

AGREEMENT

33293

THIS AGREEMENT (this "Agreement") is made and entered, in duplicate, as of October 9, 2013, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 8, 2013, by and between MICHAEL J. ARNOLD AND ASSOCIATES, INC., a California corporation ("Consultant"), with a place of business at 1127 11th Street, Suite 820, Sacramento, California 95814, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, there is a need to hire a legislative advocate to assist City in keeping informed about activities in the State Capitol that may affect the citizens of City and their municipal government; and

WHEREAS, there is a need to retain expert assistance to help City formulate and communicate in the most effective ways City's policies and positions to the California Legislature and State agencies, including the members of the Long Beach Legislative Delegation; and

WHEREAS, Consultant has previously performed such services for City in an effective, efficient and satisfactory manner; and

WHEREAS, by reason of extensive experience in dealing with governmental agencies and officials, Consultant is particularly and peculiarly qualified to serve City in establishing and maintaining liaison for City and representing City with other governmental entities and officials; and

WHEREAS, City desires to contract with Consultant so that Consultant's services will be available to the appropriate City officers when said services are required;

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

1. SCOPE OF WORK OR SERVICES. Consultant shall be available to perform the services of a legislative advocate on behalf of City when and as requested by City, including but not limited to:

1 A. Review all bills introduced into the California Legislature,
2 inform City of all legislation affecting City's interests and transmit to City a copy of
3 all versions of such bills and related background information, such as committee
4 analyses;

5 B. Act as an official representative of the City with the California
6 State Legislature and various state governmental agencies, commissions and
7 persons involved in governmental affairs affecting City when and as designated
8 and authorized by City;

9 C. Perform all duties customarily performed by legislative
10 advocates and governmental affairs representatives on behalf of their clients to the
11 best of Consultant's ability, experience and expertise;

12 D. Transmit all versions of all bills listed in the Legislative Bulletin
13 of the League of California Cities that may concern City;

14 E. Attend all regular meetings and briefings of "City
15 Representatives" held by the League of California Cities;

16 F. Track legislation of concern to City, maintain a bill record and
17 send updated copies regularly to City;

18 G. Prepare monthly written reports to City's City Manager which
19 summarize Consultant's activities on behalf of City and which offer useful and
20 current information on State legislative activity;

21 H. Arrange meetings with legislative representative for City staff
22 and elected officials when necessary, and be prepared to participate as requested;

23 I. Lobby in favor of legislation sponsored by City and on specific
24 bills and issues as directed by City;

25 J. Provide all the information necessary for City to comply in a
26 timely manner with filing requirements of the Political Reform Act of 1974; and

27 K. Identify funding that will assist in the creation of new City
28 programs, projects or services or the augmentation of existing City programs,

1 projects or services.

2 2. CITY'S OBLIGATIONS. In order to facilitate and expedite
3 Consultant's services on behalf of City, City shall cooperate in a timely manner with
4 Consultant to inform Consultant as to City's needs relating to legislative advocacy.
5 Specifically, City shall review and analyze all bills transmitted by Consultant and inform
6 Consultant of City's positions, if any, in a timely manner, and provide timely briefings and
7 information to Consultant on all issues of interest to City requiring services of Consultant.

8 3. COORDINATION AND ORGANIZATION.

9 A. Michael J. Arnold shall be the "Associate-in-Charge" under
10 this Agreement. The Associate-in-Charge shall process, coordinate and direct all
11 inquiries and requests for services hereunder in order to maximize the timeliness
12 and usefulness of the responses to said inquiries and requests. The Associate-in-
13 Charge shall be available, at all reasonable times, to the City Manager or his
14 designee for all services to be furnished by Consultant hereunder. The Associate-
15 in-Charge shall also direct and coordinate all internal activities of Consultant to the
16 end that output from Consultant to City shall be fully coordinated, consistent and
17 timely.

18 B. The City Manager or his designee shall be City's liaison under
19 this Agreement, and all actions, communications or other obligations or
20 responsibilities of City under this Agreement shall be performed by the City
21 Manager or his designee.

22 4. PAYMENT.

23 A. City shall pay to Consultant the sum of Eight Thousand Three
24 Hundred Eleven Dollars (\$8,480) per month, with the first payment due on October
25 31, 2013 for services, if any, rendered during the month of October.

26 B. In addition, City shall reimburse Consultant for out-of-pocket
27 expenses actually and necessarily incurred by Consultant in providing services
28 hereunder for long distance telephone calls, telegrams, travel at City's request and

1 similar items. Additionally, City shall reimburse Consultant for any travel and other
2 expenses directly related to a request by City for Consultant to participate in any
3 meetings or activities outside Sacramento.

4 C. Notwithstanding any other provision of this Agreement, any
5 out-of-state travel and any transaction incurring expenses subject to
6 reimbursement in excess of Two Hundred Dollars (\$200) shall require prior
7 approval of City's City Manager.

8 D. Not later than the tenth (10th) day of each month, Consultant
9 shall submit an itemized statement of Consultant's activities on behalf of City
10 during the preceding month.

11 E. Total compensation hereunder shall not exceed One Hundred
12 Five Thousand Four Hundred Thirty-Two Dollars (\$105,432). The parties agree
13 that this compensation represents the reasonable value of services to be rendered
14 by Consultant. If a court of competent jurisdiction or any administrative agency
15 determines that payment of such compensation was otherwise contingent, then
16 this Agreement shall be deemed rescinded ab initio.

17 5. TERM OF AGREEMENT. The term of this Agreement shall begin at
18 midnight on October 1, 2013 and shall terminate at 11:59 p.m. on September 30, 2014,
19 unless sooner terminate as provided in this Agreement. This Agreement may be
20 extended for two (2), one (1) year periods.

21 6. TERMINATION. Either party hereto may terminate this Agreement
22 for any reason at any time by giving to the other party ten (10) days' prior notice of
23 termination. In the event of termination under this Section, City shall pay Consultant for
24 services satisfactorily performed at City's direction or in accordance with this Agreement
25 and eligible costs incurred by Consultant up to the effective date of termination for which
26 Consultant has not been previously paid and for which Consultant submits an accurate,
27 itemized statement as required in Section 4.D.

28 7. ASSIGNMENT. This Agreement contemplates the personal services

1 of Consultant and Consultant's key employee, Michael J. Arnold, and the parties
2 acknowledge that a substantial inducement to City for entering this Agreement was and is
3 the professional reputation and competence said key employee, also identified herein as
4 "Associate-in-Charge". Consultant shall not assign its rights or delegate its duties
5 hereunder, or any interest herein, or any portion hereof. Any attempted assignment or
6 delegation shall be void, and any assignee or delegate shall acquire no right or interest
7 by reason of such attempted assignment or delegation.

8 8. ADVERSE INTERESTS LIMITED. Consultant shall file annually with
9 City a complete list of Consultant's clients for legislative services. Consultant shall report
10 immediately to City any conflict of interest or conflict between the interests and
11 instructions of City and any other client of Consultant. If, in the judgment of City, any
12 such conflict might interfere with the services to be rendered by Consultant hereunder,
13 this Agreement shall immediately terminate.

14 9. INDEPENDENT CONTRACTOR. In performing its services,
15 Consultant is and shall act as an independent contractor and not an employee,
16 representative or agent of City. Consultant acknowledges and agrees that (a) City will
17 not withhold taxes of any kind from Consultant's compensation; (b) City will not secure
18 workers' compensation or pay unemployment insurance to, for or on Consultant's behalf;
19 and (c) City will not provide and Consultant is not entitled to any of the usual and
20 customary rights, benefits or privileges of City employees. Consultant expressly warrants
21 that neither Consultant nor any of Consultant's employees or agents shall represent
22 themselves to be employees or agents of City.

23 10. INSURANCE.

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

1 Section 1763 of the California Insurance Code and that have ratings of or
2 equivalent to A:VIII by A.M. Best Company, the following insurance:

3 (a) Commercial general liability insurance (equivalent in scope to
4 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
5 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
6 coverage shall include but not be limited to broad form contractual liability,
7 cross liability, independent contractors liability, and products and
8 completed operations liability. City, its boards and commissions, and their
9 officials, employees and agents shall be named as additional insureds by
10 endorsement (on City's endorsement form or on an endorsement
11 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or
12 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and
13 CG 20 37 07 04), and this insurance shall contain no special limitations on
14 the scope of protection given to City, its boards and commissions, and
15 their officials, employees and agents. This policy shall be endorsed to
16 state that the insurer waives its right of subrogation against City, its boards
17 and commissions, and their officials, employees and agents.

18 (b) Workers' Compensation insurance as required by the California
19 Labor Code and employer's liability insurance in an amount not less than
20 \$1,000,000. This policy shall be endorsed to state that the insurer waives
21 its right of subrogation against City, its boards and commissions, and their
22 officials, employees and agents.

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

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

28 B. Any self-insurance program, self-insured retention, or

deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant. Consultant shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

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

F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Consultant and Consultant's subconsultants and

1 contractors, at any time. Consultant shall make available to City's Risk Manager
2 or designee all books, records and other information relating to this insurance,
3 during normal business hours.

4 G. Any modification or waiver of these insurance requirements
5 shall only be made with the approval of City's Risk Manager or designee. Not
6 more frequently than once a year, City's Risk Manager or designee may require
7 that Consultant, Consultant's subconsultants and contractors change the amount,
8 scope or types of coverages required in this Section if, in his or her sole opinion,
9 the amount, scope or types of coverages are not adequate.

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

14 11. INDEMNITY.

15 A. Consultant shall indemnify, protect and hold harmless City, its
16 Boards, Commissions, and their officials, employees and agents ("Indemnified
17 Parties"), from and against any and all liability, claims, demands, damage, loss,
18 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
19 costs and expenses, including attorneys' fees, court costs, expert and witness
20 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
21 whole or in part, out of or in connection with (1) Consultant's breach or failure to
22 comply with any of its obligations contained in this Agreement, or (2) negligent or
23 willful acts, errors, omissions or misrepresentations committed by Consultant, its
24 officers, employees, agents, subcontractors, or anyone under Consultant's control,
25 in the performance of work or services under this Agreement (collectively "Claims"
26 or individually "Claim").

27 B. In addition to Consultant's duty to indemnify, Consultant shall
28 have a separate and wholly independent duty to defend Indemnified Parties at

1 Consultant's expense by legal counsel approved by City, from and against all
2 Claims, and shall continue this defense until the Claims are resolved, whether by
3 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
4 breach, or the like on the part of Consultant shall be required for the duty to defend
5 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
6 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
7 in the defense.

8 C. If a court of competent jurisdiction determines that a Claim
9 was caused by the sole negligence or willful misconduct of Indemnified Parties,
10 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
11 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
12 percentage of willful misconduct attributed by the court to the Indemnified Parties.

13 D. The provisions of this Section shall survive the expiration or
14 termination of this Agreement.

15 12. AMENDMENT. This Agreement, including all Exhibits, shall not be
16 amended, nor any provision or breach waived, except in writing signed by the parties
17 which expressly refers to this Agreement.

18 13. GOVERNING LAW. This Agreement shall be governed by and
19 construed pursuant to the laws of the State of California (except those provisions of
20 California law pertaining to conflicts of laws). Consultant shall comply with all laws,
21 ordinances, rules and regulations of and obtain all permits, licenses and certificates
22 required by all federal, state and local governmental authorities.

23 14. INTEGRATION. This Agreement constitutes the entire
24 understanding between the parties and supersedes all other agreements, whether oral or
25 written, with respect to the subject matter herein.

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

1 16. NONDISCRIMINATION.

2 A. In connection with performance of this Agreement and subject
3 to applicable rules and regulations, Consultant shall not discriminate against any
4 employee or applicant for employment because of race, religion, national origin,
5 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
6 disability. Consultant shall ensure that applicants are employed, and that
7 employees are treated during their employment, without regard to these bases.
8 These actions shall include, but not be limited to, the following: employment,
9 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
10 termination; rates of pay or other forms of compensation; and selection for training,
11 including apprenticeship.

12 B. It is the policy of City to encourage the participation of
13 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
14 procurement process, and Consultant agrees to use its best efforts to carry out
15 this policy in its use of subconsultants and contractors to the fullest extent
16 consistent with the efficient performance of this Agreement. Consultant may rely
17 on written representations by subconsultants and contractors regarding their
18 status. Consultant shall report to City in May and in December or, in the case of
19 short-term agreements, prior to invoicing for final payment, the names of all
20 subconsultants and contractors hired by Consultant for this Project and information
21 on whether or not they are a Disadvantaged, Minority or Women-Owned Business
22 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.
23 637).

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

1 18. RIGHTS AND LIABILITIES. Termination or expiration of this
2 Agreement shall not affect rights or liabilities of the parties which accrued prior to
3 termination or expiration of this Agreement.

4 19. TAX REPORTING. As required by federal and state law, City is
5 obligated to and will report the payment of compensation to Consultant on Form 1099-
6 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
7 resulting from payments under this Agreement. Consultant shall submit Consultant's
8 Employer Identification Number (EIN), or Consultant's Social Security Number if
9 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
10 Financial Management. Consultant acknowledges and agrees that City has no obligation
11 to pay Consultant until Consultant provides one of these numbers.

12 20. THIRD PARTY BENEFICIARY. This Agreement is not intended or
13 designed to or entered for the purpose of creating any benefit or right for any person or
14 entity of any kind that is not a party to this Agreement.

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

23 22. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
24 accordance with the provisions of the Ordinance, this Agreement is subject to the
25 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
26 Long Beach Municipal Code, as amended from time to time.

27 A. During the performance of this Agreement, the Consultant
28 certifies and represents that the Consultant will comply with the EBO. The

1 Consultant agrees to post the following statement in conspicuous places at its
2 place of business available to employees and applicants for employment:

3 "During the performance of a contract with the City of Long Beach,
4 the Consultant will provide equal benefits to employees with spouses and its
5 employees with domestic partners. Additional information about the City of
6 Long Beach's Equal Benefits Ordinance may be obtained from the City of
7 Long Beach Business Services Division at 562-570-6200."

8 B. The failure of the Consultant to comply with the EBO will be
9 deemed to be a material breach of the Agreement by the City.

10 C. If the Consultant fails to comply with the EBO, the City may
11 cancel, terminate or suspend the Agreement, in whole or in part, and monies due
12 or to become due under the Agreement may be retained by the City. The City
13 may also pursue any and all other remedies at law or in equity for any breach.

14 D. Failure to comply with the EBO may be used as evidence
15 against the Consultant in actions taken pursuant to the provisions of Long Beach
16 Municipal Code 2.93 et seq., Contractor Responsibility.

17 E. If the City determines that the Consultant has set up or used
18 its contracting entity for the purpose of evading the intent of the EBO, the City may
19 terminate the Agreement on behalf of the City. Violation of this provision may be
20 used as evidence against the Consultant in actions taken pursuant to the
21 provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor
22 Responsibility.

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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.

MICHAEL J. ARNOLD AND ASSOCIATES,
INC., a California corporation

October 17, 2013

By Michael J. Arnold
Name Michael J. Arnold
Title President

October 17, 2013

By Michael J. Arnold
Name Michael J. Arnold
Title Secretary

"Consultant"

CITY OF LONG BEACH, a municipal
corporation

10-29, 2013

By [Signature] Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form on 10/21, 2013.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy