

1 **AGREEMENT**

2 **30597**

3 THIS AGREEMENT is made and entered, in duplicate, as of February 26,  
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 M.E.  
6 WEAVER & ASSOCIATES, LLC, a Delaware limited liability company ("MEWA") located  
7 at 4400 MacArthur Blvd., Suite 300, Newport Beach, CA 92660 and the CITY OF LONG  
8 BEACH, a municipal corporation ("Client").

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

12 WHEREAS, Client selected MEWA in accordance with the Client's policies  
13 and procedures, after evaluation of its proposal submitted in response to Client's Request  
14 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. MEWA has already been paid approximately \$45,000 under Purchase  
19 Order Number BPTS08000010. As a result, the total contract amount (not to exceed  
20 \$150,000) was reduced by actual accumulated payments under that Purchase Order.

21 2. TERM: The term of this Agreement shall commence at midnight on  
22 March 1, 2008, and shall terminate at 11:59 p.m. on March 1, 2009. The term of this  
23 Agreement may be extended on mutual written agreement of the parties for two  
24 additional 12-month terms. This Agreement may be terminated by Client for cause or  
25 convenience on two weeks' prior notice without penalty or further obligation after Client  
26 has paid for services rendered through the date of termination.

27 3. SERVICES: MEWA shall provide to Client one or more Workers as  
28 requested by Client from time to time. Such Workers shall provide the services described

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

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

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

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

16 6. PAYMENT DEFAULT: Client agrees to pay the invoices of MEWA within  
17 thirty (30) days after receipt of a valid invoice by having such payment delivered to  
18 MEWA at 4400 MacArthur Blvd., Suite 300, Newport Beach, CA 92660 or such other  
19 location or manner as MEWA shall hereafter direct in writing.

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

27 Notwithstanding the above paragraph, if at any time Client wishes to hire  
28 any MEWA's Worker directly or indirectly as an employee of Client or independent

1 contractor (without the participation of a placement agency other than MEWA), Client  
2 may request that MEWA release the MEWA's Worker from his/her employment contract  
3 or other engagement with MEWA in order to permit such desired engagement provided,  
4 however, Client acknowledges and agrees that MEWA, in its sole and absolute  
5 discretion, has the right to accept or refuse such request of Client.

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

17           9. CLIENT PROPERTY:

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

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

27           10. TIME RECORDS: A MEWA time card shall be the official time record  
28 for purposes of payment.

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11. NOTICES:

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

11.2 Addressee: Notice shall be addressed to:

MEWA: M. E. WEAVER & ASSOCIATES, LLC  
4400 MacArthur Blvd., Suite 300  
Newport Beach, CA 92660

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

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

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

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

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

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

11 (b) Workers' compensation insurance as required by the California  
12 Labor Code and employer's liability insurance in an amount not less than One Million  
13 Dollars (\$1,000,000) per accident.

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

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

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

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

1 not be suspended, voided or canceled by either party except after thirty (30) days prior  
2 written notice to Client, and shall be primary and not contributing to any other insurance  
3 or self-insurance maintained by the City of Long Beach, its officials, employees and  
4 agents.

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

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

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

26 The procuring or existence of insurance shall not be construed or deemed  
27 as a limitation on liability relating to MEWA's performance of services or as full  
28 performance of or compliance with the indemnification provisions herein.

1                                    13. MISCELLANEOUS:

2                                    13.1 No party shall transfer or assign any or all of its rights or  
3 interests under this Agreement or delegate any of its obligations without the prior  
4 written consent of the other party; which consent shall not be unreasonably  
5 withheld.

6                                    13.2 Client will provide direct supervision to MEWA's Workers, who  
7 will be assigned to work on Client's premises. MEWA's Workers shall not be  
8 permitted to, without advance written approval by an officer of MEWA, either (a)  
9 engage in travel or otherwise to operate a motor vehicle on behalf of Client; (b)  
10 handle cash, negotiable instruments, valuables or securities, or (c) be permitted  
11 unsupervised or uncontrolled access to areas where confidential information or  
12 valuables are kept.

13                                   13.3 This Agreement shall be governed by and construed pursuant  
14 to the laws of the State of California (except those provisions of California law  
15 pertaining to conflicts of laws). Any action involving this Agreement shall be  
16 brought in the Los Angeles County Superior Court, Long Beach Judicial District.

17                                   13.4 This Agreement constitutes the entire understanding between  
18 the parties hereto and supersedes all other agreements, whether oral or written,  
19 with respect to the subject matter herein.

20                                   13.5 MEWA shall defend, indemnify and hold the City of Long  
21 Beach, its officials, employees and agents harmless from and against all claims,  
22 demands, damage, causes of action, proceedings, loss, costs and expenses  
23 (including reasonable attorney's fees), and liability, of any kind whatsoever  
24 (collectively in this Section "claim"), alleging (a) injury to or death of persons or  
25 damage to property, including property owned by or under the care and custody of  
26 Client or its boards and (b) that such injury, death or damage arises from or is  
27 attributable to or caused by a negligent act or omission, misrepresentation, or  
28 willful misconduct of MEWA, its employees, or agents in the performance of

1 services, except to the extent that the injury, death, or damage was caused by the  
2 negligence of Client, its boards, or their officials or employees. MEWA shall notify  
3 Client of any claim within ten (10) days. Likewise, Client shall notify MEWA of any  
4 claim, shall tender the defense of such claim to MEWA, and shall assist MEWA, as  
5 may be reasonably requested, in such defense.

6 13.6 In the event that there is any legal proceeding between the  
7 parties to enforce or interpret this Agreement or to protect or establish any rights  
8 or remedies hereunder, the prevailing party shall be entitled to its costs and  
9 expenses, including reasonable attorneys' fees.

10 13.7 Subject to applicable laws, rules, and regulations, neither Client  
11 nor MEWA shall discriminate in the performance of this Agreement on the basis of  
12 race, color, religion, national origin, sex, sexual orientation, AIDS, and AIDS  
13 related condition, age, disability or handicap, disabled or veteran status.

14 13.8 The acceptance of the services or the payment of any money  
15 by Client shall not operate as a waiver of any provision of, this Agreement, or of  
16 any right to damages or indemnity stated in this Agreement. The waiver of any  
17 breach of this Agreement shall not constitute a waiver of any other or subsequent  
18 breach of this Agreement.

19 13.9 Termination or expiration of this Agreement shall not affect  
20 rights or liabilities of the parties which accrued pursuant prior to such termination  
21 or expiration.

22 13.10 MEWA shall not use the name of the City of Long Beach, its  
23 officials or employees in any advertising or solicitation for business, nor as a  
24 reference, without the prior approval of Client's City Manager or designee.

25 13.11 Client represents that it is in compliance with all applicable  
26 laws relating to occupational safety and health requirements of the workplace.  
27 MEWA shall provide general job safety instruction to Workers it places with Client.  
28 Client shall provide specific safety training for all Workers if the nature of the job so



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333 West Ocean Boulevard, 11th Floor  
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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.

M.E. WEAVER & ASSOCIATES, LLC  
a Delaware limited liability company

3.11.08, 2008

By *Phoebe Kays*

Officer's Title *Vice President*

3/11/08, 2008

By *Lewdy Woolery*

Officer's Title *President*

"MEWA"

CITY OF LONG BEACH, a municipal corporation

Mar 21, 2008

By *Smj* Assistant City Manager  
City Manager

"Client"

This Agreement is approved as to form on 3/17, 2008.

ROBERT E. SHANNON, City Attorney

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

By *Robert E. Shannon*  
Deputy

GJA:ikm # A08-00652

## EXHIBIT A

### CHARGES/FEES

This Exhibit A is issued pursuant to an Agreement dated 2/26/08 between City of Long Beach and M.E Weaver & Associates, 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 , 12<sup>th</sup> floor  
Long Beach, CA 90802

<u>Category</u>	<u>Regular and Overtime Rates</u>
Business Analyst	\$75/Hr - \$80/Hr
Project Manager	\$95/Hr - \$100/Hr
Legacy Systems Programmer	\$65/Hr - \$70/Hr