

1 AGREEMENT

2 **30350**

3 THIS AGREEMENT (this "Agreement") is made and entered, in duplicate,
4 as of October 29, 2007 for reference purposes only, pursuant to a minute order adopted
5 by the City Council of the City of Long Beach at its meeting held on October 23, 2007, by
6 and between MICHAEL J. ARNOLD AND ASSOCIATES, INC., a California corporation,
7 with its principle place of business at 1127 11th Street, Suite 820, Sacramento, California
8 95814 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

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

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

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

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

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

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

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

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

- 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.

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 Forty
24 Nine Dollars (\$8,049.00) per month, with the first payment due on October 31,
25 2007 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 (\$200.00) 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 Two Thousand Two Hundred Eighty Eight Dollars (\$102,288.00). The parties
13 agree that this compensation represents the reasonable value of services to be
14 rendered by Consultant. If a court of competent jurisdiction or any administrative
15 agency determines that payment of such compensation was otherwise contingent,
16 then 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, 2007 and shall terminate at 11:59 p.m. on September 30, 2008,
19 unless sooner terminated as provided in this Agreement.

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

27 7. ASSIGNMENT. This Agreement contemplates the personal services
28 of Consultant's key employee Michael J. Arnold and the parties acknowledge that a

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

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

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

22 10. INSURANCE.

23 A. As a condition precedent to the effectiveness of this
24 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
25 duration of this Agreement, from insurance companies that are admitted to write
26 insurance in California and have ratings of or equivalent to A:V by A.M. Best
27 Company or from authorized non-admitted insurance companies subject to
28 Section 1763 of the California Insurance Code and that have ratings of or

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equivalent to A:VIII by A.M. Best Company, the following insurance:

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

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

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

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

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

1 manner and to the same extent as they would have been protected had the policy
2 or policies not contained retention or deductible provisions.

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

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

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

21 F. Prior to the start of performance, Consultant shall deliver to
22 City certificates of insurance and the endorsements for approval as to sufficiency
23 and form. In addition, Consultant shall, within thirty (30) days prior to expiration of
24 the insurance, furnish to City certificates of insurance and endorsements
25 evidencing renewal of the insurance. City reserves the right to require complete
26 certified copies of all policies of Consultant and Consultant's subconsultants and
27 contractors, at any time. Consultant shall make available to City's Risk Manager
28 or designee all books, records and other information relating to this insurance,

1 during normal business hours.

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

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

12 11. INDEMNITY. Consultant shall, with respect to services performed in
13 connection with this Agreement, indemnify and hold harmless City, its Boards,
14 Commissions, and their officials, employees and agents (collectively in this Section,
15 "City") from and against any and all liability, claims, allegations, demands, damage, loss,
16 causes of action, proceedings, penalties, costs and expenses (including attorney's fees,
17 court costs, and expert and witness fees) (collectively "Claims" or individually "Claim")
18 arising, directly or indirectly, in whole or in part, out of any negligent act or omission of
19 Consultant, its officers, employees, agents, sub-consultants or anyone under
20 Consultant's control (collectively "Indemnitor"), breach of this Agreement by Indemnitor,
21 misrepresentation or willful misconduct by Indemnitor, and Claims by any employee of
22 Indemnitor relating in any way to workers' compensation. Independent of the duty to
23 indemnify and as a free-standing duty on the part of Consultant, Consultant shall defend
24 City and shall continue this defense until the Claim is resolved, whether by settlement,
25 judgment or otherwise. No finding or judgment of negligence, fault, breach or the like on
26 the part of Indemnitor shall be required for the duty to defend to arise. Consultant shall
27 notify City of any Claim within ten (10) days. Likewise, City shall notify Consultant of any
28 Claim, shall tender the defense of the Claim to Consultant, and shall assist Consultant,

1 as may be reasonably requested, in the defense.

2 12. AMENDMENT. This Agreement shall not be amended, nor any
3 provision or breach hereof waived, except in writing signed by the parties which expressly
4 refers to this Agreement. This Agreement shall not be construed against either party as
5 the drafter.

6 13. GOVERNING LAW. This Agreement shall be governed by and
7 construed pursuant to the laws of the State of California (except those provisions of
8 California law pertaining to conflicts of laws).

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

12 15. ATTORNEY'S FEES. In the event that there is any legal proceeding
13 between the parties to enforce or interpret this Agreement or to protect or establish any
14 rights or remedies hereunder, the prevailing party shall be entitled to its costs and
15 expenses, including reasonable attorney's fees.

16 16. NONDISCRIMINATION. In connection with performance of this
17 Agreement and subject to applicable rules and regulations, Consultant shall not
18 discriminate against any employee or applicant for employment because of race, religion,
19 national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap or
20 disability. Consultant shall ensure that applicants are employed, and that employees are
21 treated during their employment, without regard to these bases. These actions shall
22 include, but not be limited to, the following: employment, upgrading, demotion or transfer;
23 recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of
24 compensation; and selection for training, including apprenticeship.

25 17. NO WAIVER. The acceptance of any services or the payment of any
26 money by City shall not operate as a waiver of any provision of this Agreement. The
27 waiver of any breach of this Agreement shall not constitute a waiver of any other or
28 subsequent breach of this 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's Social Security Number of
8 Employer Identification Number is 94-2838607.

9 20. THIRD PARTY BENEFICIARY. This Agreement is intended by the
10 parties to benefit themselves only and is not in any way intended or designed to or
11 entered for the purpose of creating any benefit or right for any person or entity of any kind
12 that is not a party to this Agreement.

13 21. NOTICE. Any notice required hereunder by either party shall be in
14 writing and personally delivered or deposited in the U.S. Postal Service, first class,
15 postage prepaid, addressed to Consultant at the address first stated herein, and to the
16 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.
17 Notice of change of address shall be given in the same manner as stated herein for other
18 notices. Notice shall be deemed given on the date deposited in the mail or on the date
19 personal delivery is made, whichever first occurs.

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1 IN WITNESS WHEREOF, the parties hereto have caused these presents to
2 be duly executed with all the formalities required by law on the respective dates set forth
3 opposite their signatures.

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

5 November 14, 2007

By Michael J. Arnold
President

Michael J. Arnold
(Type or Print Name)

7 November 14, 2007

By Michael J. Arnold
Secretary

Michael J. Arnold
(Type or Print Name)

11 "Consultant"

12 CITY OF LONG BEACH, a municipal
corporation

13 November 21, 2007

By Christine J. Shipley
City Manager, ASSISTANT

16 "City"

15 SAID CITY PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

17 This Agreement is approved as to form on 11/20, 2007.

18 ROBERT E. SHANNON, City Attorney

19 By Yvonne Conway
Deputy

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