AGREEMENT

30596

THIS AGREEMENT is made and entered, in duplicate, as of July 25, 2007

for reference purposes only, pursuant to a minute order adopted by the City Council of

the City of Long Beach at its meeting on July 10, 2007, by and between MICROLINK

ENTERPRIES, Inc, a California corporation ("MICROLINK") located at 13181 Crossroads

Parkway, #290, City of Industry, CA 91746, and the CITY OF LONG BEACH, a

municipal corporation ("Client").

WHEREAS, Client desires to engage MICROLINK to provide professional

computer services to Client, and MICROLINK desires to be engaged by Client, all on the

terms and conditions of this Agreement; and

WHEREAS, Client selected MICROLINK in accordance with the Client's

policies and procedures, after evaluation of its proposal submitted in response to Client's

Request for Proposals;

NOW, THEREFORE, in consideration of the mutual terms and conditions

herein, the parties agree as follows:

1. <u>AMOUNT</u>: The amount of this Agreement shall not exceed $150,000

during the term. MICROLINK has already been paid approximately $49,000 under

Purchase Order Number BPTS07000024. As a result, the total contract amount (not to

exceed $150,000) was reduced by actual accumulated payments under that Purchase

Order.

2. <u>TERM</u>: The term of this Agreement shall commence at midnight on

March 1, 2008, and shall terminate at 11:59 p.m. on March 1, 2009. The term of this

Agreement may be extended on mutual written agreement of the parties for two

additional 12-month terms. This Agreement may be terminated by Client for cause or

convenience on two weeks' prior notice without penalty or further obligation after Client

has paid for services rendered through the date of termination.

3. <u>SERVICES</u>: MICROLINK shall provide to Client one or more Workers as

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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. <u>INDEPENDENT CONTRACTOR STATUS</u>: With respect to the services

6 provided by MICROLINK, MICROLINK is and shall act as an independent contractor and

7 not an employee, representative, or agent of Client. MICROLINK acknowledges and

8 agrees that: a) Client will not withhold taxes of any kind from MICROLINK 's

9 compensation; b) Client will not secure workers' compensation or pay unemployment

10 insurance to, for or on MICROLINK's behalf; and c) Client will not provide and

11 MICROLINK is not entitled to any of the usual and customary rights, benefits or privileges

12 of Client's employees. MICROLINK expressly warrants that neither MICROLINK nor any

13 of MICROLINK's employees or agents shall represent themselves to be employees or

14 agents of Client.

15   5. <u>INVOICES</u>: MICROLINK 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. <u>PAYMENT DEFAULT</u>: Client agrees to pay the invoices of MICROLINK

19 within thirty (30) days after receipt of a valid invoice by having such payment delivered to

20 MICROLINK at 13181 Crossroads Parkway, #290, City of Industry, CA 91746 or such

21 other location or manner as MICROLINK shall hereafter direct in writing.

22   7. <u>RESTRICTIVE COVENANT CONVERSION</u>: Client acknowledges that

23 MICROLINK 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 MICROLINK's Workers perform services for Client under this Agreement and

26 for a period of six months following the date in which a MICROLINK's Worker last

27 performed services for the Client under this Agreement, Client agrees that it will not hire

28 or engage such MICROLINK's Worker as an employee of Client.

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1 Notwithstanding the above paragraph, if at any time Client wishes to hire

2 any MICROLINK's Worker directly or indirectly as an employee of Client or independent

3 contractor (without the participation of a placement agency other than MICROLINK),

4 Client may request that MICROLINK release the MICROLINK's Worker from his/her

5 employment contract or other engagement with MICROLINK in order to permit such

6 desired engagement provided, however, Client acknowledges and agrees that

7 MICROLINK, in its sole and absolute discretion, has the right to accept or refuse such

8 request of Client.

9 8. <u>LIMITATION OF LIABILITY</u>: MICROLINK does not warrant or guarantee

10 that the Workers placed with Client pursuant to this Agreement will produce any particular

11 result or any solution to Client's particular needs. Accordingly, Client acknowledges and

12 agrees that MICROLINK is not responsible for any aspects of the Worker's work or the

13 Client's project, including, without limitation, compliance with any deadlines or work

14 product requirements. MICROLINK shall not be liable for (I) any claims, costs, expenses,

15 damages, obligations or losses arising from or in connection with the acts or omission of

16 any Worker, including, but not limited to, work on engineering or design concepts or

17 calculations or related drawings, software programs, designs or documentation, or (ii) any

18 indirect, special or consequential damages (including, but not limited to, loss of profits,

19 interest, earnings or use) whether arising in contract, tort or otherwise.

20 9. <u>CLIENT PROPERTY</u>:

21 a. Work Product: All work product of every kind performed by any

22 MICROLINK's Worker on behalf of Client shall be the sole and exclusive property of

23 Client.

24 b. Confidentiality: MICROLINK recognizes that while performing its

25 duties under this Agreement, MICROLINK and its Workers may be granted access to

26 certain proprietary and confidential information regarding client's business, customers,

27 and employees. MICROLINK shall keep such information confidential (unless compelled

28 to reveal such information by court), and the obligations of this paragraph will survive the

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1 termination of this Agreement. This paragraph does not apply to information that was

2 previously known or information that is available in the public domain.

3   10. TIME RECORDS: An MICROLINK time card shall be the official time

4 record for purposes of payment.

5   11. NOTICES:

6   11.1 Manner: Any notice or other communication required or

7 permitted under this Agreement shall be in writing and either delivered

8 personally or sent by overnight courier, or U.S. certified or registered mail,

9 postage prepaid, return. receipt requested.

10   11.2 Addressee: Notice shall be addressed to:

11

12 MICROLINK: Microlink Enterprises, Inc

13   13181 Crossroads Parkway, #290
                 City of Industry, CA 91746

14 Client: City of Long Beach
                 333 W. Ocean Boulevard

15   Long Beach, CA 90802
                 Attn: City Manager

16 With a copy to: City of Long Beach

17   333 W. Ocean Boulevard, 12th Floor
                 Long Beach, CA 90802

18   Attn: Jack Ciulla

19   11.3 Delivery: Notice delivered personally shall be deemed given

20 only if acknowledged in writing by the person to whom it is given. Notice

21 sent by overnight courier shall be deemed given on the date shown on the

22 courier's records. Notice that is sent by U.S. certified mail or registered mail

23 shall be deemed given on the date shown on the return receipt.

24   11.4. Changes: Either party may designate, by notice to the other,

25 substitute addressees, addresses for notices, and thereafter, notices are to

26 be directed to those substitute addresses.

27   12. INSURANCE: As a condition precedent to the effectiveness of this

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1 Agreement, MICROLINK shall procure and maintain at MICROLINK's expense for the

2 duration of this Agreement from an insurance company that is admitted to write insurance

3 in California or from authorized non-admitted insurance companies that have ratings of or

4 equivalent to A:VIII by A.M. Best Company:

5   (a)   Commercial general liability insurance (equivalent in scope to ISO

6 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars

7 ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) general aggregate.

8 Such coverage shall include but not be limited to broad form contractual liability, cross

9 liability, independent contractors liability, and products and completed operations liability.

10 The City of Long Beach, its officials, employees and agents shall be named as additional

11 insureds by endorsement.(on Clients endorsement form or on an endorsement equivalent

12 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall

13 contain no special limitations on the scope of protection given to the City of Long Beach,

14 its officials, employees and agents.

15   (b)   Workers' compensation insurance as required by the California

16 Labor Code and employer's liability insurance in an amount not less than One Million

17 Dollars ($1,000,000) per accident.

18   (c)   Professional liability insurance in an amount not less than One

19 Million Dollars ($1,000,000) per occurrence.

20   (d)   Commercial automobile liability insurance (equivalent in scope to

21 ISO form CA 00 01 06 92), covering Auto Symbol I (Any Auto), in an amount not less

22 than Five Hundred Thousand Dollars ($500,000) combined single limit per accident.

23   (e) Blanket honesty bond in the amount not less than Two Hundred Fifty

24 Thousand Dollars ($250,000) insuring against any loss which may result from the

25 dishonesty or fraudulent act of employees, officers, or directors of MICROLINK. This

26 Bond shall include a loss payee endorsement naming the City of Long Beach, its officials

27 and employees as additional insureds.

28   Any self-insurance program, self-insured retention, or deductible must be

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1 separately approved in writing by Client's Risk Manager or designee and shall protect the

2 City of Long Beach, its officials, employees and agents in the same manner and to the

3 same extent as they would have been protected had the policy or policies not contained

4 retention provisions. Each insurance policy shall be endorsed to state that coverage shall

5 not be suspended, voided or canceled by either party except after thirty (30) days prior

6 written notice to Client, and shall be primary and not contributing to any other insurance

7 or self-insurance maintained by the City of Long Beach, its officials, employees and

8 agents.

9 MICROLINK shall require that all contractors and subcontractors which

10 MICROLINK uses in the performance of services under this Agreement maintain

11 insurance in compliance with this Section unless otherwise agreed in writing by Client's

12 Risk Manager or designee.

13 Prior to the start of performance under this Agreement, MICROLINK shall

14 deliver to Client certificates of insurance and required endorsements, including any

15 insurance required of MICROLINK contractors and subcontractors, for approval as to

16 sufficiency and form. The certificates and endorsements shall contain the original

17 signature of a person authorized by that insurer to bind coverage on its behalf. In

18 addition, MICROLINK shall, at least thirty (30) days prior to expiration of the insurance

19 required hereunder, furnish to Client certificates of insurance and endorsements

20 evidencing renewal of such insurance. Client reserves the right to require complete

21 certified copies of all policies of MICROLINK or MICROLINK's contractors or

22 subcontractors, at any time. MICROLINK shall make available to Client all books, records

23 and other information relating to the insurance coverage required herein during normal

24 business hours.

25 Any modification or waiver of the insurance requirements herein shall only

26 be made with the written approval of Client's Risk Manager or designee. Not more

27 frequently than once a year, Client's Risk Manager or designee may require that

28 MICROLINK, MICROLINK's contractors and subcontractors change the amount, scope or

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1   types of coverages required herein if, in his or her sole opinion, the amount, scope, or

2   types of coverages herein are not adequate.

3   The procuring or existence of insurance shall not be construed or deemed

4   as a limitation on liability relating to MICROLINK's performance of services or as full

5   performance of or compliance with the indemnification provisions herein.

6   13. <u>MISCELLANEOUS</u>:

7   13.1 No party shall transfer or assign any or all of its rights or

8   interests under this Agreement or delegate any of its obligations without the prior

9   written consent of the other party; which consent shall not be unreasonably

10   withheld.

11   13.2 Client will provide direct supervision to MICROLINK's Workers,

12   who will be assigned to work on Client's premises. MICROLINK's Workers shall

13   not be permitted to, without advance written approval by an officer of MICROLINK,

14   either (a) engage in travel or otherwise to operate a motor vehicle on behalf of

15   Client; (b) handle cash, negotiable instruments, valuables or securities, or (c) be

16   permitted unsupervised or uncontrolled access to areas where confidential

17   information or valuables are kept.

18   13.3 This Agreement shall be governed by and construed pursuant

19   to the laws of the State of California (except those provisions of California law

20   pertaining to conflicts of laws). Any action involving this Agreement shall be

21   brought in the Los Angeles County Superior Court, Long Beach Judicial District.

22   13.4 This Agreement constitutes the entire understanding between

23   the parties hereto and supersedes all other agreements, whether oral or written,

24   with respect to the subject matter herein.

25   13.5 MICROLINK shall defend, indemnify and hold the City of Long

26   Beach, its officials, employees and agents harmless from and against all claims,

27   demands, damage, causes of action, proceedings, loss, costs and expenses

28   (including reasonable attorney's fees), and liability, of any kind whatsoever

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(collectively in this Section "claim"), alleging (a) injury to or death of persons or damage to property, including property owned by or under the care and custody of Client or its boards and (b) that such injury, death or damage arises from or is attributable to or caused by a negligent act or omission, misrepresentation, or willful misconduct of MICROLINK, its employees, or agents in the performance of services, except to the extent that the injury, death, or damage was caused by the negligence of Client, its boards, or their officials or employees. MICROLINK shall notify Client of any claim within ten (10) days. Likewise, Client shall notify MICROLINK of any claim, shall tender the defense of such claim to MICROLINK, and shall assist MICROLINK, as may be reasonably requested, in such defense.

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

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

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

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

13.10 MICROLINK shall not use the name of the City of Long Beach, its officials or employees in any advertising or solicitation for business, nor as a

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1 reference, without the prior approval of Client's City Manager or designee.

2   13.11 Client represents that it is in compliance with all applicable

3 laws relating to occupational safety and health requirements of the workplace.

4 MICROLINK shall provide general job safety instruction to Workers it places with

5 Client. Client shall provide specific safety training for all Workers if the nature of

6 the job so requires.

7   IN WITNESS WHEREOF, the parties have caused this document to be duly

8 executed with all formalities required by law as of the date first stated above.

9

10   MICROLINK ENTERPRISE, Inc
                                        a California corporation

11

12 _02-22-08_____, 2008   By _____

13   Officer's Title ___CFO___

14 _____, 2008   By _____

15   Officer's Title _____

16   "MICROLINK"

17   CITY OF LONG BEACH, a municipal
                                   corporation

18 _March 17_____, 2008   By _____Assistant City Manager
                                   City Manager

19   "Client"

20

21   This Agreement is approved as to form on ___2/27____, 2008.

22   ROBERT E. SHANNON, City Attorney

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24   By _____
                                   Deputy

25   EXECUTED PURSUANT
                                   TO SECTION 301 OF

26   THE CITY CHARTER.

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28 GJA:lkm # A08-00499

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EXHIBIT A

CHARGES/FEES

This Exhibit A is issued pursuant to an Agreement dated 7/25/07 between City of Long Beach and Microlink Enterprises, Inc. This is an at will contract, and either party may terminate at their discretion without penalty or cost. Any term not otherwise defined herein shall have the meaning ascribed to it in such Agreement.

Client: City of Long Beach

Client Site: 333 West Ocean , 12th floor
               Long Beach, CA 90802

Category	Hourly Rate	Overtime Rate
Business Analyst	$65	$97.50
Project Manager	$95	$142.50
Legacy Systems Programmer	$85	$127.50