

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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OPERATIONAL AGREEMENT  
**34223**

THIS OPERATIONAL AGREEMENT ("Agreement") is made and entered, in duplicate, as of February 25, 2016, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on November 3, 2015, by and between ANDREW J WONG INCORPORATED DBA AJW INC., a California corporation ("Consultant"), with a place of business at 44 Montgomery Street, Suite 2310, San Francisco, California 94104, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City is the fiscal agent and grantee for the federally-funded continuation support for the National Forum on Youth Violence Prevention, State and Community Development grant program ("Forum Grant Program" and also referred to as the "DOJ Safe Schools Grant"); and

WHEREAS, City shall utilize a portion of the grant funds to develop an integrated data system as part of the Forum Grant Program; and

WHEREAS, Consultant provides services related to data and information sharing for organizations and localities; and

WHEREAS, City and Consultant wish to mutually cooperate and collaborate with each other for the purposes of developing an integrated data system and implementing a data sharing strategy as part of the Forum Grant Program;

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

1. CONSULTANT RESPONSIBILITIES. Consultant shall produce a Memorandum of Understanding ("MOU") for the City's integrated data system and data sharing for the purposes of improving communication and coordination of services between the City of Long Beach, Los Angeles County and the Long Beach Unified School District. The terms of the MOU will cover applicable federal, state and local privacy laws and protocols as it relates to sharing student and school data, health, mental health, child and

1 adult welfare and law enforcement information. The sharing of this data will assist in  
2 supporting City of Long Beach efforts to reduce family, school and community violence by  
3 connecting individuals and families to supportive services.

4 Development of the MOU will include, but is not limited to, writing of the  
5 document, development of work flow diagrams for legal citation relevance, participation in  
6 legal negotiations, research on legal issues relevant to data and information sharing,  
7 design discussions with City of Long Beach data sharing leadership and administrative  
8 support regarding legal issues.

9 The final MOU must be delivered to the City of Long Beach no later than  
10 September 30, 2016, unless otherwise extended by the City at its sole discretion.

11 2. CITY RESPONSIBILITIES. As the fiscal agent and lead for the Forum  
12 Grant Program, the City shall provide overall leadership under the DOJ Safe Schools  
13 Grant. Specifically, the City shall serve as the coordinating body under the DOJ Safe  
14 Schools Grant to ensure the attainment of the grant goals, objectives and outcomes. This  
15 includes providing technical support and assistance to all organizations receiving a sub-  
16 award under this grant program.

17 3. FUNDING. City shall pay for these services in the manner described  
18 below and at the rates or charges shown in Exhibit "A", attached to this Agreement and  
19 incorporated by this reference, in an amount not to exceed Twenty-Four Thousand Four  
20 Hundred Dollars (\$24,400). City shall pay Consultant in due course of payments following  
21 receipt from Consultant and approval by City of invoices showing the services or task  
22 performed, and the time expended (if billing is hourly). Consultant shall certify on the  
23 invoices that Consultant has performed the services in full conformance with this  
24 Agreement and is entitled to receive payment. Each invoice shall be submitted on agency  
25 letterhead, and shall be accompanied by supporting documentation of services rendered and  
26 a progress report indicating the progress to date of services performed and covered by the  
27 invoice, including a brief statement of any project problems and potential causes of delay  
28 in performance, and listing those services that are projected for performance by Consultant

1 during the next invoice cycle. Where billing is done and payment is made on an hourly  
2 basis, the parties acknowledge that this arrangement is either customary practice for  
3 Consultant's profession, industry or business, or is necessary to satisfy audit and legal  
4 requirements which may arise due to the fact that City is a municipality.

5 4. TERM. The term of this Agreement shall commence at midnight on  
6 October 1, 2015, and shall terminate at 11:59 p.m. on September 30, 2016, unless  
7 otherwise extended by the City at its sole discretion or sooner terminated as provided in  
8 this Agreement, or unless the services or the Project is completed sooner.

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

20 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
21 contemplates the personal services of Consultant and Consultant 's employees, and the  
22 parties acknowledge that a substantial inducement to City for entering this Agreement was  
23 and is the professional reputation and competence of Consultant and Consultant 's  
24 employees. Consultant shall not assign its rights or delegate its duties under this  
25 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
26 of City, except that Consultant may with the prior approval of the City Manager of City,  
27 assign any moneys due or to become due Consultant under this Agreement. Any  
28 attempted assignment or delegation shall be void, and any assignee or delegate shall

1 acquire no right or interest by reason of an attempted assignment or delegation.  
2 Furthermore, Consultant shall not subcontract any portion of its performance without the  
3 prior approval of the City Manager or designee, or substitute an approved subconsultant  
4 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
5 prevent Consultant from employing as many employees as Consultant deems necessary  
6 for performance of this Agreement.

7           7.     CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
8 certifies that, at the time Consultant executes this Agreement and for its duration,  
9 Consultant does not and will not perform services for any other client which would create  
10 a conflict, whether monetary or otherwise, as between the interests of City and the interests  
11 of that other client. And, Consultant shall obtain similar certifications from Consultant's  
12 employees, subconsultants and contractors.

13           8.     MATERIALS. Consultant shall furnish all labor and supervision,  
14 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
15 necessary to or used in the performance of Consultant's obligations under this Agreement.

16           9.     OWNERSHIP OF DATA. All materials, information and data  
17 prepared, developed or assembled by Consultant or furnished to Consultant in connection  
18 with this Agreement, including but not limited to documents, estimates, calculations,  
19 studies, maps, graphs, charts, computer disks, computer source documentation, samples,  
20 models, reports, summaries, drawings, designs, notes, plans, information, material and  
21 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
22 and City shall have the unrestricted right to use and disclose the Data in any manner and  
23 for any purpose without payment of further compensation to Consultant. Copies of Data  
24 may be retained by Consultant but Consultant warrants that Data shall not be made  
25 available to any person or entity for use without the prior approval of City. This warranty  
26 shall survive termination of this Agreement for five (5) years.

27           10.    TERMINATION. Either party shall have the right to terminate this  
28 Agreement for any reason or no reason at any time by giving thirty (30) calendar days prior

1 written notice to the other party. In the event of termination under this Section, City shall  
2 pay Consultant for services satisfactorily performed and costs incurred up to the effective  
3 date of termination for which Consultant has not been previously paid. On the effective  
4 date of termination, Consultant shall deliver to City all Data developed or accumulated in  
5 the performance of this Agreement, whether in draft or final form, or in process. And,  
6 Consultant acknowledges and agrees that City's obligation to make final payment is  
7 conditioned on Consultant's delivery of the Data to City.

8           11. CONFIDENTIALITY. Consultant shall keep all Data confidential and  
9 shall not disclose the Data or use the Data directly or indirectly, other than in the course of  
10 performing its services, during the term of this Agreement and for five (5) years following  
11 expiration or termination of this Agreement. In addition, Consultant shall keep confidential  
12 all information, whether written, oral or visual, obtained by any means whatsoever in the  
13 course of performing its services for the same period of time. Consultant shall not disclose  
14 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit  
15 of others except for the purpose of this Agreement.

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

22           13. ADDITIONAL COSTS. Any costs incurred by City due to Consultant's  
23 failure to meet the standards required by the scope of work or Consultant's failure to  
24 perform fully the tasks described in the scope of work which, in either case, causes City to  
25 request that Consultant perform again all or part of the Scope of Work shall be at the sole  
26 cost of Consultant and City shall not pay any additional compensation to Consultant for its  
27 re-performance.

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1           14.    AMENDMENT. This Agreement, including all Exhibits, shall not be  
2 amended, nor any provision or breach waived, except in writing signed by the parties which  
3 expressly refers to this Agreement.

4           15.    LAW. This Agreement shall be construed in accordance with the laws  
5 of the State of California, and the venue for any legal actions brought by any party with  
6 respect to this Agreement shall be the County of Los Angeles, State of California for state  
7 actions and the Central District of California for any federal actions.

8           16.    ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
9 constitutes the entire understanding between the parties and supersedes all other  
10 agreements, oral or written, with respect to the subject matter in this Agreement.

11           17.    INDEMNITY.

12           A.    Consultant shall indemnify, protect and hold harmless City, its  
13 Boards, Commissions, and their officials, employees and agents ("Indemnified  
14 Parties"), from and against any and all liability, claims, demands, damage, loss,  
15 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
16 costs and expenses, including attorneys' fees, court costs, expert and witness fees,  
17 and other costs and fees of litigation, arising or alleged to have arisen, in whole or  
18 in part, out of or in connection with (1) Consultant's breach or failure to comply with  
19 any of its obligations contained in this Agreement, including any obligations arising  
20 from the Project's compliance with or failure to comply with applicable laws,  
21 including all applicable federal and state labor requirements including, without  
22 limitation, the requirements of California Labor Code section 1770 *et seq.* or (2)  
23 negligent or willful acts, errors, omissions or misrepresentations committed by  
24 Consultant, its officers, employees, agents, subcontractors, or anyone under  
25 Consultant's control, in the performance of work or services under this Agreement  
26 (collectively "Claims" 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

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

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

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

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

19. NONDISCRIMINATION.

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

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

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

A. During the performance of this Agreement, the Consultant certifies and represents that the Consultant will comply with the EBO. The Consultant agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

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

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

C. If the Consultant fails to comply with the EBO, the City may cancel, terminate or suspend the Agreement, in whole or in part, and monies due or



1 to become due under the Agreement may be retained by the City. The City may  
2 also pursue any and all other remedies at law or in equity for any breach.

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

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

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

18 22. COPYRIGHTS AND PATENT RIGHTS.

19 A. Consultant shall place the following copyright protection on all  
20 Data: © City of Long Beach, California \_\_\_\_, inserting the appropriate year.

21 B. City reserves the exclusive right to seek and obtain a patent or  
22 copyright registration on any Data or other result arising from Consultant 's  
23 performance of this Agreement. By executing this Agreement, Consultant assigns  
24 any ownership interest Consultant may have in the Data to City.

25 C. Consultant warrants that the Data does not violate or infringe  
26 any patent, copyright, trade secret or other proprietary right of any other party.  
27 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials  
28 and employees harmless from any and all claims, demands, damages, loss, liability,

1 causes of action, costs or expenses (including reasonable attorney's fees) whether  
2 or not reduced to judgment, arising from any breach or alleged breach of this  
3 warranty.

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

9 24. AUDIT. City shall have the right at all reasonable times during the  
10 term of this Agreement and for a period of five (5) years after termination or expiration of  
11 this Agreement to examine, audit, inspect, review, extract information from and copy all  
12 books, records, accounts and other documents of Consultant relating to this Agreement.

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

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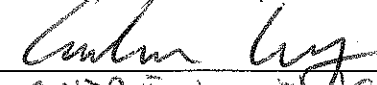
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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

ANDREW J WONG INCORPORATED DBA  
AJW INC., a California corporation

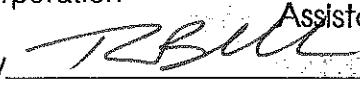
FEBRUARY 29, 2016  
  
\_\_\_\_\_, 2016

By   
Name ANDREW WONG  
Title PRESIDENT, AJW I  
  
By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

"Consultant"

CITY OF LONG BEACH, a municipal  
corporation

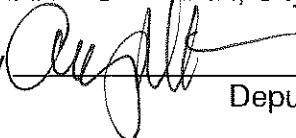
March 23, 2016

By  Assistant City Manager  
City Manager EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

"City"

This Agreement is approved as to form on 3-14, 2016.

CHARLES PARKIN, City Attorney

By   
Deputy

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

CERTIFICATE OF ADOPTION OF BYLAWS

OF

ANDREW J. WONG, INCORPORATED

Certificate by Secretary

The undersigned hereby certifies that he is the duly elected, qualified, and acting Secretary of Andrew J. Wong, Incorporated and that the foregoing Bylaws, comprising twenty-two (22) pages, were adopted as the Bylaws of the corporation on 9/16/, 2005 by the person appointed in the Articles of Incorporation to act as the Incorporator of the corporation.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and affixed the corporate seal

9/16/05

Date



Steve Phillips, Secretary

BYLAWS

OF

ANDREW J. WONG, INCORPORATED

BYLAWS OF  
ANDREW J. WONG, INCORPORATED

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## ARTICLE VIII

### GENERAL MATTERS

#### 8.1 RECORD DATE FOR PURPOSES OTHER THAN NOTICE AND VOTING

For purposes of determining the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any other lawful action (other than action by shareholders by written consent without a meeting), the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action. In that case, only shareholders of record at the close of business on the date so fixed are entitled to receive the dividend, distribution or allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided in the Code..

If the board of directors does not so fix a record date, then the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board adopts the applicable resolution or the sixtieth (60th) day before the date of that action, whichever is later.

#### 8.2 CHECKS: DRAFTS: EVIDENCES OF INDEBTEDNESS

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

#### 8.3 CORPORATE CONTRACTS AND INSTRUMENTS: HOW EXECUTED

The board of directors authorize the President to sign and deliver any agreement in the name of this corporation and to otherwise obligate this corporation in any respect relating to matters of the business of this corporation, within budgets approved by the board of directors of this corporation; provided that the board may adopt from time to time specific limitations on authority of the officers.

#### 8.4 CERTIFICATES FOR SHARES

A certificate or certificates for shares of the corporation shall be issued to each shareholder when any of such shares are fully paid. The board of directors may authorize the issuance of certificates for shares partly paid provided that these certificates shall state the total amount of the consideration to be paid for them and the amount actually paid. All certificates shall be signed in the

**EXHIBIT A**  
**AJW, Inc. Fees for Service**

Estimated Budget for Long Beach Data Sharing MOU Development				Cost	
	Task/Service	Units	# of Units	Cost per Unit	Est. Cost
1	Provide MOU examples and draft language	Hours	40	\$200	\$8,000
2	Facilitate design discussions	Hours	12	\$250	\$3,000
3	Participate in legal negotiations	Hours	12	\$250	\$3,000
4	Research relevant legal citations	Hours	24	\$250	\$6,000
5	Facilitation support for working committees	Hours	12	\$200	\$2,400
6	Final Draft	Hours	8	\$250	\$2,000
<b>Total Estimate</b>					<b>\$24,400</b>

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