

1 October 1 of the year and continues through September 30 of the following year. In
2 the event that the City Council of the City fails to appropriate the necessary funds
3 for any fiscal year, then, and in that event, the Agreement will terminate at no
4 additional cost or obligation to the City.

5 C. Consultant may select the time and place of performance for
6 these services; provided, however, that access to City documents, records and the
7 like, if needed by Consultant, shall be available only during City's normal business
8 hours and provided that milestones for performance, if any, are met.

9 D. Consultant has requested to receive regular payments. City
10 shall pay Consultant in due course of payments following receipt from Consultant
11 and approval by City of invoices describing the job order for which the invoice is
12 submitted, including the job order number, the name of the Project and date of
13 service. Consultant shall certify on the invoices that Consultant has performed the
14 services in full conformance with this Agreement and is entitled to receive payment.

15 E. Consultant represents that Consultant has obtained all
16 necessary information on conditions and circumstances that may affect its
17 performance and has conducted site visits, if necessary.

18 F. CAUTION: Consultant shall not begin work until this
19 Agreement has been signed by both parties and until Consultant's evidence of
20 insurance has been delivered to and approved by City.

21 2. TERM. The term of this Agreement shall commence at midnight on
22 November 30, 2016, and shall terminate at 11:59 p.m. on November 30, 2018, unless
23 sooner terminated as provided in this Agreement, or unless the services or the Project is
24 completed sooner. The Agreement may be renewed for two (2) additional one-year
25 periods, at the discretion of the City Manager.

26 3. LICENSE AND FEES.

27 A. Consultant hereby grants to City, and City hereby accepts from
28 Consultant for the term of this Agreement, a non-exclusive right, privilege and

1 license to Gordian's JOC System and other related proprietary materials
2 (collectively referred to as "Proprietary Information") to be used for the sole purpose
3 of operating the City's JOC program. The parties hereby agree that Proprietary
4 Information shall include, but is not limited to, Gordian's eGordian® applications and
5 support documentation, Construction Task Catalog® and associated construction
6 cost data (also commonly referred to as a unit price book), training materials and
7 other proprietary materials provided by Gordian. In the event this Agreement expires
8 or terminates as provided herein, this JOC System License shall terminate and the
9 City shall return to Gordian all Proprietary Information in the City's possession.

10 B. City acknowledges that disclosure of Proprietary Information
11 will result in irreparable harm to Consultant for which monetary damages would be
12 an inadequate remedy and agrees that no such disclosure shall be made to anyone
13 without first receiving the written consent of Consultant. City further acknowledges
14 and agrees to respect the copyrights, registrations, trade secrets and other
15 proprietary rights of Consultant in Proprietary Information during and after the term
16 of this Agreement and shall at all times maintain complete confidentiality with regard
17 to the Proprietary Information provided to City, subject to federal and state laws
18 related to public records disclosure.

19 C. Upon expiration or termination of this Agreement as provided
20 herein, Consultant shall provide all data generated by City in a form accessible by
21 a standard database program, such as Microsoft® Access®.

22 D. Gordian agrees to grant a license to each JOC contractor that
23 is awarded a JOC contract by the City, provided the JOC contractor agrees to pay
24 Gordian's contractor license fee in effect when the City awards the contract and
25 provided the City includes licensing language in the JOC contract similar in form to
26 this JOC System License.

27 E. In the event of a conflict in terms and conditions between this
28 JOC system license and any other terms and conditions of this Agreement or any

1 purchase order or similar purchasing document issued by City, this JOC system
2 license shall take precedence.

3 F. In consideration for said license, City shall pay to Consultant
4 the fees set forth in Exhibit "B", for the duration of the Agreement, including
5 extension periods. Notwithstanding anything in the preceding sentence to the
6 contrary, the maximum obligation of the City during the two (2) year term of this
7 Agreement shall not exceed Eight Hundred Thousand Dollars (\$800,000)
8 ("Maximum Contract Value") and the City shall not be obligated to award JOC
9 contracts which would generate a fee in excess of said amount. In the event the
10 Maximum Contract Value is attained during the term of the Agreement, and not
11 increased through written amendment, Consultant shall not be liable to continue to
12 perform its obligations under this Agreement.

13 G. Consultant shall submit invoices monthly to the City and City
14 shall pay Consultant in due course of payments which is generally thirty (30) days
15 after receipt of invoice.

16 4. COORDINATION AND ORGANIZATION.

17 A. Consultant shall coordinate its performance with City's
18 representative, if any, named in Exhibit "C", attached to this Agreement and
19 incorporated by this reference. Consultant shall advise and inform City's
20 representative of the work in progress on the Project in sufficient detail so as to
21 assist City's representative in making presentations and in holding meetings on the
22 Project.

23 B. The parties acknowledge that a substantial inducement to City
24 for entering this Agreement was and is the reputation and skill of Consultant's key
25 employee, Jo Medelman. City shall have the right to approve any person proposed
26 by Consultant to replace that key employee.

27 5. INDEPENDENT CONTRACTOR. In performing its services,
28 Consultant is and shall act as an independent contractor and not an employee,

1 representative or agent of City. Consultant shall have control of Consultant's work and the
2 manner in which it is performed. Consultant shall be free to contract for similar services to
3 be performed for others during this Agreement. Consultant acknowledges and agrees that
4 (a) City will not withhold taxes of any kind from Consultant's compensation; (b) City will not
5 secure workers' compensation or pay unemployment insurance to, for or on Consultant's
6 behalf; and (c) City will not provide and Consultant is not entitled to any of the usual and
7 customary rights, benefits or privileges of City employees. Consultant expressly warrants
8 that neither Consultant nor any of Consultant's employees or agents shall represent
9 themselves to be employees or agents of City.

10 6. INSURANCE.

11 A. As a condition precedent to the effectiveness of this
12 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
13 duration of this Agreement, from insurance companies that are admitted to write
14 insurance in California and have ratings of or equivalent to A:V by A.M. Best
15 Company or from authorized non-admitted insurance companies subject to Section
16 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
17 by A.M. Best Company, the following insurance:

18 (a) Commercial general liability insurance (equivalent in scope to
19 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
20 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
21 coverage shall include but not be limited to broad form contractual liability,
22 cross liability, independent contractors liability, and products and completed
23 operations liability. City, its boards and commissions, and their officials,
24 employees and agents shall be named as additional insureds by
25 endorsement (on City's endorsement form or on an endorsement equivalent
26 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10
27 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),
28 and this insurance shall contain no special limitations on the scope of

1 protection given to City, its boards and commissions, and their officials,
2 employees and agents. This policy shall be endorsed to state that the
3 insurer waives its right of subrogation against City, its boards and
4 commissions, and their officials, employees and agents.

5 (b) Workers' Compensation insurance as required by the California
6 Labor Code and employer's liability insurance in an amount not less than
7 \$1,000,000. This policy shall be endorsed to state that the insurer waives
8 its right of subrogation against City, its boards and commissions, and their
9 officials, employees and agents.

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

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

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

20 C. Each insurance policy shall be endorsed to state that coverage
21 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
22 written notice to City, shall be primary and not contributing to any other insurance
23 or self-insurance maintained by City, and shall be endorsed to state that coverage
24 maintained by City shall be excess to and shall not contribute to insurance or self-
25 insurance maintained by Consultant. Consultant shall notify City in writing within
26 five (5) days after any insurance has been voided by the insurer or cancelled by the
27 insured.

28 D. If this coverage is written on a "claims made" basis, it must

1 provide for an extended reporting period of not less than one hundred eighty (180)
2 days, commencing on the date this Agreement expires or is terminated, unless
3 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,
4 continuing coverage for a period of not less than three (3) years, commencing on
5 the date this Agreement expires or is terminated.

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

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

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

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

28 7. ASSIGNMENT AND SUBCONTRACTING. This Agreement

1 contemplates the personal services of Consultant and Consultant's employees, and the
2 parties acknowledge that a substantial inducement to City for entering this Agreement was
3 and is the professional reputation and competence of Consultant and Consultant's
4 employees. Consultant shall not assign its rights or delegate its duties under this
5 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
6 of City, such consent not to be unreasonably withheld, except that Consultant may with the
7 prior approval of the City Manager of City, assign any moneys due or to become due
8 Consultant under this Agreement. Any attempted assignment or delegation shall be void,
9 and any assignee or delegate shall acquire no right or interest by reason of an attempted
10 assignment or delegation. Furthermore, Consultant shall not subcontract any portion of its
11 performance without the prior approval of the City Manager or designee, or substitute an
12 approved subconsultant or contractor without approval prior to the substitution. Nothing
13 stated in this Section shall prevent Consultant from employing as many employees as
14 Consultant deems necessary for performance of this Agreement.

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

21 9. TERMINATION. Either party shall have the right to terminate this
22 Agreement for any reason or no reason at any time by giving sixty (60) calendar days prior
23 written notice to the other party. In the event of termination under this Section, City shall
24 pay Consultant for services satisfactorily performed and costs incurred up to the effective
25 date of termination for which Consultant has not been previously paid. The procedures for
26 payment in Section 1.B. with regard to invoices shall apply. On the effective date of
27 termination, Consultant shall deliver to City all project data generated by Consultant during
28 the term of this Agreement, whether in draft or final form, or in process. And, Consultant

1 acknowledges and agrees that City's obligation to make final payment is conditioned on
2 Consultant's delivery of the data to City.

3 10. ADDITIONAL COSTS. Any costs incurred by City due to Consultant's
4 failure to meet the standards required by the scope of work or Consultant's failure to
5 perform fully the tasks described in the scope of work which, in either case, causes City to
6 request that Consultant perform again all or part of the Scope of Work shall be at the sole
7 cost of Consultant and City shall not pay any additional compensation to Consultant for its
8 re-performance.

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

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

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

19 14. INDEMNITY.

20 A. Consultant shall indemnify, protect and hold harmless City, its
21 Boards, Commissions, and their officials, employees and agents ("Indemnified
22 Parties"), from and against any and all liability, claims, demands, damage, loss,
23 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
24 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
25 in connection with (1) Consultant's breach or failure to comply with any of its
26 obligations contained in this Agreement, including any obligations arising from the
27 Project's compliance with or failure to comply with applicable laws, including all
28 applicable federal and state labor requirements including, without limitation, the

1 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
2 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
3 employees, agents, subcontractors, or anyone under Consultant's control, in the
4 performance of work or services under this Agreement (collectively "Claims" or
5 individually "Claim").

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

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

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

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

24 16. NONDISCRIMINATION.

25 A. In connection with performance of this Agreement and subject
26 to applicable rules and regulations, Consultant shall not discriminate against any
27 employee or applicant for employment because of race, religion, national origin,
28 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or

1 disability. Consultant shall ensure that applicants are employed, and that
2 employees are treated during their employment, without regard to these bases.
3 These actions shall include, but not be limited to, the following: employment,
4 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
5 termination; rates of pay or other forms of compensation; and selection for training,
6 including apprenticeship.

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

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

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

26 "During the performance of a contract with the City of Long Beach, the
27 Consultant will provide equal benefits to employees with spouses and its
28 employees with domestic partners. Additional information about the City of

1 Long Beach's Equal Benefits Ordinance may be obtained from the City of
2 Long Beach Business Services Division at 562-570-6200."

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

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

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

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

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

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

1 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
2 due under this Agreement or otherwise recover the full amount of the fee, commission or
3 other monies.

4 20. 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 21. CONTINUATION. Termination or expiration of this Agreement shall
10 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10,, 17,
11 19, 22 and 28 prior to termination or expiration of this Agreement.

12 22. TAX REPORTING. As required by federal and state law, City is
13 obligated to and will report the payment of compensation to Consultant on Form 1099-
14 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
15 resulting from payments under this Agreement. Consultant shall submit Consultant's
16 Employer Identification Number (EIN), or Consultant's Social Security Number if
17 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
18 Financial Management. Consultant acknowledges and agrees that City has no obligation
19 to pay Consultant until Consultant provides one of these numbers.

20 In addition, Consultant shall cooperate with the City in all matters relating to
21 self-accrual of use tax. Consultant shall contact the City Treasurer for additional information
22 regarding self-accrual.

23 23. ADVERTISING. Consultant shall not use the name of City, its officials
24 or employees in any advertising or solicitation for business or as a reference, without the
25 prior approval of the City Manager or designee.

26 24. AUDIT. City shall have the right at all reasonable times during the
27 term of this Agreement and for a period of five (5) years after termination or expiration of
28 this Agreement to examine, audit, inspect, review, extract information from and copy all

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

1 books, records, accounts and other documents of Consultant relating to this Agreement.

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

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

7 THE GORDIAN GROUP, INC., a Georgia
8 corporation

9 December 12, _____, 2016

By [Signature]
Name Ammon T. Leshner
Title Vice President

11 December 12 _____, 2016

By [Signature]
Name Roy E Kemper
Title CFO

14 "Consultant"

15 CITY OF LONG BEACH, a municipal
16 corporation

17 December 22 _____, 2016

By [Signature]
City Manager

18 "City" Assistant City Manager EXECUTED PURSUANT
TO SECTION 301
THE CITY CHARTER

19 This Agreement is approved as to form on 12/19 _____, 2016.

21 CHARLES PARKIN, City Attorney

22 By [Signature]
23 Deputy

Attachment A
Scope of Services

JOC Program Maintenance & Support Scope of Services

Program Support

- Provide strategic guidance to the project team
- Monitor program performance, as requested
- Integrate successful experiences from other agencies using JOC
- Identify and consult on major program issues
- Provide guidance and interpretations on procedures
- Assist with interpretation of the Construction Task Catalog[®] including:
 - Resolve Construction Task Catalog[®] issues
 - Manage revisions to the Construction Task Catalog[®]
- Conduct annual on-site reviews of the JOC program, as requested
- Prepare program evaluations, as requested

Procurement & Document Maintenance Support (On-Site)

- Provide assistance with modifications to the Contract and General Conditions
- Provide assistance with modifications to the Instructions to Bidders
- Conduct research to identify recurring use of non-prepriced tasks
- Coordinate preparation of updated Construction Task Catalogs[®]
- Coordinate preparation of updated Technical Specifications
- Conduct informational seminars for local groups, as requested
- Assist with bidding new JOC contracts including:
 - Conduct pre-bid meetings with potential contractors
 - Assist with bid review and JOC contractor selection, as requested

Procurement & Document Maintenance Support (Off-Site)

- Update and enhance the customized Construction Task Catalog[®] including:
 - Maintain the integrity of the CSI numbering system
 - Improve task descriptions
 - Develop new tasks for recurring non-prepriced tasks
 - Remove outdated tasks that are no longer used or available
 - Monitor local area pricing
 - Incorporate current construction practices and materials
 - Publish a new Construction Task Catalog[®] for each additional solicitation
- Update and enhance customized Technical Specifications including:
 - Develop new specifications for recurring non-prepriced tasks
 - Incorporate current construction practices, standards and materials
 - Publish new Technical Specifications for each additional solicitation

Training Support

- Update the Training Manual to reflect any changes in procedures
- Conduct JOC procedures refresher training for staff, as requested
- Conduct JOC procedures training for new staff
- Provide hands-on training for new staff in the areas of:
 - Project identification and development
 - Joint scope meetings
 - Project scope development
 - Proposal development and preparation
 - Proposal review and variance resolution
- Conduct PROGEN[®] and/or eGordian[®] software training including:
 - Provide on-site software assistance, as needed or requested
 - Provide refresher training for current staff
 - Provide on-site/Internet based training for new releases of the software
 - Provide on-site/ Internet based training for all new staff
 - Provide Internet based training for current and new staff

Software Support

- Provide unlimited access to the PROGEN[®] and/or eGordian[®] software
- Provide software technical support, including:
 - Maintain software access for staff
 - Set-up software access for new staff
 - Provide systems support in connection with the software
- Provide access to all new releases of the software
- Write, test and finalize modifications to existing reports, as requested
- Write, test and finalize new reports, as requested
- Provide toll free 24/7 software telephone support

Attachment B
Rates and License

JOC SYSTEM LICENSE

The Gordian Group, Inc. ("Gordian") hereby grants to the City, and the City hereby accepts from Gordian for the term of this Agreement, a non-exclusive, non-transferable right, privilege and license to Gordian's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of operating the Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to, Gordian's PROGEN[®] and/or eGordian[®] applications and support documentation, Construction Task Catalog[®] (also commonly referred to as a unit price book), training materials and other proprietary materials provided by Gordian. In the event this Agreement expires or terminates as provided herein, this JOC System License shall terminate and the City shall return to Gordian all Proprietary Information in the City's possession.

The City acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The City further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the City, subject to federal and state laws related to public records disclosure.

Upon expiration or termination of this Agreement as provided herein, Gordian shall provide all data generated by the City in a form accessible by a standard database program, such as Microsoft[®] Access[®].

Gordian agrees to grant a license to each contractor that is awarded a JOC contract by the City, provided the JOC contractor agrees to pay Gordian's contractor license fee in effect when the City awards the contract and provided the City includes licensing language in the JOC contract similar in form to this JOC System License.

In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Agreement or any purchase order or similar purchasing document issued by the City, this JOC System License shall take precedence.

Gordian JOC Solution™ License Fees

Gordian's standard License Fees to provide the Gordian JOC Solution consist of a client paid license fee ("City License Fee") and a contractor paid license fee ("Contractor License Fee") as specified below:

City License Fee: Five percent (5%) of the first eight million dollars (\$8,000,000) of construction procured through the City's JOC program, and one and ninety-five hundredths percent (1.95%) of the value of construction procured thereafter; and

Contractor License Fee: One percent (1.00%) of the value of work ordered.

Since the City has previously procured more than \$8,000,000 through a Gordian JOC Solution, Gordian will waive the initial fee and the City will be assessed a fee of one and ninety-five hundredths percent (1.95%) of the value of all work ordered under a new contract with Gordian.

The Gordian JOC Solution License Fees are payable when a Job Order Notice to Proceed is issued to the JOC contractor. The Contractor License Fee will apply to all JOC contracts awarded by the City and will be assessed regardless of the cumulative value of the work ordered. It is important to note that Gordian will be responsible for all administrative duties related to the Contractor License Fee, including invoicing and collections.

Annual Volume	Discount	Discounted Rate
+\$0 - \$5MM	0%	1.95%
>\$5MM - \$7MM	10%	1.76%
>\$7MM - \$10MM	11%	1.74%
>\$10MM - \$13MM	13%	1.70%
>\$13MM - \$16MM	15%	1.66%
>\$16MM - \$20MM	16%	1.64%
>\$20MM - \$25MM	17%	1.62%
>\$25MM - \$30MM	18%	1.60%
>\$30MM - \$35MM	19%	1.58%
>\$35MM - \$40MM	20%	1.56%
>\$40MM - \$50MM	21%	1.54%
>\$50MM - \$60MM	22%	1.52%
>\$60MM - \$70MM	23%	1.50%
>\$70MM	24%	1.48%

Attachment C
City's Representative is
Eric Lopez,
Project Management Officer,
562/570-5690