

AGREEMENT

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THIS AGREEMENT is made and entered this 15th day of December, 1998 for reference purposes only, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and HENRY TABOADA ("Manager") pursuant to Resolution No. C-27462, adopted by the CITY COUNCIL of the City of Long Beach ("Council") at its meeting held on December 15, 1998.

WHEREAS, it is the desire of the Council to employ Henry Taboada as the City Manager of the City, commencing on January 1, 1999; and

WHEREAS, the Council and the Manager desire to incorporate certain conditions of employment, working conditions and benefits of the Manager into a written agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Duties. City hereby agrees to employ Henry Taboada as City Manager of the City of Long Beach, California to perform the functions and duties specified in Section 302 of the City Charter of the City and such other legally permissible and proper duties and functions as the Council shall from time to time assign. The Manager shall assume the office of City Manager and begin performance of such duties on January 1, 1999, or at any earlier date which may be mutually acceptable to the parties.

2. Term. A. Council and Manager both acknowledge that Section 300 of the City Charter of the City provides that the Manager may only be employed for an indefinite term.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council by a majority vote of all members to terminate the services of the Manager at any time, without notice, subject only to the provisions set forth in subsections A, B, and C of Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with

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1 the right of the Manager to resign at any time from his position with City, subject only to
2 subsection C of Section 3 of this Agreement.

3 3. Termination and Severance Pay. A. If the Manager is involuntarily
4 terminated by action of the Council during the first twelve (12) months of Manager's
5 employment hereunder and if the Manager is willing and able to perform his duties under
6 this Agreement, then City shall pay to Manager a lump sum cash payment equal to twelve
7 (12) months' aggregate salary and the cash equivalent of the Manager's fringe benefits for
8 said twelve-month period provided, however, that if the Manager is terminated because of
9 his conviction of a felony or any offense involving a violation of his official duties, or for any
10 unlawful act involving personal gain to him, or because of his legal disqualification from
11 office, then City shall have no obligation to pay the aggregate severance sum designated
12 in this paragraph.

13 If the Manager is involuntarily terminated by action of the Council at any time
14 after his first twelve (12) months of Manager's employment hereunder and if the Manager
15 is willing and able to perform his duties under this Agreement, then City shall pay to
16 Manager a lump sum cash payment equal to six (6) months' aggregate salary and the cash
17 equivalent of the Manager's fringe benefits for said six-month period provided, however,
18 that if the Manager is terminated because of his conviction of a felony or any offense
19 involving a violation of his official duties, or for any unlawful act involving personal gain to
20 him, or because of his legal disqualification from office, then City shall have no obligation
21 to pay the aggregate severance sum designated in this paragraph.

22 B. If the Council at any time, without the consent of the Manager, reduces
23 the salary or other financial benefits of the Manager in a greater percentage than an
24 applicable across-the-board reduction for all employees of City, or if City refuses, following
25 notice, to comply with any other provision benefitting the Manager herein, then the
26 Manager may, at his option and provided that he gives notice to the Council within thirty
27 (30) days after the effective date of such reduction, be deemed to be "terminated" at the
28 date of such reduction or such refusal to comply within the meaning and context of the

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1 severance pay provisions of this Agreement.

2 C. If the duties, responsibilities or authority of the office of City Manager are
3 reduced by an amendment of Section 302 of the City Charter, Manager may, at his option
4 and provided that he gives notice to the Council within thirty (30) days after the effective
5 date of such reduction, be deemed to be "terminated" within the meaning and context of
6 the severance pay provisions of this Agreement.

7 D. If the Manager elects voluntarily to resign his position with City, the
8 Manager shall give to the Council a minimum of ninety (90) days' notice and he shall not
9 be entitled to severance pay.

10 4. Disability. If the Manager is permanently disabled or is otherwise unable
11 to perform his duties because of sickness, accident, injury, mental incapacity or health for
12 a period of four (4) consecutive weeks beyond any accrued sick leave, or for twenty (20)
13 working days over a thirty (30) working day period beyond any accrued sick leave, Council
14 shall have the option to terminate this Agreement, subject to the severance pay provisions
15 of subsection A of Section 3 of this Agreement by giving to the Manager notice of such
16 termination. However, the Manager shall be paid for any accrued sick leave, vacation,
17 holidays, compensatory time and other accrued but unpaid or unused benefits.

18 5. Compensation. A. City shall pay to Manager for his services performed
19 hereunder a base salary of \$165,000.00 for a twelve-month period. Subsequent salary
20 adjustments shall be determined from time to time by Council and established by
21 Resolution.

22 B. As a part of the Manager's annual compensation, and in addition to the
23 base salary provided in subsection A of this Section 5, the City shall contribute the sum of
24 \$8,000.00 per year, at the rate of \$666.66 per month, to a "book account" established in
25 Manager's name under the Deferred Compensation Plan for the City ("Plan"). The
26 Manager's participation in the Plan shall be subject to all of the terms and conditions of the
27 Plan, which is incorporated herein by this reference, and to the provisions of the United
28 States Internal Revenue Code and any other applicable laws, rules or regulations. The

1 Manager may, in accordance with the provisions of the Plan, revoke all or any part of his
2 participation in the Plan and, in that event, the Manager shall be entitled to receive and
3 shall be paid \$8,000.00 or any portion thereof which is not contributed to the Plan as part
4 of his annual compensation.

5 6. Performance and Salary Evaluation. The Council shall review and
6 evaluate the performance and salary of the Manager at least annually. Said review and
7 evaluation shall be in accordance with specific criteria, goals and objectives developed
8 jointly by the Council and the Manager. Criteria, goals and objectives may be added or
9 deleted as the Council may from time to time determine, in consultation with the Manager.
10 Such criteria, goals and objectives shall be generally attainable within the applicable time
11 limitations, annual operating and capital budgets and appropriations. The Council shall
12 provide an adequate opportunity for the Manager to discuss his evaluation with the
13 Council.

14 7. Fringe Benefits: Other Terms and Conditions of Employment. In addition
15 to the benefits specifically enumerated herein for the Manager, all of the provisions of the
16 City Charter, as well as City's Personnel Ordinance, Salary Resolution and other rules and
17 regulations of the City relating to vacation and sick leave, retirement and pension system
18 contributions, holidays, health and life insurance, executive leave, physical examinations,
19 and other fringe benefits and working conditions as they now exist or hereafter may be
20 amended, shall also apply to the Manager as they would to the other management
21 employees of City.

22 8. Automobile or Mileage Allowance. The Manager's duties require him to
23 have the exclusive use of an automobile at all times during his employment with the City,
24 and an automobile shall be provided to him by the City. This automobile shall be no more
25 than three (3) years old. City shall pay for or provide via City's insurance or self-insurance
26 appropriate liability, property damage and comprehensive coverage, and shall maintain,
27 repair and replace the automobile, as necessary. In the alternative, the City shall give to
28 the Manager a monthly mileage allowance in the same manner as provided for other

1 management employees in the City's Salary Resolution.

2 9. City shall pay for or provide any fidelity or other bonds require of
3 the Manager under any law, rules or regulation.

4 10. Notices. Notices hereunder shall be writing and personally delivered or
5 deposited in the U.S. Postal Service, first class, postage prepaid, addressed as follows:

6 City: Offices of the Mayor and City Council
7 Fourteenth Floor
8 333 West Ocean Boulevard
9 Long Beach, California 90802

10 Manager: Henry Taboada
11 City Manager
12 Thirteenth Floor
13 333 West Ocean Boulevard
14 Long Beach, California 90802

15 Notice shall be deemed given as of the date of personal delivery or as of the
16 date of deposit in the mail.

17 11. General Provisions. A. This Agreement constitutes the entire
18 understanding between the parties and supersedes all other agreements, oral or written,
19 with respect to the subject matter herein.

20 B. This Agreement shall not be amended except in a written amendment
21 which expressly refers to this Agreement, is signed by the parties and authorized by a vote
22 of the Council.

23 C. This Agreement shall be governed by and construed in accordance with
24 the laws of the State of California. Both parties shall comply with all laws, ordinances,
25 rules, regulations and the City Charter with respect to the subject matter of this Agreement.

26 D. If there is any legal proceeding between the parties to enforce or interpret
27 this Agreement or to protect or establish any rights or remedies hereunder, the prevailing
28 party shall be entitled to its costs and expenses, including reasonable attorney's fees and
court costs (including appeals).

E. This Agreement shall be binding on and inure to the benefit of the heirs
and legal representatives of the Manager.

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1 F. The provisions of this Agreement are severable and, if any provision or
2 any portion of this Agreement is held to be unconstitutional, invalid, or unenforceable by
3 a court of law, the remainder of this Agreement shall be severed and shall be enforced
4 as severed.

5 G. This Agreement is not intended or designed to or entered for the purpose
6 of creating any benefit or right for any person or entity of any kind that is not a party to this
7 Agreement.

8 H. The failure or delay of the City or the Council to exercise any right or
9 remedy hereunder shall not operate as a waiver of that or any other right or remedy. No
10 waiver of any breach shall be effective unless in writing and signed by the party waiving
11 the breach; the waiver of any breach shall not constitute a waiver of any other or
12 subsequent breach. The payment of money by the City shall not operate as a waiver of
13 any provision hereof.


14 IN WITNESS WHEREOF, the parties hereto have caused this document to
15 be executed, in duplicate, with all of the formalities required by law.

CITY OF LONG BEACH, a municipal corporation

16
17 December 15, 1998

18 By 
19 City Manager
"City"

20 December 15, 1998

21 
22 Henry Taboada
"Manager"

23 The foregoing Agreement is hereby approved as to form on December 15,
24 1998.

25 
26 ROBERT E. SHANNON, City Attorney