



1700 Broadway, 19th Floor
New York, NY 10019-5905
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July 7, 2021

City of Long Beach
1 West Chester Street
Long Beach, NY 11561
Attention: Ms. Donna M. Gayden, City Manager

Ladies and Gentlemen:

Reference is made to the letter agreement, dated April 14, 2021 (as amended, supplemented or otherwise modified from time to time, the "*Engagement Letter*"), between M3 Advisory Partners, LP ("*M3*") and City of Long Beach (the "*Client*"; and, together with M3, the "*Parties*"). Unless otherwise defined herein, capitalized terms used in this agreement (this "*Amendment*") shall have the meanings assigned thereto in the Engagement Letter.

This Amendment shall evidence and confirm our agreement that the Engagement Letter hereby is supplemented and amended as follows:

1. Services. In addition to the Services described in Section 1 of the Engagement Letter, the term "Services" shall include the following: (x) assisting the Client on developing and evaluating restructuring and negotiation proposals with key stakeholders with the goal of reaching agreements on a consensual out-of-court restructuring, (y) provide support to the Client and its counsel with respect to litigation against the Client and labor negotiations and (z) such other matters related to the Engagement as the City Manager and M3 may mutually agree.

2. Engagement Term. The Parties hereby mutually agree that the Engagement shall be extended beyond the Initial Term and may be terminated by either Party at any time hereafter upon ten days' written notice to the other Party.

3. Compensation for Services. Notwithstanding anything to the contrary contained in the Engagement Letter, the hourly rates used in calculating the Hourly Fees for periods from and after June 1, 2021 shall be the "Adjusted Rates" shown below:

Professional	Standard Rates	10% Discount	Adjusted Rates
Managing Partner	\$1,225	\$(122.50)	\$1,102.50
Senior Managing Director	\$1,100	\$(110.00)	\$990.00
Managing Director	\$925 - \$1,050	\$(92.50) - \$(105.00)	\$832.50 - \$945.00
Director	\$750 - \$850	\$(75.00) - \$(85.00)	\$675.00 - \$765.00
Vice President	\$675	\$(67.50)	\$607.50
Senior Associate	\$575	\$(57.50)	\$517.50
Associate	\$495	\$(49.50)	\$445.50
Analyst	\$395	\$(39.50)	\$355.50

As contemplated by the Engagement Letter, M3 may adjust its billing rates from time to time in the normal course of business upon notice to the Client; provided, however, that M3 will not adjust such billing rates prior to January 1, 2022 without the prior approval of the Client.

4. Representations and Warranties. The Client hereby restates each of the representations and warranties set forth in Section 15(b) of the Engagement Letter, with such representations and warranties being deemed to be restated after giving effect to the modifications set forth in this Amendment.

5. Miscellaneous. Except to the extent expressly modified by this Amendment, the terms of the Engagement Letter shall remain in full force and effect and without modification. This Amendment shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

* * *

Please acknowledge your agreement with the foregoing by signing where indicated below and returning this Amendment to us.

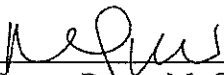
Very truly yours,


M3 ADVISORY PARTNERS, LP

Mohsin Y. Meghji
Managing Partner

ACCEPTED AND AGREED
as of the date first set forth above:

CITY OF LONG BEACH

By: 
Name: Donna M. Gayden
Title: City Manager

 AUTHORIZING RESOLUTION #146/21

April 13, 2021

Item No. 2
Resolution No. 64/21

The following Resolution was moved by Mr. Delury
and seconded by Pres. Bendo :

Resolution Authorizing the Retention of M3 Partners, LP.

WHEREAS, the City of Long Beach faces current and prospective financial obligations which could exceed \$460 million; and

WHEREAS, the City's history of borrowing money to fulfill its financial obligations, among other factors, have contributed to the decline of its fiscal health and has led to a credit status of Baa2 with a negative outlook; and

WHEREAS, the City of Long Beach desires to engage the services of a financial consulting firm to assist in turning around and/or restructuring the City's financial obligations; and

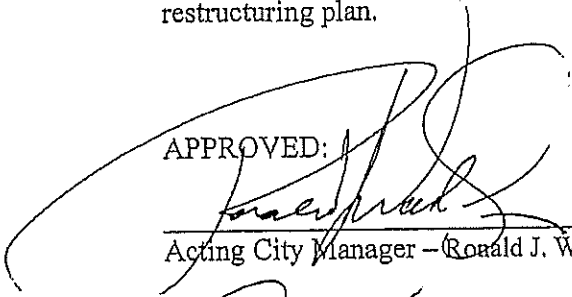
WHEREAS, M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019 has a team of professionals specializing in financial turnaround and restructuring; and

WHEREAS, the City of Long Beach desires to retain the consulting services of M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019;

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York, that the City Manager be and is hereby authorized to enter into a limited retainer agreement with M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019 to work with the City and its consultants to provide services which include, but are not limited to: (a) a rolling 13-week cash flow forecast to assess liquidity & identify inflow/outflow timing issues; (b) assisting the City in developing long-term budget projections in conjunction with the City's existing advisor to provide visibility on severity of fiscal issues; (c) identifying credible strategic alternatives to address operational and financial issues; and (d) assist the City in implementing/executing a restructuring plan.

APPROVED:


Acting City Manager - Ronald J. Walsh, Jr.

APPROVED AS TO FORM & LEGALITY:


Acting Corporation Counsel - Richard Berrios

VOTING:

Council Member Delury	-	AYE
Council Member Mandel	-	AYE
Council Member Treston	-	AYE
Vice President McInnis	-	AYE
President Bendo	-	AYE

September 9, 2021

Item No. 7
Resolution No. 140/21

The following Resolution was moved by Ms. Treston
and seconded by Pres. Bendo :

Resolution Authorizing the Continued Retention of
M3 Partners, LP.


WHEREAS, pursuant to Resolution No. 64/21, duly adopted by the City Council on April 13, 2021, the City entered into a limited retainer agreement with the M3 Partners, LP, 1700 Broadway, 19th floor, New York, New York 10019 to work with the City and its consultants to provide financial services to assist in turning around and/or restructuring the City's financial obligations; and

WHEREAS, it is the desire of the City to continue the retention of M3 Partners, LP for the above stated services and in assisting the City on developing and evaluating restructuring and negotiation proposals with key stakeholders with the goal of reaching agreements on a consensual out-of-court restructuring; provide support to the City and its counsel with respect to litigation against the City and labor negotiations; and such other matters related to the subject matters as the City Manager and M3 Partners, LP may mutually agree;

NOW, THEREFORE, be it


RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager be and is hereby authorized to enter into a continued retainer agreement with M3 Partners, LP, 1700 Broadway, 19th floor, New York, New York 10019 for financial consulting services regarding the restructuring of the City's financial obligations, litigation against the City, labor negotiations, and other matters as the City Manager and M3 Partners, LP may mutually agree.

APPROVED:



City Manager-Donna M. Gayden

APPROVED AS TO FORM & LEGALITY:



Corporation Counsel-Richard Berrios

VOTING:

Council Member Delury - AYE
Council Member Mandel - AYE
Council Member Treston - AYE
Vice President McInnis - AYE
President Bendo - AYE



April 14, 2021

City of Long Beach
1 West Chester Street
Long Beach, NY 11561
Attention: Ms. Donna M. Gayden, City Manager

Engagement Letter

Ladies and Gentlemen:

This letter agreement (this "*Agreement*") sets forth the terms and conditions of the engagement (the "*Engagement*") of M3 Advisory Partners, LP ("*M3*") to provide the Services (as defined below) to City of Long Beach (the "*Client*") from and after March 1, 2021. M3 and the Client are collectively referred to in this Agreement as the "*Parties*."

1. Services: The Client hereby retains M3 to provide, and M3 hereby agrees to provide, the following services (the "*Services*") upon the terms and subject to the conditions set forth in this Agreement:

(a) in conjunction with the Client, create a rolling 13-week cash flow forecast to assess liquidity & identify inflow/outflow timing issues;

(b) assist the Client in development of long-term budget projections (one/five/ten-year horizon) with existing advisor Capital Markets Advisors ("*CMA*") to provide visibility on severity of fiscal issues;

(c) seek to identify credible strategic alternatives, in conjunction with the Client's legal and other advisors, to address the Client's operational and financial issues, as well as other liabilities of the Client:

(i) use long term budgets to develop restructuring plans and proposals for creditors;

(ii) review Receivership / Emergency Financial Control Board alternatives;

(iii) review what non-core and unencumbered assets exist;

(iv) build contingency plan if consensual resolution is unavailable, and use as a 'downside' benchmark against out-of-court alternatives;

(d) assist the Client in choosing a best path forward and building consensus among the Client's creditors, stakeholders and citizens.

(e) support the Client in implementing and executing its restructuring plan, or revert to contingency plan if consensual resolution proves to be impracticable; and

(f) provide such other services as M3 and the Client shall otherwise agree in writing.

(g) Standard of Care. All Services hereunder shall (i) be performed by experienced, qualified personnel, (ii) reflect and adhere to generally accepted and reasonable industry standards and (iii) in each instance, be performed with the care, skill, prudence and diligence under the circumstances then prevailing as would a prudent person, acting in a like capacity and familiar with such matters.

(h) Although the time required to complete the Services will depend upon many factors and no assurance can be given about the time required to do so, it is the desire of M3 and the Client that the Services shall be completed within 90 days from the commencement of the Engagement.

2. Engagement Term. The Engagement commenced on March 1, 2021 (but subject to receipt of formal approval from the Client's City Council of the engagement of M3 upon the terms described in this Agreement and, once obtained, such approval shall have retroactive effect to March 1, 2021) and shall terminate on May 31, 2021 (the "*Initial Term*"); provided that the Engagement may be extended beyond the Initial Term by mutual written agreement between the Client and M3. Upon the ultimate termination of the engagement (after giving effect to any extension of the Initial Term), neither Party shall have further liability to the other, except with respect to fees and expenses earned and incurred in accordance with the terms of this Agreement through the date of termination and any provisions of this Agreement which are expressly stated to survive its termination or expiration.

3. Staffing. M3 will staff a team that it believes to be appropriate to provide the Services in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties agree that the M3 team shall be led by Mohsin Y. Meghji and Brian Griffith. The individual members of the team are subject to change by M3 from time to time; *provided* that the Client shall not replace Mohsin Y. Meghji or Brian Griffith as leader of the Engagement team without the prior approval of the Client.

4. Compensation for Services. (a) M3's compensation due hereunder shall consist of, and all invoices provided hereunder shall reflect, the following:

(i) Hourly Fees: As compensation for providing the Services hereunder, M3 shall be entitled to non-refundable professional fees based on the actual hours incurred by M3 personnel on matters pertinent to the Engagement (the "*Hourly Fees*"). The Hourly Fees shall be based upon the following hourly rates:



Professional	Rate Subject to Discounted Monthly Cap ¹
Managing Partner	\$1,225
Senior Managing Director	\$1,100
Managing Director	\$925 - \$1,050
Director	\$750 - \$850
Vice President	\$675
Senior Associate	\$575
Associate	\$495
Analyst	\$395

The Hourly Fees shall be billed by M3 to the Client monthly by M3 furnishing to the Client copies of an invoice for the Hourly Fees in respect of the billing period, which invoice shall include a description of the services provided and the individual representatives of M3 that provided such services. M3 may adjust its billing rates from time to time in the normal course of business upon notice to the Client; provided, however, that M3 will not adjust such billing rates prior to January 1, 2022 without the prior approval of the Client. Notwithstanding anything to the contrary contained herein, the Hourly Fees during the Initial Term shall be subject to a cap of \$250,000 per month; provided that, in the event that the Hourly Fees for any month during the Initial Term are less than such monthly cap, amounts which have not been utilized in such month may be carried over and applied to increase the cap on a dollar-for-dollar basis for subsequent months.

(ii) Expenses: In addition to any compensation for providing the Services, the Client shall reimburse M3 for all reasonable and documented out-of-pocket expenses incurred in the performance of the Services (with it being understood that no travel costs are anticipated for the Engagement). All requests for reimbursement of an out-of-pocket expense in excess of \$100 shall be accompanied by reasonable back-up for each expense and as otherwise required by applicable law or any reasonable and customary Client policy/procedure.

(b) All amounts owing hereunder shall be paid within by the Client by wire transfer (in accordance with wire transfer instructions to be provided by M3 to the Client in writing) within twenty (20) days following receipt of an invoice complying with the requirements of this Section 4. Any amounts payable hereunder which are not paid when due shall be deemed "past due" and M3 shall have the right (but not the obligation) to take any action permitted under applicable law. M3 reserves the right to suspend further Services until payment is received on past due invoices. In the event that M3 so suspends the Services, M3 shall not be responsible or liable for any resulting loss, damage or expense due to such suspension.

¹ M3 estimates that the costs of services provided in this Agreement are well in excess of \$750,000, but has agreed to the discounted monthly cap set forth in Section 4(a)(i) of this Agreement as full and complete payment for the Hourly Fees relating to the Phase I Work.



(c) Unless expressly stated otherwise in the relevant invoice, none of the amounts invoiced by M3 from time to time with respect to the Engagement shall be contingent upon, or in any way tied to the delivery of, any specific reports or other work product in the future (other than any reports or other work product which are expressly agreed in writing between the Parties), nor upon the outcome of any case or matters. All fees payable to M3 are exclusive of taxes or similar charges, which shall be the sole obligation of the Client (other than any taxes which may be payable on account of M3's income generally, which shall be the obligation of M3). The Client shall not withhold from payment to M3 sums due for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. M3 agrees that any income tax obligation of M3 arising from the payments made under this Agreement are the sole responsibility of M3.

5. Cooperation from Client. In order to properly perform the Services and fulfill its responsibilities on a timely basis, M3 will rely on the timely cooperation of the Client and its other professional advisors, including, without limitation, making available to M3 relevant data, information and personnel, performing any tasks or responsibilities assigned to the Client and notifying M3 of any issues or concerns that the Client may have relating to the Services. The Client will provide M3 with full access to personnel, books and records of the Client relating to the performance of the Services, as well as to all advisors and professionals retained by the Client with respect to matters relating to the Engagement. The Client also will provide M3 with access to workspaces and data connectivity at the Client's offices on an as-needed basis, upon request of the City and in accordance with any process and/or City protocols. The Client understands and acknowledges that M3's proper delivery of the Services is dependent upon timely decisions and approvals by the Client and its management. M3 shall have no responsibility or liability for any delays, additional costs or other deficiencies to the extent caused by the Client failing to properly fulfill its responsibilities under this Agreement.

6. Deliverables. (a) In connection with the Engagement, M3 is anticipated to furnish the Client with information, advice, reports, analyses, presentations or other materials (the "*Deliverables*"). The Deliverables may contain factual data, the interpretation of which may change over the project term as more information or better understanding becomes available. The Client acknowledges that M3 will have no obligation to update the Deliverables as part of the Services in the event of such a change, except to the extent expressly requested by the Client in writing and consistent with the Services.

(b) Any materials prepared by M3 are solely for the confidential use of the Client and its directors, officers, employees and professional advisors and will not be distributed, reproduced, summarized, referred to, disclosed publicly or given to any other person without the prior written consent of M3, *provided* that such permission shall not be required if the materials are required to be disclosed by applicable law or by order or act of any court or governmental or regulatory authority or body (which, in the case of any order or act of the Client, must be in effect on the date hereof).

(c) The provisions of this Section shall survive the termination or expiration of this Agreement.



7. Limitations on Services. (a) The Services are limited to those specifically noted in this Agreement.

(b) M3 does not provide accounting or tax-related assistance and no Deliverable or other information or advice provided to the Client shall be deemed to be accounting or tax-related assistance. The Client shall be solely responsible for determining the accounting and tax-related implications of the Deliverables and other information and advice provided to it by M3. M3 shall not express any professional opinions on financial statements or perform attest procedures with respect to other information in conjunction with the Engagement. The Services are not designed, nor should they be relied upon, to disclose weaknesses in internal controls, financial statement errors, irregularities or illegal acts. M3 shall assume the accuracy and completeness of all information submitted by or on behalf of the Client to M3 for analysis and which will form the basis of M3's conclusions, without any obligation of M3 to verify the accuracy or completeness of such information, and M3 shall not be responsible for any analysis, advice or other Services to the extent based on inaccurate or incomplete information provided or accepted by or on behalf of the Client.

(c) The Services shall not include preparing, auditing or otherwise attesting in any way (including without limitation, with respect to the accuracy, achievability, reliability, relevance, usefulness or other appropriateness) to the Client's financial projections, and the Client has not engaged M3 for that purpose. The Services are provided based upon the understanding that the Client has sole responsibility for its financial projections (including preparation thereof), developing underlying assumptions and providing any disclosure related thereto. To the extent that, during the performance of Services hereunder, M3 is required to consider the Client's financial projections, the Client understands that M3's procedures with respect to such projections do not constitute an examination in accordance with procedures established by the American Institute of Certified Public Accountants and do not and are not intended to provide any assurance on any aspect of such projections, including, without limitation, the reasonableness of the assumptions underlying such projections, nor do they provide assurance that M3 might not become aware of significant matters affecting the reasonableness of the projections that might be disclosed by more extensive procedures. There will usually be differences between projected and actual results, and those differences may be material. The Client understands and agrees that M3 will have no responsibility or liability relating to any such differences.

(b) M3 does not provide investment advice and the Services shall not include the provision of investment advice. The Client shall have sole responsibility for all investment decisions made by it. Similarly, M3 is providing advisory and consulting services only and will not make management decisions for the Client. Although M3 may from time to time suggest or recommend options that may be available to the Client, the ultimate decision with respect to such options rests with the Client and the Client shall be solely responsible for such decision and its outcome. M3 makes no representation, promise or guarantee with respect to the outcome of any matter affecting the Client.



(d) To the extent that the performance of the Services requires that M3 form conclusions or reach opinions, M3 shall do so without regard to or consideration of the impact that such conclusions or opinions may have on the initiation or outcome of any litigation to which the Client is or may become a party.

(e) The Client shall be solely responsible for the work and fees of any third parties engaged by the Client to provide services in connection with the Engagement. M3 shall not be responsible for providing or reviewing the advice or services of any such third party, including advice as to legal, regulatory, accounting or taxation matters.

(f) The provisions of this Section shall survive the termination or expiration of this Agreement.

8. Non-Solicitation. The Client covenants and agrees that, prior to the first anniversary of the termination or expiration of this Agreement, it will not, directly or indirectly, hire directly or as an independent contractor, or refer to another for employment, any person who was during the term of this Agreement an employee or contractor of M3 or any of its affiliated entities who was involved on behalf of M3 with the Engagement or the performance of the Services. In the event of the breach of the foregoing covenant, the Client shall be liable to M3, and shall pay on demand to M3, liquidated damages equal to 200% of the total annual compensation of each relevant employee for the preceding calendar year (and, in the event that any such employee was not employed for the full year, the amount equal to 200% of his or her annualized compensation). The Parties mutually agree that the actual damages that would be sustained by M3 as the result of any such breach will be substantial and will be impossible to measure accurately, and that the foregoing liquidated damage amount is fair and reasonable. The provisions of this Section shall survive the termination or expiration of this Agreement.

9. Confidentiality.

(a) For purposes of this Section 9, the term "*Confidential Information*" means any information (without regard to the medium on which such information may be recorded, whether written, visual, audio, graphic, electronic or otherwise) concerning or relating to the property, business, customers, systems, personnel and/or affairs of the Client. Notwithstanding the foregoing, the term "*Confidential Information*" shall not include any such information which (w) is or becomes generally available to the public other than as a result of a disclosure by M3 in violation of this Agreement; (x) was already within the possession of M3 on a non-confidential basis prior to its disclosure to M3 pursuant to this agreement; (y) is or becomes available to M3 from a source that is not known to M3 to be bound by a confidentiality agreement with the Client; or (iv) is independently developed, discovered or arrived at by M3 without using any of the materials that otherwise constitute Confidential Information.

(b) M3 agrees to hold Confidential Information in confidence and to use Confidential Information only for the purposes contemplated by this Agreement. M3, its employees, representatives and agents shall not, directly or indirectly, use, publish, discuss, disclose or



communicate Confidential Information to third parties, except as expressly provided for in this Agreement.

M3 further agrees that any information received by M3, its employees, representatives, and/or agents from the Client which constitutes personally-identifiable consumer data will be treated by M3, its employees, representatives, and/or agents in full confidence and will not be revealed to any third party without the prior consent of the Client.

(c) The Client acknowledges and agrees that M3 may be required to disclose Confidential Information to governmental agencies, courts or similar authorities pursuant to applicable law, a subpoena, a court order or other legal process, and that such disclosure shall not be considered to be a violation of this Agreement, *provided* that M3 provides prompt written notice to the Client prior to disclosure to the extent legally permissible and practicable, so to allow the Client the opportunity to take action necessary to protect its Confidential Information.

(d) M3 agrees that it shall use the same degree of care to safeguard the Confidential Information as it utilizes to safeguard its own Confidential Information. M3 shall notify the Client of any breaches of the Confidential Information, to the extent it has obtained knowledge of such breach. The notice shall include: (i) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (ii) a description of the types of Confidential Information that were involved in the breach; (iii) to the extent known by M3, any steps the Client should take to protect themselves from potential harm resulting from the breach; (iv) a brief description of what M3 is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and (v) contact procedures for the Client to ask questions or learn additional information about the breach.

(e) Upon termination of this Agreement, M3 shall return (at the cost of the Client) or destroy (at M3's cost) all Confidential Information obtained in connection with the Services. Destruction of the confidential information shall be accomplished utilizing an approved method of confidential destruction, including, shredding, or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. Notwithstanding the foregoing, M3 may retain copies of the Confidential Information to the extent required (i) by applicable law or (ii) in accordance with a bona-fide written internal electronic records retention or back-up policy of Recipient.

(f) The provisions of this Section shall survive for a period of two years following the termination or expiration of this Agreement and shall supersede any separate confidentiality or analogous agreement between M3 and the Client.

10. Intellectual Property. Upon payment in full of all amounts owing to M3 hereunder, the Client will own all Deliverables furnished by M3 to the Client in connection with the Services, *provided* that M3 will retain ownership of (a) all concepts, analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by M3 in connection with the Services and (b) all other intellectual property not containing Confidential Information which has been developed by M3 outside of the provision of the Services (the "*M3 Tools*"), it being understood



that M3 will have no ownership right to, and will maintain in accordance with the provisions of this Agreement the confidentiality of, any Confidential Information contained in the M3 Tools. To the extent that the Deliverables include any M3 Tools, M3 hereby grants the Client a non-exclusive, non-transferable, non-sublicensable worldwide, royalty-free license to use and copy the M3 Tools solely as part of the Deliverables and subject to the confidentiality provisions contained in this Agreement. The Client acknowledges and agrees that the M3 Tools are provided to the Client on an "as is" basis and without any warranty or condition of any kind (whether express, implied or otherwise), and including without limitation any implied warranty of merchantability or fitness for a particular purpose. The provisions of this Section shall survive the termination or expiration of this Agreement.

11. Indemnification. The Client hereby irrevocably agrees to indemnify and hold harmless the Indemnitees (as defined in Annex I to this Agreement) to the extent described in Annex I to this Agreement, with such Annex I being incorporated herein by reference and constituting an integral and enforceable part of this Agreement. The provisions of this Section (including, without limitation, the provisions of Annex I) shall survive the termination or expiration of this Agreement. To the fullest extent permitted by law, M3 shall indemnify the Client, its board members, officers and employees from and against all liabilities caused by or the result of the negligence, recklessness, or willful misconduct of M3, or its employees, agents, or subcontractors. Liabilities subject to the duty to indemnify include, without limitation, all claims, losses, damages, penalties, fines and judgements; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorney's fees; court costs. M3 shall have no obligation to indemnify where such liabilities are by the sole active negligence or willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then the Firm's indemnification obligation shall be reduced in proportion to the established comparative liability. The indemnification provided by this Agreement shall be a continuing right to indemnification and shall survive the expiration or termination of this Agreement.

12. Required Insurance Coverage. During the term of the Engagement, M3 will maintain, at its own expense, insurance coverage with limits of no less than those set forth below, and with insurers with a minimum A.M. Best Financial Strength rating of "A- (Excellent)" and Financial Size rating of "X", or equivalent ratings from other valid rating agencies.

(a) Professional Liability Insurance ("Errors and Omissions") in the minimum amount of \$3,000,000 per occurrence, covering losses from any act, errors, omissions, negligence, breach of contract and/or misrepresentations related to M3's obligations under this Agreement.

(b) Commercial General Liability including broad form contractual liability and personal injury endorsement, providing coverage against liability for bodily injury, death, and property damages in the minimum amount of \$1,000,000 per occurrence and no less than \$2,000,000 annual aggregate.



(c) Workers Compensation insurance and Employers Liability Coverage covering M3's employees pursuant to applicable state laws and at the statutory limits required for each such state.

13. Limitation on Damages. In no event shall M3 or any other Indemnitee be liable to the Client or its affiliates, successors, or any person claiming on behalf of or in the right of the Client (including the Client's owners, parents, affiliates, directors, officers, employees, agents, security holders, or creditors) for (i) any amount which, when taken together with all losses for which M3 and the Indemnitee are liable in connection with this Agreement or the Engagement, would exceed the amount of fees for the Services actually received by M3 from the Client in connection with the Engagement during the immediately preceding 12 months or (ii) any special, consequential, incidental or exemplary damages or loss (or any lost profits, savings or business opportunity) (collectively, the "*Liability Cap*"). This paragraph shall apply regardless of the nature of any claim(s) (including claims based on contract, statute, negligence, tort, strict liability or otherwise), regardless of any failure of the essential purpose of any remedy and whether or not M3 was advised of the possibility of the damage or loss asserted, but shall not apply to the extent finally determined by final and non-appealable judgment of a court of competent jurisdiction to be prohibited by applicable law. For the avoidance of doubt, the Parties hereby irrevocably agree that the Liability Cap is intended to be the total limit of liability for M3 and all other Indemnitee in the aggregate for any and all claims or demand by anyone in connection with this Agreement, the Services and the Engagement, including without limitation any liability to the Client and to any others making claims relating to the Services and the Engagement. Any such claimants shall allocate among themselves any amounts payable by M3, but the failure of the claimants to reach such an agreement shall not affect the enforceability of the Liability Cap. Under no circumstances shall the collective liability of M3 and the other Indemnitee in connection with this Agreement exceed the Liability Cap. The provisions of this Section shall survive the termination or expiration of this Agreement.

14. Client Acknowledgement. The Client hereby acknowledges and agrees that M3 may, in the ordinary course of its business, serve clients who are competitive with, or have conflicting interests with, the Client. Consistent with its confidentiality obligations hereunder and its confidentiality obligations to its other clients, M3 will not advise or consult to the Client with respect to any aspect of M3's engagement or potential engagement with any other client, potential client or former client. Similarly, M3 will not advise or consult to any other client, potential client or former client with respect to any aspect of the Engagement. M3 will maintain the confidentiality of the Confidential Information in accordance with the terms of this Agreement and, similarly, will not share confidential information of any client, potential client or former client of M3 with the Client. The provisions of this Section shall survive the termination or expiration of this Agreement.

15. Representations and Warranties of the Parties.

(a) Each Party hereby represents and warrants, for the exclusive benefit of the other Party, that (i) each of the execution and delivery of this Agreement, and the performance such Party of its obligations hereunder, has been duly authorized in accordance with applicable law, (ii) this Agreement constitutes the legal, valid and binding obligation of such Party, enforceable



against it in accordance with its terms, (iii) all approvals, consents and authorizations required under applicable law for the execution, delivery and performance of this Agreement by such Party have been duly obtained and remain in full force and effect, (iv) that it has no obligations, legal or otherwise, inconsistent with the terms of this Agreement, (v) that the incurrence of its obligations under this Agreement does not violate any applicable law, rule or regulation or, to its knowledge, any proprietary or other right of any third party, and (vi) it has not entered into any Agreement (whether oral or written) which conflicts with this Agreement in any material respect.

(b) The Client hereby further represents and warrants, for the sole benefit of M3, that (i) it has entered the services to be purchased hereunder and all other required information into any necessary purchase order or requisition, (ii) it has obtained certification of available funds by the City Comptroller and approval by the City Manager, (iii) it has obtained approval of the obligations to be incurred by the Client hereunder from the City Council by resolution, (iv) no competitive bidding process is required under applicable law for the execution and delivery of this Agreement by the Client or the performance of its obligations hereunder and (v) the Client has no basis for a claim of sovereign immunity (or analogous concept) as a defense to its obligations hereunder and, to the extent that a defense may exist with respect to this Agreement and the obligations of the Client hereunder, the Client hereby irrevocably and unconditionally waives such defense. For purposes of this Section 15, all references to "applicable law" shall include, without limitation, the Code of Ordinances of the City of Long Beach, New York, as in effect on the date hereof.

16. Source of Funds. The Client acknowledges and agrees that M3 is not acting as a state or federal contractor or subcontractor or as a federal grant recipient or subrecipient and that no state or federal funds will be specifically directed by the state or federal government to make any payments to M3 (i.e., M3 will be paid from the Client's general fund and not by or from any other source) in connection with this engagement. For the avoidance of any doubt, the Client acknowledges and agrees that M3 is not subject to Article 15-A of the New York State Executive Law or Executive Orders 11246 or 11375 or any related, similar, or applicable state or federal rules, regulations, or orders.

17. Termination. Either Party may terminate this Agreement for any reason upon seven (7) days' written notice to the other. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder prior to the effective date of such termination.

18. Miscellaneous.

(a) For purposes of any provision of this Agreement which specifies that consent or approval of the Client is required, the consent or approval of the City Manager of the Client shall be deemed to satisfy such requirement and M3 may rely, without further investigation, upon any consent, approval or instruction provided by the City Manager.

(b) This Agreement (i) constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements (both written and oral) among the parties with respect to the subject matter hereof, and (ii) may be modified, amended or supplemented only by prior written agreement of each of the Parties.



(c) The invalidity, illegality, or unenforceability of any provision in or obligation under this Agreement in any jurisdiction shall not affect or impair the validity, legality, or enforceability of the remaining provisions or obligations under this Agreement or of such provision or obligation in any other jurisdiction. If feasible, any such offending provision shall be deemed modified to be within the limits of enforceability or validity; *provided* that, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

(d) Any notice to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt and mailed notices will be deemed communicated as of five (5) days after mailing. Notice shall be delivered or mailed to:

If to the Client: City of Long Beach
 1 West Chester Street
 Long Beach, NY 11561
 Attention: Ms. Donna M. Gayden, City Manager

If to M3: M3 Advisory Partners, LP
 1700 Broadway, 19th Floor
 New York, NY 10019
 Attn: Mohsin Y. Meghji

(e) M3 shall not discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status.

(f) Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or M3 or shall cause either Party to owe any obligation to a person (natural or otherwise) other than the other Party.

(g) All employees of M3 shall be deemed employees of M3 for all purposes and M3 alone shall be responsible for their work, personal conduct, direction, and compensation. M3 acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of the Client. M3 is retained by the Client only for the purpose and to the extent set forth in this Agreement, and its relationship to the Client shall, during the periods of its services hereunder, be that of an independent contractor. None of M3 or any officer, employee or agent thereof shall be considered as having employee status or shall be entitled to participate in any of the Client's



workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs, or as having any other rights, privileges or benefits that would be derived from employment by the Client. M3 agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein and the other rights and benefits expressly described here. M3 shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between the Client and its employees.

(i) M3 shall furnish each individual providing service hereunder with a photo identification badge to be worn at all times while the individual is on the premises of the Client.

(j) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument, and all signatures need not appear on any one counterpart. Further, a copy of a signature on a facsimile or electronic transmission of this Agreement shall have the same force and effect as if it were an original signature.

(k) This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any State court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.

(l) The undersigned representative of each party represents and warrants that the undersigned is an officer, director, or agent of such Party with full legal rights, power and authority to enter into this Agreement on behalf of such Party and bind such Party with respect to the obligations enforceable against it in accordance with its terms.

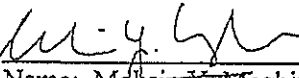
[Remainder of Page Intentionally Left Blank]

This Agreement shall be binding upon the Parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.


Very truly yours,

M3 ADVISORY PARTNERS, LP

By: 
Name: Mohsin Y. Meghji
Title: Managing Member

ACCEPTED AND AGREED
as of the date first set forth above:

CITY OF LONG BEACH

By: 
Name: Donna M. Gayden
Title: City Manager

Authorizing Resolution: 64/21



Annex I

AGREEMENTS REGARDING INDEMNIFICATION

In consideration of M3 performing the Services for the benefit of the Client, the Client (the "Indemnitor") shall indemnify M3 and its affiliates, equity holders, partners, directors, employees, agents, representatives and contractors, including past, present or future partners, principals and personnel of each (collectively hereinafter called the "Indemnitees") against all costs, fees, expenses, damages, and liabilities (including defense costs) associated with any pending or threatened claim, action, proceeding or investigation (a "Claim") relating to or arising as a result of the Engagement or the provision of the Services, the Client's use or disclosure of the Deliverables, or this Agreement ("Losses"). This provision is intended to apply regardless of the nature of any Claim (including contract, statute, any form of negligence, whether of the Client, M3, or others, tort, strict liability or otherwise), except to the extent such Losses are determined by a final and non-appealable judgment of a court of competent jurisdiction to be the result of M3's bad faith, gross negligence or willful misconduct.

The Indemnitor shall not, without M3's prior written consent (which will not be unreasonably withheld) settle, compromise, or consent to the entry of any judgment in any pending or threatened Claim in respect of which indemnification could reasonably be sought hereunder (whether or not M3 or any other Indemnitee is an actual or potential party to such Claim), if such settlement, compromise, or consent does not include an unconditional release of each Indemnitee from all liability arising out of such Claim; *provided, however*, that the Indemnitor shall not enter into any such settlement, compromise or consent of a Claim without M3's prior written consent (which may be granted or withheld in M3's sole discretion) if such settlement, compromise or consent provides for injunctive relief against an Indemnitee or an admission of liability by an Indemnitee or would require payment of any amount by an Indemnitee or any insurer of an Indemnitee. The Indemnitor shall not be liable hereunder to any Indemnitee for any amount paid or payable in the settlement of any action, proceeding or investigation entered into by such Indemnitee without the Indemnitor's written consent.

Upon receipt by an Indemnitee of actual notice of a Claim against such Indemnitee in respect of which indemnity may be sought hereunder, such Indemnitee shall promptly notify the Indemnitor with respect thereto. In addition, an Indemnitee shall promptly notify the Indemnitor after any action is commenced (by way of service with a summons or other legal process giving information as to the nature and basis of the claim) against such Indemnitee in respect of which indemnity may be sought hereunder. In any event, failure to notify the Indemnitor shall not relieve the Indemnitor from any liability which the Indemnitor may have on account of this indemnity or otherwise, except to the extent, and only to the extent, that the Indemnitor shall have been materially prejudiced by such failure.

Indemnitor shall advance all expenses indemnifiable hereunder that are reasonably incurred by or on behalf of each Indemnitee in connection with any Claim within thirty (30) days after receipt by Indemnitor of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Claim. Such statement or statements shall reasonably evidence the expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any

expenses advanced if it shall ultimately be determined by a final and non-appealable judgment of a court of competent jurisdiction that Indemnitee is not entitled to be indemnified against such expenses. Any advances and undertakings to repay pursuant to this paragraph shall be unsecured and interest free.

To the extent that the Indemnitor so elects, it shall be entitled to assume the defense, with counsel selected by the Indemnitor (and approved by M3, with such approval not to be unreasonably withheld), of any action that is the subject of the Claim in respect of which indemnity may be sought. After notice to the Indemnitees of its election to assume the defense thereof, the Indemnitor will not be liable to the Indemnitee under this Agreement for any expenses subsequently incurred by such Indemnitee in connection with the defense thereof except as otherwise provided below. Such Indemnitee shall have the right to employ counsel of its choice in such Claim, but the fees and expenses of such counsel incurred after notice from the Indemnitor of the assumption of the defense thereof shall be at the expense of the Indemnitee unless the employment of counsel by the Indemnitee has been authorized by the Indemnitor, in which case the reasonably incurred fees and expenses of such counsel of the Indemnitee shall be at the expense of the Indemnitor.

The Client agrees that neither M3 nor any other Indemnitee shall have any liability (whether direct or indirect and regardless of the legal theory advanced) to the Client or any person or entity asserting claims on behalf of or in right of the Client caused by, relating to, based upon or arising out of (directly or indirectly) this Agreement or the Engagement, except for losses, claims, damages, penalties or liabilities incurred by the Client which are finally determined by a non-appealable judgment of a court of competent jurisdiction to have resulted primarily and directly from the bad faith, willful misconduct or gross negligence of M3 or any such other Indemnitee, as the case may be. In no event, however, shall M3's or any other Indemnitee's liability to the Client or their respective affiliates, successors, or any person claiming on behalf of or in the right of the Client (including the Client's owners, parents, affiliates, directors, officers, employees, agents, security holders, or creditors) exceed the Liability Cap.

In the event that any M3 personnel are requested or required to appear as a witness in connection with any claim, action or proceeding relating to or arising as a result of the Engagement or the provision of the Services, the Client's use or disclosure of the Deliverables, or this Agreement, the Indemnitor shall, to the extent permitted by applicable law, reimburse M3 for all reasonable and documented out-of-pocket expenses incurred by it in connection with such personnel appearing and preparing to appear as a witness, including, without limitation, the reasonable fees and disbursements of its legal counsel, and to compensate M3 at a rate equal to M3's then standard hourly rate for the relevant personnel for each day that such personnel is involved in preparation, discovery proceedings or testimony pertaining to such Claim. Additionally, M3 will have the right to obtain advice from independent legal counsel with respect to its actual or potential obligations and liability hereunder and the Client will promptly reimburse M3 for the reasonable out-of-pocket fees and expenses paid by M3 on account thereof.

The provisions of this Annex I shall be deemed to be an integral part of this Agreement to which this Annex I is affixed and shall survive the termination or expiration of this Agreement for any reason. The provisions of this Annex I shall be binding upon the Client and its successors and assigns.



April 13, 2021

Item No. 2

Resolution No. 64/21

The following Resolution was moved by Mr. Delury and seconded by Pres. Bendo ;

Resolution Authorizing the Retention of M3 Partners, LP.

WHEREAS, the City of Long Beach faces current and prospective financial obligations which could exceed \$460 million; and

WHEREAS, the City's history of borrowing money to fulfill its financial obligations, among other factors, have contributed to the decline of its fiscal health and has led to a credit status of Baa2 with a negative outlook; and

WHEREAS, the City of Long Beach desires to engage the services of a financial consulting firm to assist in turning around and/or restructuring the City's financial obligations; and

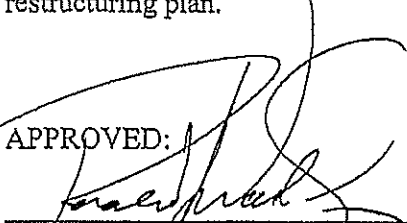
WHEREAS, M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019 has a team of professionals specializing in financial turnaround and restructuring; and

WHEREAS, the City of Long Beach desires to retain the consulting services of M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019;

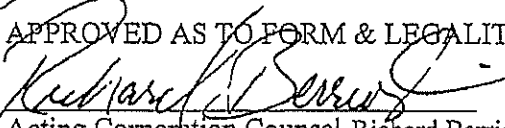
NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York, that the City Manager be and is hereby authorized to enter into a limited retainer agreement with M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019 to work with the City and its consultants to provide services which include, but are not limited to: (a) a rolling 13-week cash flow forecast to assess liquidity & identify inflow/outflow timing issues; (b) assisting the City in developing long-term budget projections in conjunction with the City's existing advisor to provide visibility on severity of fiscal issues; (c) identifying credible strategic alternatives to address operational and financial issues; and (d) assist the City in implementing/executing a restructuring plan.

APPROVED:


Acting City Manager - Ronald J. Walsh, Jr.

APPROVED AS TO FORM & LEGALITY:


Acting Corporation Counsel - Richard Berrios

VOTING:

Council Member Delury	-	AYE
Council Member Mandel	-	AYE
Council Member Treston	-	AYE
Vice President McInnis	-	AYE
President Bendo	-	AYE