



1 hours and provided that milestones for performance, if any, are met.

2 C. Consultant has requested to receive regular payments. City  
3 shall pay Consultant in due course (within 30 days) of payments following receipt  
4 from Consultant and approval by City of invoices showing the services or task  
5 performed, the time expended (if billing is hourly), and the name of the Project.  
6 Consultant shall certify on the invoices that Consultant has performed the services  
7 in full conformance with this Agreement and is entitled to receive payment. Where  
8 billing is done and payment is made on an hourly basis, the parties acknowledge  
9 that this arrangement is either customary practice for Consultant's profession,  
10 industry or business, or is necessary to satisfy audit and legal requirements which  
11 may arise due to the fact that City is a municipality.

12 D. Consultant represents that Consultant has obtained all  
13 necessary information on conditions and circumstances that may affect its  
14 performance and has conducted site visits, if necessary.

15 E. CAUTION: Consultant shall not begin work until this  
16 Agreement has been signed by both parties and until Consultant's evidence of  
17 insurance has been delivered to and approved by City.

18 2. TERM. The term of this Agreement shall commence at midnight on  
19 January 1, 2009, and shall terminate at 11:59 p.m. on December 31, 2009, unless sooner  
20 terminated as provided in this Agreement, or unless the services or the Project is  
21 completed sooner.

22 3. COORDINATION AND ORGANIZATION.

23 A. Consultant shall coordinate its performance with City's  
24 representative, if any, named in Exhibit "B", attached to this Agreement and  
25 incorporated by this reference. Consultant shall advise and inform City's  
26 representative of the work in progress on the Project in sufficient detail so as to  
27 assist City's representative in making presentations and in holding meetings on  
28 the Project. City shall furnish to Consultant information or materials, if any,

1 described in Exhibit "C", attached to this Agreement and incorporated by this  
2 reference, and shall perform any other tasks described in the Exhibit.

3 B. The parties acknowledge that a substantial inducement to City  
4 for entering this Agreement was and is the reputation and skill of Consultant's key  
5 employee, Rhonda Hilyer. City shall have the right to approve any person  
6 proposed by Consultant to replace that key employee.

7 4. INDEPENDENT CONTRACTOR. In performing its services,  
8 Consultant is and shall act as an independent contractor and not an employee,  
9 representative or agent of City. Consultant shall have control of Consultant's work and  
10 the manner in which it is performed. Consultant shall be free to contract for similar  
11 services to be performed for others during this Agreement; provided, however, that  
12 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.  
13 Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from  
14 Consultant's compensation; (b) City will not secure workers' compensation or pay  
15 unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide  
16 and Consultant is not entitled to any of the usual and customary rights, benefits or  
17 privileges of City employees. Consultant expressly warrants that neither Consultant nor  
18 any of Consultant's employees or agents shall represent themselves to be employees or  
19 agents of City.

20 5. INSURANCE.

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

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

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

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

25 B. Any self-insurance program, self-insured retention, or  
26 deductible must be separately approved in writing by City's Risk Manager or  
27 designee and shall protect City, its officials, employees and agents in the same  
28 manner and to the same extent as they would have been protected had the policy

1 or policies not contained retention or deductible provisions.

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

10 D. If this coverage is written on a "claims made" basis, the  
11 Consultant guarantees that Consultant will provide to City evidence of  
12 uninterrupted, continuing coverage for a period of not less than three (3) years,  
13 commencing on the date this Agreement expires or is terminated.

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

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

27 G. Any modification or waiver of these insurance requirements  
28 shall only be made with the approval of City's Risk Manager or designee. Not

1 more frequently than once a year, City's Risk Manager or designee may require  
2 that Consultant, Consultant's subconsultants and contractors change the amount,  
3 scope or types of coverages required in this Section if, in his or her sole opinion,  
4 the amount, scope or types of coverages are not adequate.

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

9 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
10 contemplates the personal services of Consultant and Consultant's employees, and the  
11 parties acknowledge that a substantial inducement to City for entering this Agreement  
12 was and is the professional reputation and competence of Consultant and Consultant's  
13 employees. Consultant shall not assign its rights or delegate its duties under this  
14 Agreement, or any interest in this Agreement, or any portion of it, without the prior  
15 approval of City, except that Consultant may with the prior approval of the City Manager  
16 of City, assign any moneys due or to become due Consultant under this Agreement. Any  
17 attempted assignment or delegation shall be void, and any assignee or delegate shall  
18 acquire no right or interest by reason of an attempted assignment or delegation.  
19 Furthermore, Consultant shall not subcontract any portion of its performance without the  
20 prior approval of the City Manager or designee, or substitute an approved subconsultant  
21 or contractor without approval prior to the substitution. Nothing stated in this Section  
22 shall prevent Consultant from employing as many employees as Consultant deems  
23 necessary for performance of this Agreement.

24 7. MATERIALS. Consultant shall furnish all labor and supervision,  
25 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
26 necessary to or used in the performance of Consultant's obligations under this  
27 Agreement, except as stated in Exhibit "C".

28 8. OWNERSHIP OF DATA. Except for previously produced and/or

1 copyrighted materials, products and data owned by Agreement Dynamics, all materials,  
2 information and data prepared, developed or assembled by Consultant or furnished to  
3 Consultant in connection with this Agreement, including but not limited to documents,  
4 estimates, calculations, studies, maps, graphs, charts, computer disks, computer source  
5 documentation, samples, models, reports, summaries, drawings, designs, plans,  
6 information, material and memorandum ("Data") shall be the exclusive property of City.  
7 Except for previously produced and/or copyrighted materials, products and data owned  
8 by Agreement Dynamics, data shall be given to City, and City shall have the unrestricted  
9 right to use and disclose the Data in any manner and for any purpose without payment of  
10 further compensation to Consultant. Copies of Data may be retained by Consultant but  
11 Consultant warrants that except for previously produced and/or copyrighted materials,  
12 products and data owned by Agreement Dynamics, data shall not be made available to  
13 any person or entity for use without the prior approval of City. This warranty shall survive  
14 termination of this Agreement for five (5) years. Due to the consultant's role as a  
15 mediator/facilitator, all notes taken by the consultant shall remain the sole property of the  
16 consultant without any disclosure requirements.

17 9. TERMINATION. Either party shall have the right to terminate this  
18 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
19 prior notice to the other party. In the event of termination under this Section, City shall  
20 pay Consultant for services satisfactorily performed and costs incurred up to the effective  
21 date of termination for which Consultant has not been previously paid. The procedures  
22 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of  
23 termination, Consultant shall deliver to City all Data developed or accumulated in the  
24 performance of this Agreement, whether in draft or final form, or in process. And,  
25 Consultant acknowledges and agrees that City's obligation to make final payment is  
26 conditioned on Consultant's delivery of the Data to City.

27 10. CONFIDENTIALITY. Except for previously produced and/or  
28 copyrighted materials, products and data owned by Agreement Dynamics, consultant

1 shall keep all Data confidential and shall not disclose the Data or use the Data directly or  
2 indirectly, other than in the course of performing its services, during the term of this  
3 Agreement and for five (5) years following expiration or termination of this Agreement. In  
4 addition, Consultant shall keep confidential all information, whether written, oral or visual,  
5 obtained by any means whatsoever in the course of performing its services for the same  
6 period of time. Except for previously produced and/or copyrighted materials, products  
7 and data owned by Agreement Dynamics, consultant shall not disclose any or all of the  
8 Data to any third party, or use it for Consultant's own benefit or the benefit of others  
9 except for the purpose of this Agreement.

10           11. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
11 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
12 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
13 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
14 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
15 disclosed pursuant to subpoena or court order.

16           12. ADDITIONAL COSTS AND REDESIGN.

17           A. Any costs incurred by City due to Consultant's failure to meet  
18 the standards required by the scope of work or Consultant's failure to perform fully  
19 the tasks described in the scope of work which, in either case, causes City to  
20 request that Consultant perform again all or part of the Scope of Work shall be at  
21 the sole cost of Consultant and City shall not pay any additional compensation to  
22 Consultant for its re-performance.

23           B. If the Project involves construction and the scope of work  
24 requires Consultant to prepare plans and specifications with an estimate of the  
25 cost of construction, then Consultant may be required to modify the plans and  
26 specifications, any construction documents relating to the plans and specifications,  
27 and Consultant's estimate, at no cost to City, when the lowest bid for construction  
28 received by City exceeds by more than ten percent (10%) Consultant's estimate.



1 This modification shall be submitted in a timely fashion to allow City to receive new  
2 bids within four (4) months after the date on which the original plans and  
3 specifications were submitted by Consultant.

4 13. AMENDMENT. This Agreement, including all Exhibits, shall not be  
5 amended, nor any provision or breach waived, except in writing signed by the parties  
6 which expressly refers to this Agreement.

7 14. LAW. This Agreement shall be governed by and construed pursuant  
8 to the laws of the State of California (except those provisions of California law pertaining  
9 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and  
10 regulations of and obtain all permits, licenses and certificates required by all federal, state  
11 and local governmental authorities.

12 15. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
13 constitutes the entire understanding between the parties and supersedes all other  
14 agreements, oral or written, with respect to the subject matter in this Agreement.

15 16. INDEMNITY. Consultant shall, with respect to services performed in  
16 connection with this Agreement, indemnify and hold harmless City, its Boards,  
17 Commissions, and their officials, employees and agents (collectively in this Section,  
18 "City") from and against any and all liability, claims, allegations, demands, damage, loss,  
19 causes of action, proceedings, penalties, costs and expenses (including attorney's fees,  
20 court costs, and expert and witness fees) (collectively "Claims" or individually "Claim")  
21 arising, directly or indirectly, in whole or in part, out of any negligent act or omission of  
22 Consultant, its officers, employees, agents, sub-consultants or anyone under  
23 Consultant's control (collectively "Indemnitor"), breach of this Agreement by Indemnitor,  
24 misrepresentation or willful misconduct by Indemnitor, and Claims by any employee of  
25 Indemnitor relating in any way to workers' compensation. The Consultant's duty to  
26 defend, indemnify, protect, and hold harmless shall not include any claims or liabilities  
27 arising from the active negligence, sole negligence or willful misconduct of City officials,  
28 Commissions, agents, officials or employees. Independent of the duty to indemnify and

1 as a free-standing duty on the part of Consultant, Consultant shall defend City and shall  
2 continue this defense until the Claim is resolved, whether by settlement, judgment or  
3 otherwise. No finding or judgment of negligence, fault, breach or the like on the part of  
4 Indemnitor shall be required for the duty to defend to arise. Consultant shall notify City of  
5 any Claim within ten (10) days. Likewise, City shall notify Consultant of any Claim, shall  
6 tender the defense of the Claim to Consultant, and shall assist Consultant at Consultant's  
7 sole expense, as may be reasonably requested, in the defense.

8 17. AMBIGUITY. In the event of any conflict or ambiguity between this  
9 Agreement and any Exhibit, the provisions of this Agreement shall govern.

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

13 19. NONDISCRIMINATION.

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

24 B. It is the policy of City to encourage the participation of  
25 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
26 procurement process, and Consultant agrees to use its best efforts to carry out  
27 this policy in its use of subconsultants and contractors to the fullest extent  
28 consistent with the efficient performance of this Agreement. Consultant may rely

1 on written representations by subconsultants and contractors regarding their  
2 status. City's policy is attached as Exhibit "D" to this Agreement. Consultant shall  
3 report to City in May and in December or, in the case of short-term agreements,  
4 prior to invoicing for final payment, the names of all subconsultants and  
5 contractors hired by Consultant for this Project and information on whether or not  
6 they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as  
7 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

8 20. NOTICES. Any notice or approval required by this Agreement shall  
9 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
10 postage prepaid, addressed to Consultant at the address first stated above, and to City at  
11 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a  
12 copy to the City Engineer at the same address. Notice of change of address shall be  
13 given in the same manner as stated for other notices. Notice shall be deemed given on  
14 the date deposited in the mail or on the date personal delivery is made, whichever occurs  
15 first.

16 21. COPYRIGHTS AND PATENT RIGHTS. Consultant warrants that  
17 the copyrighted materials and products owned by Agreement Dynamics do not violate or  
18 infringe any patent, copyright, trade secret or other proprietary right of any other party.  
19 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials and  
20 employees harmless from any and all claims, demands, damages, loss, liability, causes  
21 of action, costs or expenses (including reasonable attorney's fees) whether or not  
22 reduced to judgment, arising from any breach or alleged breach of this warranty.

23 22. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
24 that Consultant has not employed or retained any entity or person to solicit or obtain this  
25 Agreement and that Consultant has not paid or agreed to pay any entity or person any  
26 fee, commission or other monies based on or from the award of this Agreement. If  
27 Consultant breaches this warranty, City shall have the right to terminate this Agreement  
28 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct

1 from payments due under this Agreement or otherwise recover the full amount of the fee,  
2 commission or other monies.

3           23. WAIVER. The acceptance of any services or the payment of any  
4 money by City shall not operate as a waiver of any provision of this Agreement or of any  
5 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
6 Agreement shall not constitute a waiver of any other or subsequent breach of this  
7 Agreement.

8           24. CONTINUATION. Termination or expiration of this Agreement shall  
9 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
10 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

11           25. TAX REPORTING. As required by federal and state law, City is  
12 obligated to and will report the payment of compensation to Consultant on Form 1099-  
13 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
14 resulting from payments under this Agreement. Consultant's Employer Identification  
15 Number is [REDACTED] If Consultant has a Social Security Number rather than an  
16 Employer Identification Number, then Consultant shall submit that Social Security  
17 Number in writing to City's Accounts Payable, Department of Financial Management.  
18 Consultant acknowledges and agrees that City has no obligation to pay Consultant until  
19 Consultant provides one of these numbers.

20           26. ADVERTISING. Consultant shall not use the name of City, its  
21 officials or employees in any advertising or solicitation for business or as a reference,  
22 without the prior approval of the City Manager or designee. This shall not prohibit the  
23 consultant from including the City of Long Beach on its client list or from disclosing to  
24 other cities and/or organizations that the consultant has provided services to the City of  
25 Long Beach.

26           27. AUDIT. Except for previously produced and/or copyrighted materials  
27 and Consultant's confidential notes, the City shall have the right at all reasonable times  
28 during the term of this Agreement and for a period of five (5) years after termination or

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

1 expiration of this Agreement to examine, audit, inspect, review, extract information from  
2 and copy all books, records, accounts and other documents of Consultant relating to this  
3 Agreement.

4 28. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
5 designed to or entered for the purpose of creating any benefit or right for any person or  
6 entity of any kind that is not a party to this Agreement.

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 AGREEMENT DYNAMICS, INC., a  
10 Washington corporation  
11 12/29/08, 2008 By [Signature]  
12 Rhonda Hilyer  
13 Type or Print Name  
14 President  
Type or Print Title

15 12/29/08, 2009 By [Signature]  
16 Ginny Ratliff  
17 Type or Print Name  
18 Executive Director  
Type or Print Title

19 "Consultant"

20  
21 CITY OF LONG BEACH, a municipal  
corporation  
22 1/20, 2009 By [Signature]  
23 City Manager

24 "City"

25 This Agreement is approved as to form on January 13, 2009  
26 ROBERT E. SHANNON, City Attorney

27 By [Signature]  
28 Deputy

## Exhibit A Scope of Work

Agreement Dynamics, Inc. will provide the following Scope of Work for the City of Long Beach:

Agreement Dynamics will serve as a neutral facilitator for negotiations with the Police Officers Association (POA) negotiations scheduled to begin in the Winter of 2009 using the Resolve Negotiating Process. Agreement Dynamics will also provide individual consultation with Bargaining Unit members, city officials, and elected officials on an as needed basis to facilitate effective negotiation of labor contracts. In addition, as called for in the IAM Memorandum of Understanding, quarterly joint labor-management trainings have been established to train employees and managers throughout the City in interest-based problem solving.

The costs/rates associated are outlined below:

SERVICE DESCRIPTION	COSTS/RATES
<p>1. Negotiation Facilitation, Consultation, and Training</p> <ul style="list-style-type: none"> <li>• Hourly consultation*</li> <li>• Day consultation*</li> <li>• Half Day consultation*</li> </ul>	<p>\$ 230 / hour (Rhonda Hilyer) \$ 180 / hour (Glenn Lowry)</p> <p>\$2,300 / day (Rhonda Hilyer) \$1,800 / day (Glenn Lowry)</p> <p>\$1,150 / half day (Rhonda Hilyer) \$ 900 / half day (Glenn Lowry)</p>
<p>2. Travel, Materials, and Training Supplies</p>	<p>Travel and materials reimbursed at actual cost with copies of receipts.</p> <p>Resolve training materials are billed at \$55 per person. Success Signals materials are billed at \$25 per person.</p>

\*Hourly rates are only for phone calls and work done from Agreement Dynamic's Washington state home office. Onsite work in Long Beach is always billed on a daily basis, with one exception: If Glenn and/or Rhonda are in California doing part of a day's work for another client and part of the day in Long Beach, then half-day rates apply.

**Exhibit B**

City of Long Beach  
City's Representative  
Suzanne R. Mason  
Director of the Human Resources Department  
333. W. Ocean Blvd. – 13<sup>th</sup> Floor  
Long Beach, CA 90802

## **Exhibit C**

### **City Responsibilities:**

1. Provide, upon request, reports, documents, records, City personnel and other data deemed necessary to support Labor Relations and Union Negotiations.
2. Provide access to related data and resources. The City's project coordinator will also be available to assist the professional consultant with additional data collection, as needed.
3. Provide project administration through the City's Representative, who will act as the project's focal point for reporting.