

AGREEMENT

36174

THIS AGREEMENT is made and entered, in duplicate, as of December 1, 2021, for reference purposes only, pursuant to Resolution No. RES-21-0136 adopted by the City Council of the City of Long Beach at its meeting on November 9, 2021, by and between THE GORDIAN GROUP, INC. DBA THE MELLON GROUP, a Georgia corporation ("Consultant"), with a place of business at 30 Patewood Drive, Suite 350, Greenville, South Carolina 29615, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with Job Order Contracting program and software support ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

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.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, in an amount not to exceed One Million Dollars (\$1,000,000), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one

1 fiscal year shall be contingent upon the City Council of the City appropriating the
2 necessary funds for such payment by the City in each fiscal year during the term of
3 this Agreement. For the purposes of this Section, a fiscal year commences on
4 October 1 of the year and continues through September 30 of the following year. In
5 the event that the City Council of the City fails to appropriate the necessary funds
6 for any fiscal year, then, and in that event, the Agreement will terminate at no
7 additional cost or obligation to the City.

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

12 D. Consultant has requested to receive regular payments. City
13 shall pay Consultant in due course of payments following receipt from Consultant
14 and approval by City of invoices showing the services or task performed, the time
15 expended (if billing is hourly), and the name of the Project. Consultant shall certify
16 on the invoices that Consultant has performed the services in full conformance with
17 this Agreement and is entitled to receive payment. Each invoice shall be
18 accompanied by a progress report indicating the progress to date of services
19 performed and covered by the invoice, including a brief statement of any Project
20 problems and potential causes of delay in performance, and listing those services
21 that are projected for performance by Consultant during the next invoice cycle.
22 Where billing is done and payment is made on an hourly basis, the parties
23 acknowledge that this arrangement is either customary practice for Consultant's
24 profession, industry or business, or is necessary to satisfy audit and legal
25 requirements which may arise due to the fact that City is a municipality.

26 E. Consultant represents that Consultant has obtained all
27 necessary information on conditions and circumstances that may affect its
28 performance and has conducted site visits, if necessary.

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

4 2. TERM. The term of this Agreement shall commence at midnight on
5 December 1, 2021, and shall terminate at 11:59 p.m. on November 30, 2023, unless
6 sooner terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner. The term may be extended for two (2) additional one-year periods, at
8 the discretion of the City Manager.

9 3. COORDINATION AND ORGANIZATION.

10 A. Consultant shall coordinate its performance with City's
11 representative, if any, named in Exhibit "C", attached to this Agreement and
12 incorporated by this reference. Consultant shall advise and inform City's
13 representative of the work in progress on the Project in sufficient detail so as to
14 assist City's representative in making presentations and in holding meetings on the
15 Project. City shall furnish to Consultant information or materials, if any, described
16 in Exhibit "D", attached to this Agreement and incorporated by this reference, and
17 shall perform any other tasks described in the Exhibit.

18 B. The parties acknowledge that a substantial inducement to City
19 for entering this Agreement was and is the reputation and skill of Consultant's key
20 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
21 reference. City shall have the right to approve any person proposed by Consultant
22 to replace that key employee.

23 4. INDEPENDENT CONTRACTOR. In performing its services,
24 Consultant is and shall act as an independent contractor and not an employee,
25 representative or agent of City. Consultant shall have control of Consultant's work and the
26 manner in which it is performed. Consultant shall be free to contract for similar services to
27 be performed for others during this Agreement; provided, however, that Consultant acts in
28 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges

1 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;
2 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
3 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of
4 the usual and customary rights, benefits or privileges of City employees. Consultant
5 expressly warrants that neither Consultant nor any of Consultant's employees or agents
6 shall represent themselves to be employees or agents of City.

7 5. INSURANCE.

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

15 i. Commercial general liability insurance (equivalent in
16 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
17 than One Million Dollars (\$1,000,000.00) per each occurrence and Two
18 Million Dollars (\$2,000,000.00) general aggregate. This coverage shall
19 include but not be limited to broad form contractual liability, cross liability,
20 independent contractors liability, and products and completed operations
21 liability. City, its boards and commissions, and their officials, employees and
22 agents shall be named as additional insureds by endorsement (on City's
23 endorsement form or on an endorsement equivalent in scope to ISO form CG
24 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04
25 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain
26 no special limitations on the scope of protection given to City, its boards and
27 commissions, and their officials, employees and agents. This policy shall be
28 endorsed to state that the insurer waives its right of subrogation against City,

its boards and commissions, and their officials, employees and agents.

ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

iii. Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

iv. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.

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

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

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless

1 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,
2 continuing coverage for a period of not less than three (3) years, commencing on
3 the date this Agreement expires or is terminated.

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

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

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

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

26 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
27 contemplates the personal services of Consultant and Consultant's employees, and the
28 parties acknowledge that a substantial inducement to City for entering this Agreement was

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

13 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
14 certifies that, at the time Consultant executes this Agreement and for its duration,
15 Consultant does not and will not perform services for any other client which would create
16 a conflict, whether monetary or otherwise, as between the interests of City and the interests
17 of that other client. Consultant further certifies that Consultant does not now have and shall
18 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
19 other source of income, interest in real property or investment which would be affected in
20 any manner or degree by the performance of Consultant's services hereunder. And,
21 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
22 and contractors.

23 8. MATERIALS. Consultant shall furnish all labor and supervision,
24 supplies, materials, tools, machinery, equipment, appliances, transportation and services
25 necessary to or used in the performance of Consultant's obligations under this Agreement,
26 except as stated in Exhibit "D".

27 9. OWNERSHIP OF DATA. All materials, information and data
28 prepared, developed or assembled by Consultant or furnished to Consultant in connection

1 with this Agreement, including but not limited to documents, estimates, calculations,
2 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
3 models, reports, summaries, drawings, designs, notes, plans, information, material and
4 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
5 in a format identified by City, and City shall have the unrestricted right to use and disclose
6 the Data in any manner and for any purpose without payment of further compensation to
7 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
8 Data shall not be made available to any person or entity for use without the prior approval
9 of City. This warranty shall survive termination of this Agreement for five (5) years.

10 10. TERMINATION. Either party shall have the right to terminate this
11 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
12 prior written notice to the other party. In the event of termination under this Section, City
13 shall pay Consultant for services satisfactorily performed and costs incurred up to the
14 effective date of termination for which Consultant has not been previously paid. The
15 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective
16 date of termination, Consultant shall deliver to City all Data developed or accumulated in
17 the performance of this Agreement, whether in draft or final form, or in process. And,
18 Consultant acknowledges and agrees that City's obligation to make final payment is
19 conditioned on Consultant's delivery of the Data to City.

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

28 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for

1 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
2 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
3 without breach of this Agreement by Consultant; or (c) a third party who has a right to
4 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
5 disclosed pursuant to subpoena or court order.

6 13. ADDITIONAL COSTS AND REDESIGN.

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

13 B. If the Project involves construction and the scope of work
14 requires Consultant to prepare plans and specifications with an estimate of the cost
15 of construction, then Consultant may be required to modify the plans and
16 specifications, any construction documents relating to the plans and specifications,
17 and Consultant's estimate, at no cost to City, when the lowest bid for construction
18 received by City exceeds by more than ten percent (10%) Consultant's estimate.
19 This modification shall be submitted in a timely fashion to allow City to receive new
20 bids within four (4) months after the date on which the original plans and
21 specifications were submitted by Consultant.

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

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

1 all work performed in connection with construction of the Project to be performed in
2 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
3 county or municipal governments or agencies (including, without limitation, all applicable
4 federal and state labor standards, including the prevailing wage provisions of sections 1770
5 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
6 marshal, health officer, building inspector, or other officer of every governmental agency
7 now having or hereafter acquiring jurisdiction.

8 16. PREVAILING WAGES.

9 A. Consultant agrees that all public work (as defined in California
10 Labor Code section 1720) performed pursuant to this Agreement (the "Public
11 Work"), if any, shall comply with the requirements of California Labor Code sections
12 1770 *et seq.* City makes no representation or statement that the Project, or any
13 portion thereof, is or is not a "public work" as defined in California Labor Code
14 section 1720.

15 B. In all bid specifications, contracts and subcontracts for any
16 such Public Work, Consultant shall obtain the general prevailing rate of per diem
17 wages and the general prevailing rate for holiday and overtime work in this locality
18 for each craft, classification or type of worker needed to perform the Public Work,
19 and shall include such rates in the bid specifications, contract or subcontract. Such
20 bid specifications, contract or subcontract must contain the following provision: "It
21 shall be mandatory for the contractor to pay not less than the said prevailing rate of
22 wages to all workers employed by the contractor in the execution of this contract.
23 The contractor expressly agrees to comply with the penalty provisions of California
24 Labor Code section 1775 and the payroll record keeping requirements of California
25 Labor Code section 1771."

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

18. INDEMNITY.

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

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

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

1 percentage of willful misconduct attributed by the court to the Indemnified Parties.

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

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

6 20. FORCE MAJEURE. If any party fails to perform its obligations
7 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
8 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
9 governmental regulations, governmental controls, judicial orders, enemy or hostile
10 governmental action, pandemic, civil commotion, fire or other casualty, or other causes
11 beyond the reasonable control of the party obligated to perform, then that party's
12 performance will be excused for a period equal to the period of such cause for failure to
13 perform.

14 21. NONDISCRIMINATION.

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

25 B. It is the policy of City to encourage the participation of
26 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
27 procurement process, and Consultant agrees to use its best efforts to carry out this
28 policy in its use of subconsultants and contractors to the fullest extent consistent

1 with the efficient performance of this Agreement. Consultant may rely on written
2 representations by subconsultants and contractors regarding their status.
3 Consultant shall report to City in May and in December or, in the case of short-term
4 agreements, prior to invoicing for final payment, the names of all subconsultants
5 and contractors hired by Consultant for this Project and information on whether or
6 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
7 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

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

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

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

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

27 D. Failure to comply with the EBO may be used as evidence
28 against the Consultant in actions taken pursuant to the provisions of Long Beach

1 Municipal Code 2.93 et seq., Contractor Responsibility.

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

7 23. NOTICES. Any notice or approval required by this Agreement shall
8 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
9 postage prepaid, addressed to Consultant at the address first stated above, and to City at
10 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
11 to the City Engineer at the same address. Notice of change of address shall be given in
12 the same manner as stated for other notices. Notice shall be deemed given on the date
13 deposited in the mail or on the date personal delivery is made, whichever occurs first.

14 24. COPYRIGHTS AND PATENT RIGHTS.

15 A. Consultant shall place the following copyright protection on all
16 Data: © City of Long Beach, California ____, inserting the appropriate year.

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

21 C. Consultant warrants that the Data does not violate or infringe
22 any patent, copyright, trade secret or other proprietary right of any other party.
23 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
24 and employees harmless from any and all claims, demands, damages, loss, liability,
25 causes of action, costs or expenses (including reasonable attorney's fees) whether
26 or not reduced to judgment, arising from any breach or alleged breach of this
27 warranty.

28 25. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

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

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

13 27. CONTINUATION. Termination or expiration of this Agreement shall
14 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled
15 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Indemnity", and
16 "Audit" prior to termination or expiration of this Agreement.

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

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

28 30. AUDIT. City shall have the right at all reasonable times during the

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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

31. THIRD PARTY BENEFICIARY. This Agreement is not intended or 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.

THE GORDIAN GROUP, INC. DBA THE
MELLON GROUP, a Georgia corporation

January 6, 2022

By Ammon T. Leshner
Name Ammon T. Leshner
Title Vice President

By _____
Name _____
Title _____

"Consultant"

CITY OF LONG BEACH, a municipal
corporation

By _____
City Manager

"City"

This Agreement is approved as to form on _____, 2021.

CHARLES PARKIN, City Attorney

By _____
Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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THE GORDIAN GROUP, INC. DBA THE
MELLON GROUP, a Georgia corporation

January 6, 2022

By Ammon T. Leshner
Name Ammon T. Leshner
Title Vice President

, 2021

By _____
Name _____
Title _____

"Consultant"

CITY OF LONG BEACH, a municipal
corporation

1/13/2022 ~~2021~~

By Linda F. Jabum
City Manager

"City"

EXECUTED BY _____
TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form on January 11, 2021.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

Exhibit A - Scope of Work

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

Exhibit B - Rate Sheet

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%

Exhibit C - City Representative is
Marilyn Surakus
Project Management Bureau Manager

Marilyn.Surakus@longbeach.gov

562/570-5793

Exhibit D - City Provided Services- None

Exhibit E- Consultant Representative

Ammon T. Lesher

Vice President

A.Lesher@gordian.com

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