERICAS  
Officer's Title SUSAN J. WOLFE  
SVP & GENERAL COUNSEL  
(Type or Print Name)

\_\_\_\_\_, 2005

By \_\_\_\_\_

Officer's Title \_\_\_\_\_

(Type or Print Name)

"BOA"

CITY OF LONG BEACH, a municipal  
corporation

12.1, 2005

By [Signature]  
City Manager

"City"

This Agreement is approved as to form on 11/28, 2005.

ROBERT E. SHANNON, City Attorney

By [Signature]  
Senior Deputy



## Exhibit "A"

### Pricing and Statement of Work

October 10, 2005

Shante Wilson  
Project Manager  
City of Long Beach  
333 W. Ocean Blvd. 12<sup>th</sup> Floor  
Long Beach, CA. 90802

Dear Shante,

Business Objects, is pleased to present this pricing proposal to the City of Long Beach for a Data Extraction, Cleaning and Loading Software Solution valid through August 26, 2005.

As a first tier vendor for many of the large State and Municipal agencies in California including the City of Long Beach and the Long Beach Police Department as well as over 85% of the Fortune 500, Business Objects brings a wealth of experience and maturity in business intelligence and data integration projects.

The following are the components of our proposal:

Software License.....	\$120,000*
Maintenance.....	\$ 24,000
Professional Services.....	\$ 76,370**

\*Includes two relational database source types (i.e. Oracle, DB2) plus ODBC and Flat File source types. Two ETL servers with up to 4 CPUs each. Profiling is included along with Firstlogic Data Cleansing for name, address correction and match & merge. ETL development environment included. Multi developer environment is an add on feature.

\*\* Attached is a breakdown of professional services which may vary depending on your final implementation requirements.

Please contact Mark Ronson, Enterprise Sales Executive, Business Objects at 949-679-9386 or via cell at 949-861-0036, [mark.ronson@businessobjects.com](mailto:mark.ronson@businessobjects.com) for additional assistance. We look forward to serving the needs of The City of Long Beach and would highly value furthering an established relationship with The City of Long Beach.

Sincerely,

Mark T. Ronson  
Enterprise Sales Executive  
Business Objects Americas



## Statement of Work

November 11, 2005

Ms. Diane Sorensen  
Contracts Administrator  
City of Long Beach  
333 W Ocean Blvd., 12<sup>th</sup> Floor  
Long Beach, CA 90802

Tel: 562-570-6650  
Email: [diane\\_sorensen@longbeach.gov](mailto:diane_sorensen@longbeach.gov)

Re: Letter of Engagement

Dear Ms. Sorensen:

In response to your request for performance of professional services, Business Objects Americas ("BOA") is pleased to submit this Letter of Engagement (LOE) to the City of Long Beach ("Client") for consideration. BOA will perform such services under the terms and conditions set forth below.

### **Project Overview**

Client is engaging with BOA to provide services related to their extract, transform and load tool – Data Integrator. The Client has a need to covert legacy data from multiple systems into a new Land Management system. The Data Integrator product will primarily be used for this purpose.

Client is implementing a Business Objects environment with the Firstlogic Data Quality functionality added. The purpose of this LOE is to outline the services required to promote a successful deployment of the BOA/Firstlogic tools. The work to be performed will be coordinated with the Client and the Business Objects project team.

### **Interfaces**

The primary systems that will feed the Land Management system reside in an HP Turbo Image system and an IMS database. Client understands that Data Integrator cannot natively access the HP Turbo Image system and data will need to be extracted to another format to be utilized by the Data Integrator Tool.

### **Staffing**

The City plans to train 3-5 people in the Data Integrator product.

### **Responsibilities**

Client intends to do the bulk of the data conversion and will look to Business Objects to provide professional services to train Client's staff. BOA will work with the Client team to develop the first interfaces to the Land Management System, performing knowledge transfer activities.

Business Objects will provide consultants to assist in the following:

- Software installation/configuration
- Interface development
- Project management and Architecture review
- Documentation services
- User Training
  - Data Integrator Training
  - First Logic Training (to be provided by First Logic personnel)

### **Business Objects Training**

Training will cover the following topics:

- Use of Data Integrator Tools
- System Administration of the products
- Use of First Logic product

### **First Logic Training**

Client is implementing a Business Objects environment with the Firstlogic Data Quality functionality added. Client has purchased the following products through Business Objects:

#### **Information Quality Products**

For use in a Business Objects environment using the RAPID deployment of the following products:

DataRight IQ

Match & Consolidate

U.S. ACE

#### **For use on the following Operating System**

Windows Server 2003

### **Requirements / Description of Work:**

Firstlogic will evaluate the issues described in the customer background, provide a recommendation and assist with implementation to the degree possible in the allotted time.

A Firstlogic Consultant will assist and advise the Client's personnel in the following areas:

## **Task 001 – Firstlogic Core Technology Training in a Business Objects Environment**

### **DTR IQ**

- Conversion of file formats
- Rule files, Dictionaries, and Directories
- Data Parsing
- Data Standardization and Assignment
- Creating and Using Lists for Data Quality
- Creating Output Files
- Creating and Reading Reports
- Search and Replace
- Scan and Split
- User Modifiable Dictionary
- General Job Set-up
- Quick Parse!

### **ACE**

- Functionality
- Dictionary and Directories
- Standardization
- Assignment
- Discussion of Postal Codes
- Creating Output Files
- Selecting Records for Output
- Filtering
- Creating and Reading Reports
- General Job Set-Up
- Processing Multi-Line Files
- Assignment Utilities

### **Match & Consolidate**

- Functionality
- Dictionaries and Directories
- Matching Strategy
- Matching Options
- Parsing Options
- Managing Multiple Input Files
- Creating and Managing Lists
- Data Consolidation
- Creating Output Files
- Output File Options
- Creating and Reading Reports
- General Job Set-Up

## **Task 002: Business Objects Link Implementation**

At the completion of the training module jobfile setup and testing will take place:

- Review of the organizations' business rules
- Setup of some basic jobs and provide assistance with parameter settings
- Assistance in defining and documenting your organization's business rules
- Data Quality assistance (i.e. fixed field lengths structuring so that the field contains the appropriate data).
- Data quality assistance for files containing missing data elements, free form data, dual or duplicate addresses
- Perform the Knowledge Transfer on the work performed

### **Client Responsibilities:**

The Client will have the Business Objects software installed and ready for Firstlogic to arrive and deploy the Firstlogic tools in the Business Objects environment.

The Client will provide a primary contact person to work with the BOA as required. This individual should have a firm understanding of the project's scope, the applications involved, and the technologies employed within the engagement. For work performed on-site, the contact person will be available and readily accessible to BOA throughout the course of the visit.

The Client will insure that all BOA, Firstlogic and third party computer applications and tools, including necessary supporting directories, program keys, and data files, are installed and operational prior to any work at the Client site.

The Client will provide an adequate and fully operational test environment that is conducive to processing data quickly and effectively.

The Client will make every effort not to upgrade, add, or make other changes to the technical environment (software, hardware, networks, etc.) that may impact the project. This includes but is not limited to operating systems, databases, servers, middleware, and application software.

The Client is responsible for final verification of this project.

The Client is responsible for the creation and utilization of any software configuration that is used in a production environment.

The Client will insure that all license agreements for all third party software are current and valid.

### **Assumptions:**

The Client will license or has licensed the required BOA and Firstlogic products.

The Business Objects software will be installed and available for Firstlogic to add the data quality tools.

Arrangements for representatives from the Client, Business Objects and Firstlogic on the final day to verify implementation is complete and working as expected.

The Firstlogic Consultant will work on only Firstlogic software products and supporting utilities.

For on-site events the Client will provide an adequate work area (cubicle or office) with a PC workstation, phone and data line access.

The Client will provide access to the necessary computers, networks, directories, files, data, and other required resources for performing the tasks defined in this engagement.

BOA will not assume responsibility for project delays due to missed time constraints from third parties.

The Client is requested to complete a Professional Services Project Completion and Acceptance form for BOA and the Firstlogic product set.

**Location of Work to Be Performed:**

This work will be performed at the Client's location as listed in the contact section of this document.

**Scheduling:**

Upon receipt of the signed Agreement for Purchase of Software and Related Services and associated purchase order, BOA will work with the Client to confirm the project schedule, and the start date.

**Fees and Payment Schedules:**

The Firstlogic daily rate is \$2,250 per day, plus production and shipping costs for training materials (\$40 per student) and all reasonable travel expenses. All expenses will be itemized separately on the subsequent invoice and are not included in the estimate. Class size for the onsite training is limited to 1-5 people at the \$2,250 per day rate, \$200/day for each additional person.

BOA will provide the services of one or more Consultants to assist with:

Implementation	Time	List	Net Price	Total
Software Install/Setup	5 days	\$232/hr	\$185/hr	\$7,400
Interface Development	20 days	\$232/hr	\$185/hr (1)	\$29,600
Project Mgt/Architecture	10 days	\$249/hr	\$185/hr	\$14,800
Documentation Services	5 days	\$232/hr	\$185/hr	\$ 7,400
Knowledge Transfer DI	4 days		\$185/hr	\$ 9,920
First Logic Installation	5 days	Daily Rate Only		\$11,250
Additional Days of Customization if requested		\$250/hr	\$185/hr (2)	
<b>Total</b>				<b>\$76,370</b>

- (1) There is no detail on required interfaces in the RFP, so BOA estimates 20 days of consulting services based on experience. Once the project begins, BOA will work with Client to understand the full list of requirements and present an updated level of effort.
- (2) The RFP does not go into detail regarding specific "required" functional customization, therefore BOA offered an hourly rate. BOA will review design specifications and scope once the project begins, and deliver a quote at that time.

**Staffing and Fees**

This work shall be performed on a time and materials basis. The consultant shall be billed at the rates per our agreement for an eight hour day and any overtime shall be billed at the same rate. All travel and subsistence expenses shall be billable at cost. Expenses for materials purchased specifically for Client's benefit shall be billable at cost, an example being Material for the First

Logic training whose shipping costs for training materials is \$40 per student. All fees and charges shall be billed to Client monthly and all payments shall be due thirty (30) days from the invoice date. Client shall pay all applicable shipping charges and sales, use, personal property or similar taxes, tariffs or government charges, exclusive of BOA's income and corporate franchise taxes.

### **FirstLogic Daily Rate**

Should the Client, at its discretion, release the FirstLogic Consultant prior to the scheduled ending of the engagement, provided all items in the Description of Work have been completed to their satisfaction, and any part of a day is used, the rate for a minimum full day would apply.

### **Postponement/Cancellation Policy:**

Once dates are confirmed for your engagement, the following postponement/cancellation policy is in effect.

- Client will be responsible for payment of any travel arrangements and/or fees that are non-refundable made on their behalf for the postponed/cancelled event.
- BOA must receive notice of postponement/cancellation in writing.

### **Contractual Terms and Conditions**

Each party receiving Confidential Information ("Recipient") shall retain in confidence and require its employees, agents and contractors, to retain in confidence the terms and conditions of this Agreement, and all Confidential Information of a party that discloses Confidential Information ("Discloser"). "Confidential Information" means information, in written or other tangible form, which is directly related to the business of Discloser, which has been conspicuously marked by Discloser as "confidential" or "proprietary" at the time of disclosure and if unable to reasonably so mark, Discloser informs Recipient of the information's confidential nature at the time of disclosure and confirms such nature in a writing transmitted to Recipient within ten (10) days after disclosure. Recipient shall retain Discloser's Confidential Information in the manner Recipient retains its own Confidential Information, but in no event less secure than a reasonable manner. Confidential Information shall remain the sole property of the Discloser and shall not be disclosed to any third party without Discloser's express written consent (except, solely for Recipient's internal business needs, to consultants and subsidiaries who are bound by a written agreement with Recipient to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement). Confidential Information shall not include any information that: (i) is at the time of disclosure, or subsequently, publicly available without the Recipient's breach of any obligations owed Discloser; (ii) becomes known to the Recipient prior to the Discloser's disclosure of such information to the Recipient; (iii) becomes known to the Recipient from a source other than the Discloser without a breach of an obligation of confidentiality owed to the Discloser; (iv) is independently developed by the Recipient; or (v) is produced in compliance with applicable law or a court order, provided the Discloser is given reasonable notice of such law or order and an opportunity to preclude or limit such production. The obligations set forth herein with respect to Confidential Information shall continue in full force and effect for a period of two (2) years after the date of disclosure of Confidential Information. Thereafter, the parties' obligations survive and continue with respect to any Confidential Information that is a trade secret under applicable law.

BOA shall retain all rights, title and interest in any and all BOA products including, without limitation, third-party products, data, plans, specifications, reports, designs, technological "know how", documentation and other information used or in any manner employed or obtained by BOA in the provision of professional services hereunder. Client shall retain all rights, title and interest in any and all Client products, data, plans, specifications, reports, designs, documentation and

other information used or in any manner employed by Client in its receipt of professional services hereunder. The professional services and any associated Deliverables are provided to Client in a

non-transferable, non-exclusive, world-wide and royalty free license upon payment in full for all fees and related expenses due BOA hereunder.

Client agrees, for the duration of this Letter of Engagement and for a period of twelve (12) months thereafter, not to actively solicit and hire any employees or contractors of BOA who have directly or indirectly been involved in the professional services without the prior written consent of BOA.

BOA warrants that it has the right to provide the professional services provided under this Letter of Engagement and that such professional services will be performed by qualified personnel in a professional manner conforming to generally accepted industry standards and practices. APART FROM ANY CONDITION OR WARRANTY IMPLIED BY STATUTE WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT AND ANY WARRANTY EXPRESSLY SET FORTH IN THIS LETTER OF ENGAGEMENT, BOA MAKES NO WARRANTIES IN RELATION TO THE PROFESSIONAL SERVICES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE THAT THE PROFESSIONAL SERVICES WILL FUNCTION UNINTERRUPTED OR ERROR FREE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. THIS SECTION SURVIVES TERMINATION OF THIS LETTER OF ENGAGEMENT.

IN ENTERING THIS LETTER OF ENGAGEMENT, CLIENT HAD RECOURSE TO ITS OWN SKILL AND JUDGMENT AND DID NOT RELY ON ANY REPRESENTATIONS MADE BY BOA. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOSS PROFITS OR REVENUES, LOSS OR INACCURACY OF ANY DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOA'S LIABILITY TO CLIENT FOR ACTUAL DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE CUMULATIVE FEES PAID BY CLIENT TO BOA FOR THE PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM. IN NO EVENT SHALL CLIENT RAISE ANY CLAIM UNDER THIS LETTER OF ENGAGEMENT MORE THAN TWO YEARS AFTER: (i) THE DISCOVERY OF THE CIRCUMSTANCES GIVING RISE TO SUCH CLAIM; OR (ii) THE EFFECTIVE DATE OF THE TERMINATION OF THIS LETTER OF ENGAGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. THIS SECTION SURVIVES TERMINATION OF THIS LETTER OF ENGAGEMENT.

This Letter of Engagement constitutes the entire agreement between the parties and supercedes all prior agreements or representations, oral or written, including terms and conditions as may be printed on any Purchase Orders and all other communications relating to the subject matter hereof. This Letter of Engagement may not be modified or any term or condition waived except in a writing signed by a duly authorized representative of each party. Neither this Letter of Engagement nor any right or obligation hereunder may be assigned by Client without BOA's advanced written consent. The provisions of this Letter of Engagement shall be binding upon and inure to the benefit of the parties, their successors, and permitted assigns.



Sincerely,

John Moranz  
Practice Manager  
Professional Services  
Business Objects Americas  
3030 Orchard Parkway  
San Jose, Ca 95134  
[john.moranz@businessobjects.com](mailto:john.moranz@businessobjects.com)  
714-271-6666 Office Phone

**THIS SECTION MUST BE COMPLETED BY CUSTOMER**

**All BOA invoices shall be directed to:**

**Customer Billing Contact: Shante Wilson**

**Billing Address: 333 W. Ocean Blvd., 12<sup>th</sup> Floor**

**Long Beach, CA 90802**

**Telephone: 562 570-6236**

**Facsimile: 562 570-5270**

**eMail: shante\_wilson@longbeach.gov**

**Does your company require a Purchase Order before issuing payment?**

**Yes**

**If the answer is yes, the Purchase Order Number for the professional services provided under this Letter of Engagement is: Will be available approximately one month after the purchase agreement is fully executed.**

Bus Obj Ex A



EXHIBIT B  
SOFTWARE LICENSE AND RELATED SERVICES

1. DEFINITIONS.

- 1.1 **"Documentation"** means the user documentation and the reference manual(s), in whatever form recorded, supplied by Business Objects Americas ("Licensor") with the Product.
- 1.2 **"Licensee"** means the City of Long Beach.
- 1.3 **"Order Schedule"** means a document entitled "Order Schedule" executed by the parties that refers to this Agreement, and that describes in greater detail Licensee's order-specific information, including, but not limited to, Licensee's billing information, lists of Products ordered, pricing, and payment and shipping information. Such Order Schedule(s) is (are) hereby incorporated into this Agreement by reference.
- 1.4 **"Outsourcer"** means a third party engaged by a Licensee for data processing, consulting, product customization, or internal information management at a designated Licensee or Outsourcer site.
- 1.5 **"Products"** means the machine-readable object code of the software programs specified in an Order Schedule and/or a Purchase Order (in conjunction with a Licensor quotation), together with any Documentation and Updates thereto.
- 1.6 **"Purchase Order"** means a non-cancelable, non-refundable Licensee order to obtain Products or Support Services that is signed by an authorized Licensee representative.
- 1.7 **"Support Services"** means Product support services described in the Description of Support Services provided at the Business Objects Licenses web site (<http://www.businessobjects.com/licenses>), as may be updated from time to time by Licensor, except as modified by written agreement between the parties.
- 1.8 **"Updates"** means any update, release, or enhancement that may be provided under Support Services.
- 1.9 **"Warranty Period"** means thirty (30) days after the date of initial delivery to Licensee of the applicable Product (excluding Updates).

2. LICENSE.

- 2.1 **License Grant.** Subject to Licensee's compliance with this Agreement, Licensee is granted a non-exclusive and non-transferable license to use the Products identified in a Purchase Order and/or Order Schedule accepted under this Agreement for Licensee's internal business purposes in accordance with the product use rights set forth in the Description of Product Use Rights provided at the Business Objects Licenses web site (<http://www.businessobjects.com/licenses>), as may be updated from time to time by Licensor.
- 2.2 **License Restrictions.** Except as expressly permitted by this Agreement, Licensee may not: (i) lease, loan, resell, sublicense, or otherwise distribute a Product; (ii) use a Product to provide or operate Application Service Provider (ASP), service bureau, marketing, training, outsourcing services, or consulting services, or any other commercial service related to the Products; (iii) use a Product to develop a product which is competitive with any of the Products; (iv) permit third-party access to, or use of, the Products, except as expressly permitted herein; (v) distribute or publish keycode(s) to the Products; or (v) use unauthorized keycode(s). Licensee shall notify Licensor if Licensee becomes aware of any unauthorized third party access to, or use of, a Product.
- 2.3 **Outsourcers.** If Licensee contracts with an Outsourcer, Licensee may permit access to, and use of, the Products by the Outsourcer, provided that: (i) the Outsourcer agrees to comply with the terms of this Agreement and to access and use the Products solely for purposes of rendering services to Licensee; and (ii) the total number of licenses used by Licensee and Outsourcer must not exceed the number of licenses ordered. Licensee shall be responsible for Outsourcer's compliance with the terms of this Agreement. Upon completion of Licensee's services by Outsourcer, Licensee shall certify in writing that Outsourcer has uninstalled and destroyed all copies of Products within thirty (30) days of such completion of services.
- 2.4 **Product Territory.** The licenses granted hereunder are only valid in the United States of America and Canada (the "Territory"). Licensee shall not ship, transfer, or otherwise export the Product outside the Territory without Licensor's prior written consent and Licensee's payment of any additional fees at Licensor's then current rates. When exporting the Products, Licensee shall comply with all applicable export laws and regulations.
- 2.5 **Duplication of Product.** Licensee may make Product copies equal to the number of licensed copies expressly authorized under this Agreement plus a reasonable number of archival copies for inactive backup purposes. All Product copyright, trademark, patent, and related proprietary notices incorporated in or fixed to the Product shall be duplicated by Licensee on all copies or extracts thereof and shall not be altered, removed, or obliterated.

- 2.6 **Product Ownership and Restrictions.** All intellectual property rights and title to the Product shall remain with Licensor and/or its suppliers and no interest or ownership therein is conveyed to Licensee. No right to modify (even for purposes of error correction), adapt, or translate the Product or create derivative works therefrom is granted to Licensee, except as necessary to configure the Product using the menus, options and tools provided for such purposes and contained in the Product. Licensee shall not use the Product to develop a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis, or report delivery product that is not the property of Licensor or alter, disassemble, decompile, translate, adapt, or reverse-engineer the report file (.RPT) format. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that Licensee has any right to obtain Product source code. Except as required to be permitted by applicable law, reverse compiling (including reverse compiling to ensure interoperability), reverse engineering and other source code derivation of the Product is prohibited. If Licensee wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Licensee shall first provide written notice to Licensor and permit Licensor, at its discretion, to make an offer to provide information and assistance reasonably required to ensure Product interoperability with other Licensee products for a fee to be mutually agreed upon (if any).

3. **SUPPORT AND ADDITIONAL SERVICES.**

- 3.1 **Support Services.** The Description of Support Services available at the Business Objects Licenses web site (<http://www.businessobjects.com/licenses>) describes terms and conditions for Support Services. Support Services may be obtained at Licensor's then-current rates and for terms specified in an Order Schedule or Purchase Order referencing a written Licensor quotation. Licensor may suspend or terminate Support Services for all Product(s) in the event that Licensee does not pay fees for Support Services when due. If Licensee purchases Support Services for a Product, then Licensee shall purchase Support Services for all licenses of such Product in its possession. Licensor may select qualified subcontractors to perform Support Services or assign performance of Support Services to Business Objects S.A. or any of its subsidiaries or affiliates. Support Services shall only be provided on a twelve (12) month basis, and may be renewed upon agreement of the parties. Support Services fees at the time of automatic renewals shall be invoiced to Licensee at the then-current Support Services rates. For a period of three (3) years after the date each Product license is initially acquired by Licensee under this Agreement, the Support Fees for such Product shall not exceed the Support Fees paid, for the same support plan, in the previous year by more than 5% or the percentage increase in the All Urban Consumer Price Index, during the previous calendar year, whichever is greater.
- 3.2 **Additional Services.** Product consulting or training may be obtained by Licensee on an as-available basis and at mutually agreed rates in accordance with a separate agreement. Should Licensor agree to provide consulting services, the payment of the Product license and Support Services fees under this Agreement shall not be contingent under any circumstances upon the performance of any such services including installation and implementation services.



## DESCRIPTION OF SUPPORT SERVICES (8/29/05)

The following terms and conditions relate to Support Services for Business Objects ("Licensor") Products. Below is a summary of Licensor's current Support Services programs, which may be revised by Licensor from time to time:

### Standard Support:

- Provides support during local Licensor office hours in the region where licenses were purchased
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone
- Three Named Contacts
- Unlimited cases per year
- Receive Updates

### Planning Support:

- Provides support from 6:00 a.m. to 5:00 p.m. Pacific
- Gives Licensee flexibility to log its cases via e-mail or telephone
- Support provided to any Business Objects Planning Applications trained user
- Installation support (telephone or e-mail)
- Support of personalizations provided by Licensor
- Unlimited cases per year
- Receive Updates

### Corporate Support:

- Provides support during local Licensor office hours in the region where licenses were purchased
- Provides interactive support for production down (Severity 1) issues 24 x 7 x 365 for licenses in use within the region where they were purchased (escalation to product group and code testing and fixes will be supplied during local office hours for the applicable product group)
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone
- Four Named Contacts
- Unlimited cases per year
- Receive Updates

### Elite Support:

- Provides support during local Licensor office hours in the region where licenses were purchased
- Provides emergency support for production down (Severity 1) issues 24 x 7 x 365 for licenses in use within the region where they were purchased
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone.
- Provides personalized service through a team of Elite Support engineers
- Provides Licensee with a weekly status report of all case activity for the prior week (for Licensee's primary contact)
- Six Named Contacts
- Unlimited cases per year
- Receive Updates

### Premium Support:

- Provides support during local Licensor office hours in the region where licenses were purchased
- Provides emergency support for production down (Severity 1) issues 24 x 7 x 365 for licenses in use within the region where they were purchased
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone.
- Provides personalized service through a group of Premium Support engineers
- Provides a Technical Account Manager who will make regular site visits as well as conduct a review of Licensee's environment and make recommendations as needed
- Priority response to all cases
- Provides Licensee with a weekly status report of all case activity for the prior week (for Licensee's primary contact)
- Provides Licensee with access to self-service online reporting tool (for up to three of your nine named contacts)
- Nine Named Contacts
- Unlimited cases per year
- Receive Updates

1. To receive Support Services, Licensee must be current (paid in full) on all Support Services fees ("Support Fees"). Support Services shall only be provided on a twelve (12) month basis. Support Services fees at the time of renewals shall be invoiced to Licensee at the then-current Support Services rates. Planning Support fees are based on a percentage of then current license fees. For all other Support services, for a period of three (3) years after the date each Product license is initially acquired by Licensee under this Agreement, the Support Fees for such Product shall not exceed the Support Fees

paid, for the same support plan, in the previous year by more than 5% or the percentage increase in the All Urban Consumer Price Index, during the previous calendar year, whichever is greater.

2. Licensor's obligations with respect to Support Services shall be:
  - (a) "Interactive Assistance" support consisting of assistance and workarounds for resolving known problems, to Licensee Named Contacts (and only to such individuals) in the event that Licensee experiences Documentation or Product related issues. "Named Contacts" shall mean the personnel of Licensee who are identified by name to Licensor in writing and who may contact Licensor for support. The number of Named Contacts shall be limited to that number provided by the applicable Support Services program, unless a different number is set forth on the applicable Order Schedule or Purchase Order.
  - (b) "Maintenance" consisting of replacements of Product in order to correct programming errors, if required in the judgment of Licensor to enable the Product to perform substantially in conformity with published specifications that accompany the Product.
  - (c) The provision of Updates if and when they are generally available to Product licensees. An "Update" means: (i) a "Major Release" that includes architectural changes and may be identified by a change of the first digit of the release numbering, (ii) a "Minor Release" that includes improvements and bug corrections and may be identified by a change of the second digit of the release numbering, or (iii) a "Maintenance Release" indicating a bug correction release and may be identified by a change of the third digit of the release numbering; in each case, when generally provided on an upgrade basis without additional charge to Product licensees who are current subscribers of Support Services. "Updates" shall not include any new products, features, or enhancements for which Licensor generally charges an additional fee (including to subscribers of Support Service). For each Major Release, Licensor shall offer Maintenance and Interactive Assistance support for a period of thirty (36) months from the date of first general commercial availability.
  - (d) Licensor is under no obligation to provide Support Services to Licensee with respect to (i) any Products altered or modified by Licensee or third parties, (ii) restoration of lost data, (iii) third party software or applications being used in conjunction with the Products, (iv) Products not operated on Licensor certified operating environments ("COE") or operated in a manner inconsistent with its documentation or license use terms, (v) computer hacking, security breaches, or illegal or unauthorized access to software products, servers, or computer systems, (vi) installation, consulting or customer training, any of which may be obtained by Licensee at Licensor's then current rates, on an as-available basis; (vii) modification, integration, installation, or configuration of the Product to run with new versions of the operating system, database, middleware or models of hardware installed by Licensee; or (viii) responding to Licensee's support calls if Licensee fails to provide sufficient information, as reasonably requested by Licensor, to enable Licensor to identify, reproduce and analyze the reported problem. Support Services do not cover the maintenance and/or service of any machines, computer hardware or equipment.
3. Once Licensor provides Licensee with the latest Update, Licensee may continue to use the licenses for the previous version of the Product, or may replace some or all of the copies of the previous versions of the Product with the latest Update. In any event, at any moment in time the cumulative total number of licenses (previous version and latest Update, combined) installed and in use may not exceed the cumulative number of licenses purchased by Licensee.
4. Licensee's obligations shall be: (i) designation and training of Named Contacts who shall ordinarily be the sole contact with Licensor; (ii) installation of the Product and any Updates; (iii) notification to Licensor of any malfunction, programming error or other problem in accordance with procedures furnished by Licensor including providing sufficient information, as reasonably requested by Licensor, to identify, reproduce, and analyze the reported problem.
5. Lapsed Support Services. After commencement of Support Services, should Licensee's Support Services ever be permitted to lapse and Licensee then desires to reinstate Support Services, Licensee may do so by paying the then-current Support Fees for the reinstated 12-month period and a reinstatement fee equal to the Support Fees that would have been invoiced during the lapsed period plus an additional 10% fee based on the lapsed period.
6. Limited Support.
  - (a) Licensor is under no obligation to provide Support Services or correct errors relating to the BusinessObjects Personal Trainer Product. Notwithstanding the foregoing, Licensor may provide installation support for the BusinessObjects Personal Trainer Product for a period of two (2) months following the shipment date to Licensee, provided that the BusinessObjects Personal Trainer Product is installed in a COE and otherwise deployed in accordance with its applicable license use terms.
  - (b) Rapid Deployment Template Products ("RDTs") are templates (i.e. metadata) and are not programs. RDTs are licensed "AS IS", without any Support Services. There shall be no new versions or Updates offered for RDTs.

#### **Bus Obj Support**



## ORDER SCHEDULE

### EXHIBIT C

#### LICENSEE INFORMATION

Licensee Name:	City of Long Beach	Licensee Contact:	Shante Wilson
Ship to Address:	333 W. Ocean Boulevard 12 <sup>th</sup> Floor	Phone:	562-570-6236
	Long Beach, CA. 90802	Fax:	562-570-5270
Bill to Address:	Same as Above	A/P Contact:	Shante Wilson
		Phone:	562-570-6236
		Fax:	562-570-5270
Order Schedule Effective Date	October 10, 2005	First Year Support Services	Standard Support 20.00%

#### BUSINESS OBJECTS CONTACT INFORMATION

Account Manager:	Mark Ronson
Phone:	949-679-9386
E-Mail:	<a href="mailto:mark.ronson@businessobjects.com">mark.ronson@businessobjects.com</a>
Opp ID:	102108

#### CONTRACT INFORMATION

This transaction is governed by the terms and conditions of the Agreement for Purchase of Software and Related Services dated October \_\_\_\_, 2005 between the parties (the "End-User Agreement"). In the event of any inconsistencies between the terms of any purchase order and the terms of the End-User Agreement, the terms of the End-User Agreement, as amended by this Order Schedule, shall be controlling.

The following Products and related Services are included in this order:

Product Name	Version	Platform	Database Access Pack	Alternate Database	Quantity	License Type	Net Price
Data Integrator Departmental – L-DEU-E-WX-00	XI	WIN			1	Server (up to 4 CPU's; 1 production Server)	\$60,000
Business Objects Data Cleansing Standard – L-DHD-E-WX-00	XI				1	Server (up to 4 CPU's; 1 production Server)	\$60,000

Net License Fees		\$120,000
Support Services Fees		\$24,000
Consulting Services:		\$76,370
Education Services:		
<b>TOTAL</b>		<b>\$220,370</b>

**PAYMENT TERMS** Net 30 days from BOA invoice date

**MAINTENANCE RENEWAL** Standard Support Services shall be calculated at 20% of net license fees, subject to annual increases. For a period of 3 years after the date each Product license is initially acquired by Licensee under this Order Schedule, the Support Services renewal fee for each such license shall not exceed the Support Services fees paid in the previous year by more than 5% or the previous calendar years All Urban Consumer Price index, whichever is greater.

**SHIPPING TERMS** FOB ORIGIN

*I elect to receive these products via Electronic Software Distribution (ESD)* Yes:   X   No:         
If ESD, then email address of Licensee's technical contact required:   Shante (underscore)    
Wilson@longbeachgov.com

**EXPIRATION OF OFFER**

The offer set forth in this Order Schedule is valid through   12/21/05   and if the Order Schedule is not executed by such date, the offer is rescinded, and all terms are null and void.

This order is subject to sales tax: Yes:        No:   X   Exemption Certificate #:                                   
If No, please provide a copy of your Exemption Certificate with this form.

Does your company require a Purchase Order before issuing payment?

Yes                      No                     

If the answer is yes, are Purchase Orders signed as a normal course of business?

Yes                      No                     

The undersigned is an authorized purchasing signatory of Licensee.

**LICENSEE**

By:   

Name:   

Title:   

Date:   

**BUSINESS OBJECTS AMERICAS**

By:   

Name:   

Title:   

Date:



Return 2 originals of the signed Order Schedule to: Business Objects Americas, Attn: Contracts Administration, 3030 Orchard Parkway, San Jose, CA 95134, fax: 408-894-6535