

AGREEMENT

32882

THIS AGREEMENT is made and entered, in duplicate, as of November 26, 2012, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 9, 2012, by and between VAN SCOYOC ASSOCIATES, INC., a Washington, D.C. corporation ("Consultant"), with a principle place of business at 101 Constitution Avenue, NW, Suite 600, West Washington, D.C. 20001, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, it is essential that City establish and maintain effective liaison with agencies and officials of federal, state and local governments and other bodies, commissions, committees and organizations; and

WHEREAS, City desires to present pertinent information, facts and data to said agencies and officials relating to matters involving and affecting City and its interests; and

WHEREAS, City requires information and data from agencies and officials of the federal and state governments and other entities in order to facilitate the operation of the government of City; and

WHEREAS, representation of City's interests and liaison between City and other officials, agencies, bodies, commissions, committees and organizations require the assistance of personnel experienced in such matters; and

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

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

1. SCOPE OF WORK OR SERVICES. Consultant, at its cost, shall:

A. Contact and communicate with agencies and officers of federal governmental entities as requested and directed by the City Manager of

1 City or his designee;

2 B. Establish and maintain liaison with said agencies and officers;

3 C. Present and disseminate pertinent information and data  
4 relating to matters concerning the interests of City;

5 D. Obtain information and data from said agencies and officers  
6 pertaining to matters of interest or concern to City and transmit same to the  
7 appropriate officers and employees of City;

8 E. Monitor federal legislation and rule-making processes by  
9 federal agencies (whether pending or introduced or initiated during the term of this  
10 Agreement) which impact the operations of City either as determined by  
11 Consultant or as directed by the City Manager;

12 F. Provide City's officials and employees in a timely manner but  
13 not less frequently than once each month with verbal status reports, and once  
14 every other month with written status reports of legislation and rule-making  
15 processes being monitored, including without limitation legislative histories,  
16 schedules of hearings on proposed legislation and rules, and copies of proposed  
17 legislation and rules and all amendments or proposed amendments thereto;

18 G. Identify funding that will assist in the creation of new City  
19 programs, projects or services or the augmentation of existing City programs,  
20 projects or services;

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

24 I. Conduct conference calls as necessary with City Manager,  
25 Assistant City Manager, and their designee(s) to discuss progress of federal  
26 advocacy efforts.

27 2. TERM. The term of this Agreement shall commence at midnight on  
28 October 1, 2012, and shall terminate at 11:59 p.m. on September 30, 2013, unless

1 sooner terminated as provided in this Agreement.

2 3. TERMINATION. Either party hereto may terminate this Agreement  
3 for any reason at any time by giving to the other party ten (10) days prior notice of  
4 termination. In the event of termination pursuant to this Section 3, City shall pay  
5 Consultant for services performed up to the effective date of termination for which  
6 Consultant has not previously been paid and for which Consultant submits the statement  
7 required in Section 4.

8 4. PAYMENT.

9 A. City shall pay to Consultant the sum of Twelve Thousand  
10 Three Hundred Fifty Dollars (\$12,350) per month, payable in arrears, plus an  
11 additional sum of up to Eighteen Thousand Dollars (\$18,000) in approved  
12 expenses annually, commencing with the first payment on October 1, 2012. Total  
13 compensation shall not exceed One Hundred Sixty-Six Thousand Two Hundred  
14 Dollars (\$166,200). In the event a court of competent jurisdiction or any  
15 administrative agency shall determine that payment of such compensation was  
16 otherwise contingent, then this Agreement shall be deemed rescinded ab initio.

17 B. Not later than the tenth (10th) day of each month during the  
18 term of this Agreement commencing October 1, 2012, Consultant shall submit to  
19 the City Manager, in a form acceptable to him, a reasonably detailed and itemized  
20 statement of Consultant's activities on behalf of City during the preceding month.  
21 Upon receipt of said statement, City will pay Consultant in due course of  
22 payments.

23 5. CITY'S OBLIGATIONS. In order to facilitate and expedite  
24 Consultant's services on behalf of City, City shall cooperate in a timely manner with  
25 Consultant to inform Consultant as to City's needs relating to legislative advocacy.  
26 Specifically, City shall review and analyze all bills transmitted by Consultant and inform  
27 Consultant of City's positions, if any, in a timely manner, and provide timely briefings and  
28 information to Consultant on all issues of interest to City that require Consultant's

1 services.

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

8 7. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
9 contemplates the personal services of Consultant and Consultant's employees and  
10 associates, and the parties acknowledge that a substantial inducement to City for  
11 entering this Agreement was and is the professional reputation and competence of  
12 Consultant and Consultant's employees and associates. Consultant shall not assign its  
13 rights or delegate its duties hereunder, or any interest herein, or any portion hereof. Any  
14 attempted assignment or delegation shall be void, and any assignee or delegate shall  
15 acquire no right or interest by reason of such attempted assignment or delegation.

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

25 9. INSURANCE.

26 A. As a condition precedent to the effectiveness of this  
27 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
28 duration of this Agreement, from insurance companies that are admitted to write

1 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
2 Company or from authorized non-admitted insurance companies subject to  
3 Section 1763 of the California Insurance Code and that have ratings of or  
4 equivalent to A:VIII by A.M. Best Company, the following insurance:

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

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

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

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

1 B. Any self-insurance program, self-insured retention, or  
2 deductible must be separately approved in writing by City's Risk Manager or  
3 designee and shall protect City, its officials, employees and agents in the same  
4 manner and to the same extent as they would have been protected had the policy  
5 or policies not contained retention or deductible provisions.

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

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

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

24 F. Prior to the start of performance, Consultant shall deliver to  
25 City certificates of insurance and the endorsements for approval as to sufficiency  
26 and form. In addition, Consultant shall, within thirty (30) days prior to expiration of  
27 the insurance, furnish to City certificates of insurance and endorsements  
28 evidencing renewal of the insurance. City reserves the right to require complete

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

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

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

15 10. INDEMNITY.

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

28 B. In addition to Consultant's duty to indemnify, Consultant shall

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

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

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

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

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

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

28 14. ENTIRE AGREEMENT. This Agreement, including all Exhibits,



1 constitutes the entire understanding between the parties and supersedes all other  
2 agreements, oral or written, with respect to the subject matter in this Agreement.

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

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

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

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

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

28 B. The failure of the Consultant to comply with the EBO will be

1 deemed to be a material breach of the Agreement by the City.

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

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

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

15 18. WAIVER. The acceptance of any services or the payment of any  
16 money by City shall not operate as a waiver of any provision of this Agreement or of any  
17 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
18 Agreement shall not constitute a waiver of any other or subsequent breach of this  
19 Agreement.

20 19. CONTINUATION. Termination or expiration of this Agreement shall  
21 not affect rights or liabilities of the parties which accrued prior to termination or expiration  
22 of this Agreement.

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

28 21. THIRD PARTY BENEFICIARY. This Agreement is not intended or

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

designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

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.

VAN SCOYOC ASSOCIATES, INC., a  
Washington, D.C. corporation

December 10, 2012

By

President  
H. Stewart Van Scoyoc

Type or Print Name

December 10, 2012

By

Secretary  
Janet Buckley

Type or Print Name

"Consultant"

CITY OF LONG BEACH, a municipal  
corporation

By

Assistant City Manager

City Manager

"City"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

This Agreement is approved as to form on 12/11, 2012.

ROBERT E. SHANNON, City Attorney

By

Deputy