

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

1 AGREEMENT

2 **30592**

3 THIS AGREEMENT is made and entered, in duplicate, as of January 1,
4 2008 for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting held on November 13, 2007, by and between
6 Agreement Dynamics, Inc. "Consultant", a professional consulting and training firm,
7 whose business address is PO Box 33640, Seattle, WA 98133, and the CITY OF LONG
8 BEACH, a municipal corporation ("City").

9 WHEREAS, City requires specialized Consultant services requiring unique
10 skills to be performed ("Project"); and

11 WHEREAS, City has selected Consultant in accordance with City's
12 administrative procedures and City has ascertained that Consultant and its employees
13 are qualified, licensed, if so required, and experienced in performing such specialized
14 services; and

15 WHEREAS, City desires to have Consultant perform said specialized
16 services, and Consultant is willing and able to do so on the terms herein.

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

19 1. SCOPE OF WORK OR SERVICES.

20 A. Consultant shall furnish specialized services more particularly set forth in
21 Exhibit "A", attached hereto and incorporated herein by this reference, in accordance with
22 the standards of the profession, and City shall pay for said services in the manner
23 described in Exhibit "A", not to exceed \$125,000 over a one-year period at the rates or
24 charges shown in Exhibit "A".

25 B. Consultant may select the time and place of performance hereunder;
26 provided, however, that access to City documents, records, and the like, if needed by
27 Consultant, shall be available only during City's normal business hours and provided that
28 milestones for performance, if any, are met.

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

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

14 2. TERM. The term of this Agreement shall commence at midnight on
15 November 13, 2007, and end on November 12, 2008 unless sooner terminated as
16 provided in this Agreement or unless the Project is completed sooner.

17 3. COORDINATION AND ORGANIZATION.

18 A. Consultant shall coordinate performance hereunder with City's
19 representative, named in Exhibit "B" attached hereto and incorporated herein by this
20 reference. Consultant shall advise and inform City's representative of the work in
21 progress on the Project in sufficient detail so as to assist City's representative in making
22 presentations and in holding meetings for the exchange of information. City shall furnish
23 to Consultant information or materials, if any, described in Exhibit "C" attached hereto
24 and incorporated herein by this reference, and shall perform any other tasks described
25 therein.

26 B. The parties acknowledge that a substantial inducement to City for
27 entering this Agreement was and is the reputation and skill of Consultant's key employee,
28 Rhonda Hilyer, as the lead consultant. City shall have the right to approve any person

1 proposed by Consultant to replace that key employee.

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

15 5. INSURANCE. As a condition precedent to the effectiveness of this
16 Agreement, Consultant shall procure and maintain at Consultant's expense for the
17 duration of this Agreement from insurance companies that are admitted to write
18 insurance in California or from authorized non-admitted insurance companies that have
19 ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

20 a. Commercial general liability insurance (equivalent in scope to ISO form
21 CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars
22 (\$1,000,000) per each occurrence and Two Million Dollars (\$2,000,000) general
23 aggregate. This coverage shall include but not be limited to broad form contractual
24 liability, cross liability, independent contractors liability, and products and completed
25 operations liability. City, its officials, employees and agents shall be named as additional
26 insurers by endorsement (on City's endorsement form or on an endorsement equivalent
27 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall
28 contain no special limitations on the scope of protection given to City, its officials,

1 employees and agents.

2 b. Workers' Compensation insurance as required by the Labor
3 Code of the State of California and employer's liability insurance in an amount
4 not less than One Million Dollars (\$1,000,000).

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

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

11 Any self-insurance program, self-insured retention, or deductible must be
12 separately approved in writing by City's Risk Manager or designee and shall protect City,
13 its officials, employees and agents in the same manner and to the same extent as they
14 would have been protected had the policy or policies not contained retention or
15 deductible provisions. Each insurance policy shall be endorsed to state that coverage
16 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written
17 notice to City, and shall be primary and not contributing to any other insurance or self-
18 insurance maintained by City. Consultant shall notify City in writing within five (5) days
19 after any insurance required herein has been voided by the insurer or cancelled by the
20 insured. If this coverage is written on a "claims made" basis, the consultant guarantees
21 that Consultant will provide City evidence of uninterrupted, continuing coverage for a
22 period of not less than three (3) years, commencing on the date this Agreement expires
23 or is terminated.

24 Consultant shall require that all subconsultants, contractors and
25 subcontractors which Consultant uses in the performance of services hereunder maintain
26 insurance in compliance with this Section unless otherwise agreed in writing by City's
27 Risk Manager or designee.

28 Prior to the start of performance, Consultant shall deliver to City certificates

1 of insurance and required endorsements for approval as to sufficiency and form. The
2 certificate and endorsements for each insurance policy shall contain the original signature
3 of a person authorized by that insurer to bind coverage on its behalf. In addition,
4 Consultant shall, within thirty (30) days prior to expiration of the insurance required
5 herein, furnish to City certificates of insurance and endorsements evidencing renewal of
6 such insurance. City reserves the right to require complete certified copies of all policies
7 of Consultant and Consultant's contractors and subcontractors, at any time. Consultant
8 shall make available to City's Risk Manager or designee all books, records and other
9 information relating to the insurance coverage required herein, during normal business
10 hours.

11 Any modification or waiver of the insurance requirements herein shall only
12 be made with the approval of City's Risk Manager or designee. Not more frequently than
13 once a year, the City's Risk Manager or designee may require that Consultant,
14 Consultant's contractors and subcontractors change the amount, scope or types of
15 coverage required herein if, in his or her sole opinion, the amount, scope, or types of
16 coverage herein are not adequate.

17 The procuring or existence of insurance shall not be construed or deemed
18 as a limitation on liability relating to Consultant's performance or as full performance of or
19 compliance with the indemnification provisions of this Agreement.

20 6. ASSIGNMENTS AND SUBCONTRACTING. This Agreement contem-
21 plates the personal services of Consultant and Consultant's employees, and the parties
22 acknowledge that a substantial inducement to City for entering this Agreement was and is
23 the professional reputation and competence of Consultant and Consultant's employees.
24 Consultant shall not assign its rights or delegate its duties hereunder, or any interest
25 herein, or any portion thereof, without the prior approval of City, except that Consultant
26 may with the prior approval of the City Manager of City, assign any moneys due or to
27 become due the Consultant hereunder. Any attempted assignment or delegation shall be
28 void, and any assignee or delegate shall acquire no right or interest by reason of such

1 attempted assignment or delegation. Furthermore, Consultant shall not subcontract any
2 portion of the performance required hereunder without the prior approval of the City
3 Manager or designee, nor substitute an approved subconsultant, contractor or
4 subcontractor without said prior approval to the substitution. Nothing stated in this
5 Section 6 shall prevent Consultant from employing as many employees as Consultant
6 deems necessary for performance of this Agreement.

7 7. MATERIALS. Consultant shall furnish all labor and supervision,
8 supplies, material, tools, machinery, equipment, appliances, transportation, and services
9 necessary to or used in the performance of Consultant's obligations hereunder, except as
10 stated in Exhibit "A", if any.

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

26 Due to the consultant's role as a mediator/facilitator, all notes taken by the
27 consultant shall remain the sole property of the consultant without any disclosure
28 requirements.

1 9. TERMINATION. Either party shall have the right to terminate this
2 Agreement for any reason or no reason at any time by giving thirty (30) calendar days'
3 prior notice to the other party. In the event of termination under this Section, City shall
4 pay Consultant for services satisfactorily performed and costs incurred up to the effective
5 date of termination for which Consultant has not been previously paid. The procedures
6 for payment in Section 1.C. with regard to invoices shall apply. On the effective date of
7 termination, Consultant shall deliver to City all Data developed or accumulated in the
8 performance of this Agreement, whether in draft or final form, or in process. Consultant
9 acknowledges and agrees that City's obligation to make trial payment is conditioned on
10 Consultants delivery of the Data to City.

11 10. CONFIDENTIALITY. Except for previously produced and/or
12 copyrighted materials, products and data owned by Agreement Dynamics Consultant
13 shall keep the Data confidential and shall not disclose the Data or use the Data directly
14 or indirectly other than in the course of services provided hereunder during the term of
15 this Agreement and for five (5) years following expiration or termination of this
16 Agreement. In addition, Consultant shall keep confidential all information, whether
17 written, oral, or visual, obtained by any means whatsoever in the course of Consultant's
18 performance hereunder for the same period of time. Except for previously produced
19 and/or copyrighted materials, products and data owned by Agreement Dynamics
20 Consultant shall not disclose any or all of the Data to any third party, nor use it for
21 Consultant's own benefit or the benefit of others except for the purpose of this
22 Agreement.

23 11. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a
24 breach of confidentiality with respect to Data that:

- 25 a. Consultant demonstrates Consultant knew prior to the time City
26 disclosed it; or
27 b. Is or becomes publicly available without breach of this agreement by
28 Consultant; or

1 c. A third party who has a right to disclose does so to Consultant
2 without restrictions on further disclosure; or

3 d. Must be disclosed pursuant to subpoena or court order.

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

7 13. 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 such permits, licenses, and certificates required by all federal,
11 state and local governmental authorities.

12 14. 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 herein.

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

1 worker's compensation. Independent of the duty to indemnify and as a free-standing duty
2 on the part of Consultant, Consultant shall defend City and shall continue such defense
3 until the Claim is resolved, whether by settlement, judgment or otherwise. Consultant
4 shall notify City of any claim within ten (10) days. Likewise, City shall notify Consultant of
5 any claim, shall tender the defense of such claim to Consultant, and shall assist
6 Consultant, as may be reasonably requested, in such defense.

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

9 17. COSTS. If there is any legal proceeding between the parties to
10 enforce or interpret this Agreement or to protect or establish any rights or remedies
11 hereunder, the prevailing party shall be entitled to its costs and expenses, including
12 reasonable attorneys' fees and court costs (including appeals).

13 18. CHANGES AND EXTRA SERVICES. City may make changes within
14 the general scope of work under this Agreement, which is attached as Exhibit "A" hereto.
15 Changes shall be in writing in the form of a change order and shall state the dollar
16 amount of the change, any adjustment in the time for performance and, when negotiated
17 prices are involved, shall provide for Consultant's signature indicating acceptance. If
18 Consultant estimates that the change will cause an increase or decrease in the cost or
19 time required for performance, Consultant shall so notify City of that fact. Any notification
20 by Consultant shall be provided within ten (10) calendar days from the date of receipt by
21 Consultant of the change order. In addition, Consultant shall notify City when Consultant
22 identifies a condition which may change the initial scope of work or services. The City
23 shall notify Consultant within ten (10) calendar days of the acceptance or denial of such
24 change. All changes shall be deemed part of this Agreement.

25 19. NONDISCRIMINATION. In connection with performance of this
26 Agreement and federal laws, rules and regulations, Consultant shall not discriminate in
27 employment or in the performance of this Agreement on the basis of race, religion,
28 national origin, color, age, sex, sexual orientation, AIDS, AIDS related condition,

1 handicap, or disability.

2 It is the policy of City to encourage the participation of Disadvantaged,
3 Minority and Women-owned Business Enterprises in City's procurement process, and
4 Consultant agrees to use its best efforts to carry out this policy in the award of all
5 approved subcontracts to the fullest extent consistent with the efficient performance of
6 this Agreement. Consultant may rely on written representations by subcontractors
7 regarding their status. Consultant shall report to City in March and in September or, in
8 the case of short-term agreements, prior to invoicing for final payment, the names of all
9 sub-consultants engaged by Consultant for this Project and information on whether or not
10 they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in
11 Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

19 21. COPYRIGHTS AND PATENT RIGHTS.

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

27 22. COVENANTS AGAINST CONTINGENT FEES. Consultant warrants
28 that Consultant has not employed or retained any entity or person to solicit or obtain this

1 Agreement and that Consultant has not paid or agreed to pay any entity or person any
2 fee, commission, or other monies based on or from the award of this Agreement. If
3 Consultant breaches this warranty, City shall have the right to terminate this Agreement
4 immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to
5 deduct from payments due under this Agreement or otherwise recover the full amount of
6 such fee, commission, or other monies.

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

12 24. CONTINUATION. Termination or expiration of this Agreement shall not
13 affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 16,
14 18, 22, and 28 prior to termination or expiration of this Agreement, and shall not
15 extinguish any warranties hereunder.

16 25. TAX REPORTING. As required by federal and state law, City is
17 obligated to and will report the payment of compensation to Consultant on Form 1099--
18 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
19 resulting from payments under this Agreement. Consultant's Employer Identification
20 Number is [REDACTED]

21 26. ADVERTISING. Consultant shall not use the name of City, its officials
22 or employees in any advertising or solicitation for business, nor as a reference, without
23 the prior approval of the City Manager or designee. This shall not prohibit the consultant
24 from including the City of Long Beach on its client list or from disclosing to other cities
25 and/or organizations that the consultant has provided services to the City of Long
26 Beach.

27 27. AUDIT. Except for previously produced and/or copyrighted materials
28 and consultants confidential notes, the City shall have the right at all reasonable times

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

1 during the term of this Agreement and for a period of five (5) years after termination or
2 expiration of this Agreement to examine, audit, inspect, review, extract information from,
3 and copy all books, records, accounts, and other documents of Consultant relating to this
4 Agreement.

5 28. NO PECULIAR RISK. Consultant acknowledges and agrees that the
6 services to be performed hereunder do not constitute a peculiar risk of bodily harm and
7 that no special precautions are required to perform said services.

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

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

AGREEMENT DYNAMICS INC., a Washington
corporation

14
15
16 Dated: 3-12-08

By [Signature]
Name: Rhonda Hilyer
Title: President

17
18
19 Dated: 3/13/08

By [Signature]
Name: Ginny Ratliff
Title: Exec. Director

20
21
22 Dated: 3-19-08

CITY OF LONG BEACH, a municipal
corporation
Assistant City Manager

By [Signature]
Name: Patrick H. West
Title: City Manager

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

23
24
25 APPROVED AS TO FORM on March 18, 2008

26 ROBERT E. SHANNON, City Attorney

27 By [Signature]
28 Christina L. Checél, 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 International Association of Machinists (IAM) and the Long Beach Fire Fighters during 2007 and 2008 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. Finally, Agreement Dynamics may conduct training sessions for Bargaining Unit members, other City staff and elected officials regarding the Resolve negotiating process and ongoing interest based problem solving during and following negotiations.

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"> • Hourly consultation* • Day consultation* • Half Day consultation* 	<p>\$210 / hour (Rhonda Hilyer) \$180 / hour (Glenn Lowry)</p> <p>\$2,000 / day (Rhonda Hilyer) \$1,500 / day (Glenn Lowry)</p> <p>\$1,000 / half day (Rhonda Hilyer) \$ 750 / 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.</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. – 13th 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.