

JOB ORDER CONTRACT AGREEMENT

JOC 2511

THIS JOB ORDER CONTRACT (Agreement), is entered into this ____ day of _____ 20____, by and between the COUNTY OF SAN MATEO, a Political Subdivision of the State of California, hereinafter called the "County", and Pro Spectra Contract Flooring, hereinafter called the "Contractor".

WITNESSETH that the Contractor and the County, in consideration of the mutual covenants, considerations and agreements herein contained, agree as follows:

STATEMENT OF WORK - The Contractor shall furnish all labor and materials and perform all work for: Job Order Contract for, **JOC-25211**, in strict accordance with the Contract Documents. The Work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

AUTHORITY - A separate Job Order Authorization duly signed by the County's Director of Public Works (or his designee) will be issued under this Agreement for each individual Job Order.

TIME FOR COMPLETION - The individual Job Orders to be performed under this Agreement shall each be commenced and completed by the dates prescribed in their respective Notices to Proceed.

DURATION - The term of this Job Order Contract is one year, except that the terms of this Agreement shall continue to cover Job Orders issued during that year until the Work thereunder has been completed. Accordingly, all Job Orders must be issued within one calendar year of the commencement date of this Agreement.

COMPENSATION TO BE PAID TO CONTRACTOR – In accordance with the Contract Documents, the County will pay, and the Contractor will accept, in full consideration for the performance of the Contract, the Unit Prices set forth in the Construction Task Catalog® (CTC) as defined in each Job Order Detailed Scope of Work (Work), subject to additions, deductions, procedures for payment, and the following Adjustment Factors:

Normal Working Hours Adjustment Factor	1.3800
Other than Normal Working Hours	1.6800
Detention Facilities Normal Working Hours	1.4000
Detention Facilities Other than Normal	1.7000
OSHPD Facilities Normal Working Hours	1.3800
OSHPD Facilities Other than Normal	1.6800

There is no Minimum Contract Value. The initial Contract amount shall be **\$200,000** for purposes of Payment Bond and Performance Bond amounts. The value of the total amount of Job Orders may be increased by the County, but in no event may the total value of Job Orders issued pursuant to this Contract exceed **\$2,000,000**.

At no time may the sum of the outstanding Job Orders exceed the amount of the Payment Bond and Performance Bond. A Job Order is outstanding until the County has accepted the Project described in the Job Order by execution of a Notice of Completion.

The Contractor will not be issued Job Orders which in total exceed the Maximum Contract Value. The Owner does not guarantee the Contractor will receive this volume of Work. Payment for any Work performed after the one-year term of this Contract will be subject to any applicable terms or restrictions imposed by Public Contract Code Section 20128.5.

The Contract as defined in paragraph 1.1 of the General Conditions constitutes the sole agreement of the parties hereto relating to said work and correctly states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing.

Contractor shall not assign this Agreement or any portion of it to a third party to provide services required by Contractor under this Agreement without the prior written consent of the County, the Director of Public Works or his designee. Any such assignment without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

The Contract Documents consist of:

1. This Job Order Contract Agreement
2. The General Conditions
3. Special Provisions
4. Job Orders
5. Construction Task Catalog®
6. Technical Specifications

IN WITNESS WHEREOF, the parties hereto on the day and year first above written have executed this agreement in three counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original thereof.

COUNTY OF SAN MATEO
A Political Sub-Division of the State of California

By _____
President, Board of Supervisors

Attest:

Michael P. Callagy
Clerk of the Board of Supervisors

Contractor

By _____

CONTRACT DOCUMENTS

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1. THE CONTRACT

1.1. DEFINITIONS

Adjustment Factor

The Contractor's competitively bid price adjustment to be applied to the Unit Prices as published in the Construction Task Catalog®. Adjustment Factors are expressed as a multiplicative increase or decrease from the published prices in the Construction Task Catalog®.

Award Criteria Figure

The sum of the extended totals as calculated in the bid form, used for the purposes of determining the low bid.

Construction Task Catalog®

A comprehensive listing of construction related specific repair or refurbishment tasks together with a specific unit of measurement and a published Unit Price. (Also referred to as the 'CTC'.)

Detailed Scope of Work

The complete description of services to be provided by the Contractor pursuant to an individual Job Order. The Detailed Scope of Work will include documentation for a given project. Documentation may include a narrative description of the Work, partial design documents, or full design documents, depending on the complexity of the specific project. (Also referred to as 'DSW'.)

Detention Facilities Normal Working Hours

Hours of Work between 6:00 AM and 6:00 PM, Monday through Friday to be performed in Detention Facilities.

Detention Facilities Other than Normal Working Hours

Hours outside Normal Working Hours including all day Saturday, Sunday, and County Holidays to be performed in Detention Facilities.

General Facilities Normal Working Hours

Hours of Work between 6:00 AM and 6:00 PM, Monday through Friday to be performed in General Facilities.

General Facilities Other than Normal Working Hours

Hours outside Normal Working Hours including all day Saturday, Sunday, and County Holidays to be performed in General Facilities.

Job Order

A document signed by the County that describes Work to be accomplished. The County has sole discretion to determine the number and scope of Job Orders issued. Each Job Order

will include a Detailed Scope of Work, a Job Order Price, a Job Order Completion Time of the Work, and any special conditions that might apply to that specific Job Order, such as Liquidated Damages. (Also referred to as 'Job Order Documents'). A project may consist of one or more Job Orders.

Job Order Authorization

Written notice signed by the County's (Deputy) Director of Public Works to Contractor authorizing the funds appropriation for, and the final scope and costs agreed upon for the individual Job Order.

Job Order Contract

A competitively bid, indefinite quantity contract for accomplishing repair and refurbishment and related services. Work is accomplished through the issuance of individual Job Orders. (Also referred to as 'JOC' and 'Contract').

Job Order Notice to Proceed

Written notice issued by the County to Contractor directing the Contractor to proceed with construction activities and specifying the first day charged to the Job Order and the Job's overall duration.

Job Order Plans

The graphic and pictorial portions of the Job Order as defined in the Detailed Scope of Work, illustrating the design, character, location, and dimensions of the Work to be performed, generally including but not limited to, elevations, sections, details, schedules, General Notes, specific notes, and diagrams. Synonymous with "Drawings", "Contract Drawings", and "Plans".

Job Order Proposal Package

The documents prepared by the Contractor stating a lump sum price to perform a specific Detailed Scope of Work. The Job Order Proposal includes shop drawings and sketches, permits and submittals as necessary, a detailed Job Order Price Proposal comprised of line items from the Construction Task Catalog®, supporting documentation for any Non-Pre-Priced items, a construction schedule, a list of anticipated Subcontractors and Suppliers, and other documentation as may be required by the County prior to the issuance of a Job Order.

Job Order Price Proposal

A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non-Pre-Priced Tasks, quantities, and appropriate Adjustment Factors required to complete the Detailed Scope of Work. (Also referred to as Proposal).

Job Order (Task) Specifications

Description of the manner of performing the Work, the quantities, qualities, and types of materials to be furnished. (Also referred to as Specifications)

Job Order Price

The compensation sum stated in the Job Order Price Proposal including authorized adjustments by Supplemental Job Order, which is the total amount payable by the County to the Contractor for the performance of the Work pursuant to the Contract Documents.

Job Order Completion Time(s)

Unless otherwise provided, the Job Order Completion Time is the period, including authorized adjustments, identified in the Contract Documents for Completion of the Job Order or a designated portion of the Job Order by the Contractor.

Joint Scope Meeting

Meeting at the project site attended by the County and the Contractor to jointly scope the Work before the Detailed Scope of Work is finalized.

Maximum Contract Value

The maximum dollar value of Job Orders the County may order, and the Contractor may receive during the term of the Job Order Contract.

Minimum Contract Value

The minimum dollar value of Job Orders the Contractor is guaranteed the opportunity to perform during the term of the Job Order Contract.

Non-Pre-Priced Tasks

Units of Work that are not included in the Construction Task Catalog® but which are within the general scope and intent of this Contract. (Also referred to as 'NPP').

OSHPD Facilities Normal Working Hours

Hours of Work between 6:00 AM and 6:00 PM, Monday thru Friday to be performed in OSHPD Facilities.

OSHPD Facilities Other than Normal Working Hours

Hours outside Normal Working Hours including all day Saturday, Sunday, and County Holidays to be performed in OSHPD Facilities.

Pre-Priced Task

A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.

Project

The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.

Request for Job Order Proposal

The County's formal written request for the Contractor to prepare and provide a Job Order Proposal for the Detailed Scope of Work referenced therein. (Also referred to as 'RFP').

Supplemental Job Order

A secondary written agreement entered into after the award of the Job Order that alters or amends the original Job Order. Changes in the Work requested are accomplished by the issuance of a Supplemental Job Order. Changes involving extensions of time, assessment of liquidated damages, adjustment for net credits, and additive or deductive changes are accomplished by issuance of a Supplemental Job Order to the original Job Order.

Technical Specifications

The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

Unit Price

The price published in the Construction Task Catalog® for a specific construction related repair or refurbishment task. The Unit Prices are fixed for the duration of the Contract. Each Unit Price is comprised of the Labor, Equipment and Materials costs to accomplish that specific task.

Work

The term "Work" means all contractual obligations required by the Contract Documents, whether completed or partially completed, and includes all other tools, equipment, labor, and material necessary to perform and complete the project in a good and workmanlike manner within the time set forth and in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The Work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

1.2. CONTRACT DESCRIPTION

The Contract Documents form the entire Contract between the Contractor and the Owner. The Contract supersedes prior negotiation and representations, either written or oral. Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Amendment.

1.3. CONTRACT DOCUMENTS

The Contract Documents consist of the Notice to Contractors, Instructions to Bidders, Agreement, General Conditions, Special Provisions, Supplementary Conditions, Technical Specifications, Construction Task Catalog®, Addenda, Revision Orders, Request for Proposals, Detailed Scopes of Work, Job Orders, Supplemental Job Orders, Drawings, Specifications Field Orders, other documents listed in the Agreement or included in the Project Manual, and written interpretations and instruction when issued in accordance with the provisions herein.

In the event of conflicting provisions within the Job Order Contract, the following order of precedence with item "1" representing the highest precedence, for resolution of the conflict shall apply:

1. Agreement
2. Addenda (later takes precedence over earlier)
3. Job Orders (including Detailed Scopes of Work and Requests for Proposals)
4. Project Manual (IFB/ RFP)
5. The Construction Task Catalog®
6. Technical Specifications

The Contract Documents are complementary and what is required by anyone shall be as binding as if required by all. The Contract Documents are not necessarily complete in every detail. The Contract is to include all labor, materials, equipment, and other items as necessary for the proper execution and completion of the work as specified or reasonably inferable as being necessary to produce the intended results in accordance with high quality industry standards.

An item designated by reference to the number, symbol, or title of a specific standard such as a commercial standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendments or supplement thereto in effect on the date of the bid. The standards referred to shall have full force and effect as though printed in the Specifications.

The County will arrange for the Contractor to have access to one set of the Construction Task Catalog® and Technical Specifications. On each Job Order the County will arrange for the Contractor to have access to one set of the Detailed Scope of Work including any reproducible Drawings and Specifications. The Contractor may at his expense, reproduce the documents as needed. All Documents, Drawings and Specifications and copies thereof are the property of the Owner. They are not to be used on other projects.

For convenience, the Specifications may be arranged in sections and the Drawings may be arranged by system or otherwise. Such separation shall not be considered as the limit of Work required of any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his Subcontractors.

In general, the Drawings will indicate dimensions, position, quantity, and kind of construction; and the Specifications will indicate quality and method. Work indicated in one but not the other shall be furnished as though fully set forth in both. Work not specifically detailed, marked, or specified, shall be the same as similar work that is marked, specified, or detailed.

The Project Manual is a collection of documents assembled for the convenience of the parties and usually includes, but is not limited to, the Notice to Contractors, Instructions to

Bidders, General Conditions, Supplementary General Conditions, Special Provisions, Bid Documents, Agreement, and Specifications.

1.4. ERROR IN THE DOCUMENTS

Should an error or conflict appear in the Contract Documents, or a conflict with the documents and actual conditions, the Contractor shall notify the Owner's Representative at once, and the Owner's Representative will issue instructions. If the Contractor proceeds with the work without such instructions, he shall make good any resulting unacceptable work or consequences.

Whenever the documents could be construed to be ambiguous or conflicting, the Contractor is deemed to have included the cost of the more expensive material, method, or requirement in the Job Order Price.

Figured dimensions shall govern over scaling and large-scale details shall govern over smaller scale details.

1.5. SEPARATE CONTRACTS

The Owner reserves the right to let other contracts in connection with a Project. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If any part of Contractor's Work depends for proper execution or results upon the work of another contractor, the Contractor shall inspect and measure the work of other contractor and promptly report to the Owner all defects or discrepancies that render it unsuitable for such proper execution or results. Contractor's action of proceeding with his work shall constitute his acceptance of the prior work as fit and proper for the reception of his work.

The Contractor shall make good any damage he may do to another contractor's work to the Owner's satisfaction.

1.6. CONTRACT TERMINATIONS

A. Owner's Right to Terminate Contract for Cause

If Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should fail to supply enough properly skilled workmen or materials to maintain the schedule, or if he should fail to diligently and expeditiously prosecute the Work, or if he should fail to commence the Work on the Project site within ten calendar days of the date of the Job Order Notice to Proceed, or if he should fail to make prompt payments to Subcontractors or for materials or labor, or persistently disregard laws, ordinances or the instructions of the Owner or Architect, or otherwise breach any provision of the Contract between the Contractor and Owner, the Owner may without

prejudice to any right or remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract or terminate the Contractor's right to proceed with the Job Order and the Work and take possession of the premises and of all materials, tools and appliances thereon and finish the Work by whatever method the Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount shall exceed the expense of finishing the Work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

B. Owner's Right to Terminate Contract for Convenience

The Owner reserves the right to terminate this contract or any Job Order at any time. Contractor shall be compensated on the basis of the reasonable value of the portion of Work completed as prorated against the Job Order Price or shown as a separate price and the cost incurred for portions of the Work performed but not completed. The total payments to contractor shall not exceed the Job Order Price(s).

C. Contractor's Right to Terminate Contract

Except as provided by paragraph 1.5 D Emergency Termination, if the Work should be stopped by the Owner, or an order of the court, or other public authority for a period of six months, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon twenty-one (21) days written notice to the Owner, terminate this Contract and recover from the Owner the amount owed under the Contract for the portion of Work, if any, which was completed.

D. Emergency Termination

This Contract is subject to termination as provided by Section 4410 and 4411 of the Public Contracts Code of the State of California, being portions of the Emergency Termination of Public Contracts Act of 1949. Said Sections read as follows:

"Sec. 4410. TERMINATION OF CONTRACT FOR PUBLIC WORK IN EVENT OF NATIONAL EMERGENCY. In the event a national emergency occurs, and public work, being performed by Contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment, or labor, as the result of an order or of a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work, then the public agency and the Contractor may, by written agreement, terminate said Contract."

"Sec. 4411. INCLUSION OF TERMS AND CONDITIONS OF TERMINATION OF CONTRACT IN AGREEMENT: COMPENSATION TO CONTRACTOR. Such an agreement shall include the terms and conditions of the termination of the Contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case."

"Compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory Work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the work for which there is a separate Contract price, the Contract price shall control. The parties may in any other case adopt the Contract price as the reasonable value of the Work or any portions thereof."

1.7. DISPUTES

Should any dispute including breach, arise out of or relate to this Contract the Contractor shall continue to perform the Work in accordance with the Contract Documents and the Owner and Contractor agree to pursue resolution of the disagreement by whatever means available. Neither the dispute resolution process, the resolution, nor lack of resolution shall delay, hinder, or alter the completion of the Work in accordance with the undisputed portion of the Contract Documents and in accordance with the Owner's direction to Contractor regarding disputed portions of the Contract.

1.8. SEVERABILITY

In the event that any provision or any part of a provision of this Contract shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Contract, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

1.9. HEADINGS

The headings of any section or provision of this Contract are for convenience only and shall not be deemed to limit, restrict, or alter the content, meaning or effect thereof.

2. CHANGES IN THE WORK

2.1. MODIFICATIONS TO DOCUMENTS

The Owner, without invalidating the Contract and without consent of surety, may accomplish changes in the Work within the general scope of the Job Order and the Contract consisting of additions, deletions or other revisions, the Job Order Price and the Job Order Completion Time being equitably adjusted accordingly. All such changes in the Work shall be accomplished by Supplemental Job Order, Field Order, Owner's Instructions or Architect's Instruction as may be applicable in accordance with the provisions herein. The

Job Order Price and the Job Order Completion Time may be changed only by a Supplemental Job Order. Changes to the Work shall be performed under the applicable provision of the Contract Documents for similar Work. Contractor agrees to promptly proceed with the Work as so changed. All changes to the Work and all Contractor requests for additional compensation shall be resolved in accordance with this Section 2, Changes in the Work.

A Supplemental Job Order Detailed Scope of Work is a written order from the Owner or Architect ordering a change in the Job Order Detailed Scope of Work. Upon receipt of a Supplemental Job Order Detailed Scope of Work, the Contractor shall promptly proceed with the Work as changed. Within twenty (20) calendar days after receiving a Supplemental Job Order Detailed Scope of Work and prior to or simultaneously with proceeding with the change in the Work, Contractor shall advise the Architect or Owner of Contractor's disagreement, if any, with the terms of the Supplemental Job Order Detailed Scope of Work and shall state the nature and extent of the disagreement. Proceeding with the Work as changed without submitting a notice of disagreement indicates Contractor's full acceptance of the Supplemental Job Order Detailed Scope of Work including the proposed adjustment, if any, in Job Order Price and Job Order Completion Time. A Supplemental Job Order is required to adjust the Job Order Price and Job Order Completion Time for changes in the Job Order. A Notice for Extension of Time (duly authorized) shall also serve to adjust Completion Time. The Contractor will not delay the Work for any reason including pending Supplemental Job Orders or unresolved price or time adjustments.

A Supplemental Job Order (duly authorized) is a written document issued after the original Job Order Notice to Proceed acknowledging a change in the Job Order and modifying the Job Order Price and Job Order Completion Time in full compensation for the change and its effects on the schedule and all other impacts on the Work and the Project. A Notice for Extension of Time (duly authorized) shall also serve to adjust Completion Time.

The issuance of the Supplemental Job Order indicates the final and conclusive acceptance of the stated terms and provisions as full compensation for the change to the Job Order. In the event the Owner and Contractor do not agree upon the adjustment to the Job Order Price and Job Order Completion Time the Owner may issue a Supplemental Job Order unilaterally. A Supplemental Job Order issued unilaterally is signed by the Owner and issued to the Contractor authorizing an adjustment in the Job Order Price and Job Order Completion Time as the Owner deems equitable per the Contract Documents.

If Contractor disagrees with the terms or provisions of a unilaterally issued Supplemental Job Order, the Contractor shall give the Owner and Architect written notice of his disagreement, the basis thereof, and supporting documentation within twenty (20) calendar days of receiving the unilateral Supplemental Job Order. Such notice of disagreement does not excuse performance by the Contractor of all obligations under the Contract Documents and the Contractor shall proceed with the Work including the Work involved with the disagreement. Payments shall be made to the Contractor on the basis of

the unilateral Supplemental Job Order. Failure to present such notice of disagreement constitutes a waiver by the Contractor of any entitlement to additional cost or time.

The Owner and Architect have the authority to issue instructions to the Contractor which may require minor changes in the Work not involving an adjustment in the Job Order Price or an extension of Job Order Completion Time. If contractor believes an adjustment of Job Order Price or Job Order Completion Time is warranted, Contractor shall not incur additional cost or delay and notify the Owner or Architect in writing within 24 hours of receiving the notice.

A Field Order is a written document signed by the Owner and issued to the Contractor to perform as so specified. The Contractor shall immediately comply with Field Orders. If the Contractor believes an adjustment of Job Order Price or Job Order Completion Time is justified, a request may be submitted in accordance with Section 2.4, Contractor Claims. If the Owner concurs with the Contractor a Supplemental Job Order will be issued.

2.2. VERBAL INSTRUCTIONS

Contractors shall not act or rely upon verbal instructions. No work will be accepted by the Owner that differs from the Contract Documents as modified in writing.

2.3. METHOD OF DETERMINING ADJUSTMENT

An adjustment to the Job Order Price or Job Order Completion Time pursuant to a Supplemental Job Order, Field Order, Claim, or other provision herein shall be determined in the following way.

By the issuance of a Supplemental Job Order to accommodate the changes. The procedures for the issuance of such a Supplemental Job Order are the same as the procedures for the issuance of the original Job Order with the exception of a Notice to Proceed. A Notice to Proceed will not be issued for a Supplemental Job Order. Any additions or deletions are therefore calculated by using the appropriate item in the Construction Task Catalog®, times the quantity to be adjusted, times the appropriate Adjustment Factor.

If the adjustment is not determined by the above methods prior to the Contractor starting work involved with a Supplemental Job Order, Field Order or Claim, Contractor, shall proceed with the Work and keep daily accurate records of the Work performed. Copies of the records shall be given to the Owner or Architect daily. Contractor shall present at such time and in such form as Owner may prescribe, a Supplemental Job Order Proposal together with appropriate supporting data as may be required by Owner to fully substantiate the changed Work. Any additions or deletions of the work are calculated by using the appropriate item in the Construction Task Catalog®, times the quantity to be adjusted, times the appropriate Adjustment Factor.

Extension of Job Order Completion Time will be granted only to the extent that the time required to complete the Work as changed or delayed extends the schedule critical path beyond the contract completion date.

Credits for Pre-priced and Non-Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

2.4. CONTRACTOR CLAIMS

If the Contractor wishes to request an adjustment in the Job Order Price or Job Order Completion Time, other than pursuant to a Supplemental Job Order or Field Order, Contractor shall give the Owner and Architect a written Notice of Claim within seven calendar days after the occurrence or beginning of the event giving rise to such Claim except that notice shall be given immediately if delays or extra costs occur within such seven-day period. The Notice of Claim shall be given by the Contractor before disturbing conditions which are the basis for the Claim, except in an emergency endangering life or property in which case the Contractor should proceed in accordance with Section 6.7, Emergencies. Failure to present such Notice of Claim constitutes a waiver of such Claim. The adjustment to the Job Order Price or Job Order Completion Time, if any, shall be determined and issued in accordance with this Section 2, Changes in the Work.

Notices are valid only if written and shall be a document issued for the sole purpose of notification and titled clearly "Notice of (specify category i.e., delay, claim)." A separate written notice is required for each subject and issue.

Written notice shall be deemed to have been duly served if delivered in person to the individual to whom it is addressed, or if sent by certified mail to the address specified in the Contract Documents as may be revised in writing.

2.5. DELAYS BEYOND CONTRACTOR'S CONTROL

If the Contractor is delayed at any time in the progress of the Work by acts or neglect of the Owner or by any separate contractor employed by Owner, or by labor disputes, fire, unusual delays in transportation, unusually adverse weather conditions, unavoidable casualties or by any other unforeseeable cause of delay beyond the Contractor's control, which the Owner decides justifies the delay, then the Job Order Completion Time may be extended for such reasonable time as the Owner in his discretion may decide. Contractor's Claim for extension of time shall be made in writing to the Owner in accordance with Section 2.4, Contractor Claims. Only one Claim is necessary in the case of continuing delay.

Unusually adverse weather conditions for the purposes of this Project are agreed to be workdays lost from weather or the effects of weather greater than the number of lost days specified in Section 7.5, Schedule.

2.6. HIDDEN CONDITIONS

Should concealed or unknown conditions be encountered in the performance of the Work below the surface of the ground or in an existing structure be at variance with the conditions indicated by the Job Order, or differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for the Job Order, the Job Order Price and Job Order Completion Time shall be equitable adjusted as provided herein upon Claim by Owner or Contractor. Contractor Claims shall be in accordance with Section 2.4, Contractor Claims.

2.7. HAZARDOUS MATERIALS

Asbestos or other hazardous material may be present in County buildings or on County property. Asbestos is typically in the form of pipe lagging, fire proofing, floor tiles, mastic, and plaster. Soil may be contaminated by petroleum products or other substances. In the event any suspected asbestos or other hazardous material is encountered during construction that may be disturbed by the Work, the Contractor shall stop immediately and notify the County. The Contractor and all Subcontractors shall instruct their employees of the type and location of the most likely forms of hazardous material to be encountered and of the procedure to be taken if encountered. Contractor will be responsible for the mitigation and abatement of the hazardous material upon authorization of Owner. All Claims for adjustment in time or money shall be processed in accordance with Section 2.6, Hidden Conditions.

2.8. MAINTAIN RECORDS

Contractor and Subcontractor shall maintain records, in accordance with generally accepted accounting principles, relating to costs of changes to the Work or Claims for 4 years after the final completion. The Owner will have the right to audit these records at any time up to 4 years after completion of the Project and recover from the Contractor or Subcontractor any amount paid by Supplemental Job Order but not substantiated by audit.

2.9. ESTIMATE REQUESTS

Contractor is required to provide preliminary estimates using their best judgment of time and cost impact of potential changes to the Job Order as requested by the Architect or Owner. Estimates shall be provided within seven (7) days of receiving the Estimate Request. Contractor will be responsible for any cost increase or schedule impact resulting from Contractor's failure to respond within the allowed time.

3. CONTRACTOR

3.1. DEFINITIONS

The term Contractor, as used herein, is the person or organization identified as such in the Agreement and is referred to as if singular and masculine and includes his authorized representatives.

The term Subcontractor, as used herein, includes only those persons or organizations having a direct Contract with the Contractor or with a Subcontractor of the Contractor to perform a portion of Contractor's Work. Subcontractor includes one who furnishes material worked to a special design according to the Plans or Specifications but does not include one who furnishes material not so worked.

3.2. GENERAL

A Contractor agrees to perform all Work required by the Contract Documents.

All Work shall be done in accordance with the best practices of the various trades involved and highest industry standards.

The Contractor shall keep on the Job Order site(s) during the progress of the Work a competent superintendent satisfactory to the Owner. The Superintendent shall not be changed except with the consent of the Owner. The Superintendent shall represent the Contractor and all directions given to him shall be as binding as if given to the Contractor. Superintendent shall have a cell phone at which he or she can be reachable at all times.

It is the Contractor's responsibility to diligently prosecute the Work, using his best skills and attention, and the most appropriate techniques and equipment that are required to provide a finished product in compliance with the Contract requirements. He shall insure that no Work is done that does not comply with the Contract Documents.

The Contractor for each Job Order shall attend a pre-construction meeting, weekly progress meetings and other meetings as necessary to accomplish the Work and administer the provisions of the Contract.

Contractor shall submit to Owner a daily record of Contractor's activity. Such record shall be delivered to Owner daily for previous day's activity and shall include Job Order name, date, weather, names of Subcontractors, count of personnel by company, material deliveries, description and location of activity and events. The record of daily activity shall not be used as a Notice to Owner.

The Contractor shall also always have an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, the Contractor shall identify the Superintendent responsible for that Job Order. The Superintendent shall be reachable 24 hours a day, seven days a week. If the named Superintendent is not available because of illness or vacation or the like, the Contractor shall notify the Owner of a substitute Superintendent. At all times, the Contractor shall provide at least one Superintendent for every four Job Orders.

Whenever, in the sole discretion of the Owner, the Contractor is not providing a sufficient level of supervision, the Owner may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the

Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the Owner. In the event the Owner's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the Owner \$150 per hour for such effort.

Contractor shall not assign this Agreement or any portion of it to a third party to provide services required by Contractor under this Agreement without the prior written consent of the County, the Director of Public Works or his designee. Any such assignment without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

3.3. SUBCONTRACTS

In accordance with California Public Contracts Code Section 4100 to 4113, inclusive, the JOC Contractor shall provide with each Job Order Proposal a list giving the name and location of place of business of each subcontractor who will perform a portion of the Job Order work in an amount in excess of one-half of one percent of the Job Order Proposal. In each instance, the nature and extent of the work to be sublet shall be described.

The Contractor shall not be permitted to substitute any person or organization for any Subcontractor, person or organization listed by them with the Job Order Proposal without the prior, written consent of the Owner, as provided for in Chapter 2 of Division 5, Title 1 of the California Public Contracts Code.

In addition to the information required with the Job Order Proposal regarding Subcontractors, the Contractor, after issuance of the Job Order but prior to execution of the subcontract, shall submit the following information on each Subcontractor: name, address, and nature of Subcontractor's work, Subcontract Amount, and all other information the Owner deems relevant. The Contractor shall not Contract with any such proposed person or entity to whom the Owner objects.

Contractor shall bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract Documents insofar as applicable to their work. The Contractor shall be responsible for the acts and omissions of Subcontractors.

Contractor agrees to pay to each Subcontractor promptly upon receiving payment from Owner.

Neither the acceptance of the Subcontractor nor any other act of the Owner, nor anything contained in any contract document is to be construed as creating any contractual relation between the Owner and any Subcontractor.

3.4. PERSONNEL AND LABOR POLICY

Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ any unfit person or anyone not skilled in the work assigned to him. The Contractor shall be responsible to the Owner for the acts and omissions of his employees and other persons performing work for the Contractor.

No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this contract on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical ability, or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and subcontractors under this Contract.

Violation of the non-discrimination provisions of this Contract shall be considered a breach of this Contract and subject the Contractor to penalties, to be determined by the County Executive, including but not limited to:

- i) termination of this Contract;
- ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 5 years;
- iii) liquidated damages of \$2,500 per violation; and,
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive.

To effectuate the provisions of this paragraph, the County Executive shall have the authority to:

- i) examine Contractor's employment records with respect to compliance with this paragraph;
- ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Executive the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed.

For contracts over \$5,000, with respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in

the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees working on the Project. Contractor's affirmative action policies shall be made available to Owner upon request.

It is the policy of the Owner that Contractors on Public Projects employ their workers from the local labor market whenever possible. Consistent with that policy, the Contractor is requested to employ his workers from the local labor market. Local labor market within the meaning of this section is defined as the labor market within the geographical confines of San Mateo County in the State of California.

The Contractor shall forfeit, as penalty to the Owner, twenty-five Dollars (\$25) for each laborer, workman, or mechanic employed in the execution of the Contract by him, or by any Subcontractor under him, upon any of the Work hereinabove mentioned, for each calendar day during which said laborer, workman, or mechanic is required or permitted to labor more than eight hours in violation of the provisions of Article 3, Chapter 1, Part 7, Division 2 of the Labor Code.

The Contractor shall forfeit as penalty to the Owner, twenty-five dollars (\$25) for each laborer, workman or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinafter stipulated for any Work done under the attached Contract, by him, or by any Subcontractor under him, in violation of the provisions of Article 2, Chapter 1, Part 7, Division 2 of the Labor Code.

Apprenticeship Program: Contractor shall comply with the provision of Section 1777.5, Chapter 1, Part 7, Division 2 of the Labor Code.

The Contractor's attention is directed to the provisions of the California Labor Code, Division 2, Section 1776, and the regulations implementing it in Title 8, California Administrative Code. The Contractor shall be responsible for compliance by his Subcontractors. A certified copy of all weekly payroll records shall be furnished upon request of the Owner, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations.

Payrolls shall contain the full name, address, and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen.

The penalties specified in subdivision (f) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

4. OWNER

4.1. DEFINITION

The Owner is the person or organization identified as such in the Agreement and is referred to as if singular in number and masculine in gender and includes his authorized representatives. The Owner is the County of San Mateo and is alternately referred to as "The County".

4.2. THE DIRECTOR OF PUBLIC WORKS

The Director of Public Works for the County of San Mateo, or their duly appointed representative, is the duly appointed agent for the Owner and as such is empowered to act for the Owner in all matters as stated in the Contract Documents or as provided by law.

4.3. OWNER'S CONSTRUCTION OBSERVER

The Owner may engage a Construction Observer. The Owner's Construction Observer shall receive copies of all communications regarding a Job Order, have full access to the Work, and be kept informed of all actions taken.

The Owner's Construction Observer shall not interpret the plans, coordinate the Work, order changes in the Work, supervise the workmen, or perform any duty which is the responsibility of the Architect, Owner or the Contractor.

5. ARCHITECT

5.1. DEFINITION

For the purpose of this Contract, the Architect is identified in each Job Order. The Owner may also be the Architect. The term "Architect" shall include his appointed representatives and consultants. The person is referred to throughout the Contract as if singular in number and masculine in gender. Nothing contained in the Contract Documents shall create any contractual relationship between the Architect and the Contractor.

5.2. GENERAL

The Architect will provide general administration of the Contract between Owner and Contractor.

The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents. The Owner's instructions to the Contractor may be issued through the Architect.

The Architect shall at all times have access to the Work. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents. The Architect will make periodic visits to the site to familiarize himself with the progress and quality of the work and to determine if the work is proceeding in accordance with the Contract Documents. Architect will endeavor to guard the Owner against defects and deficiencies in the Work.

The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the Contractor's performance thereunder. The Architect will, within 14 calendar days, render interpretations or answers to questions submitted by Contractor. All interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge he will exercise his best efforts to insure faithful performance by all parties of the Contract. The Architect's decision in matters relating to esthetic effect will be final.

The Architect will review submittals, samples, adjustments to the Contract, applications for payment, written guarantees, operation and maintenance manual and other documents required by the Contract.

6. PERFORMANCE OF THE WORK

6.1. DEFINITION

The term "Work" as used herein is all of the Contractors obligations under the Contract including, but not limited, to providing all labor, material, equipment and services indicated by each Job Order and the Contract Documents, as-built drawings, punchlist, inspections and approvals required or necessary for occupancy, and guarantees.

The term "Project" is the total construction planned or contemplated by the Owner of which the Work may be the whole or a part. The Owner may perform or contract for other work on the Project site during the progress of the Work.

6.2. ADMINISTRATION OF JOB ORDERS

The scope of required Work will be determined by the Detailed Scopes of Work stated in each individual Job Order. The County is not obligated to issue any individual Job Order(s). All costs incurred with preparing Job Order Proposals are the sole responsibility of the Contractor.

Contractor will perform Work only as authorized by Job Orders issued by the County in accordance with the 'Administration of Job Orders'. The Contractor must perform all Job Orders up to and including the Maximum Contract Value. The County must order at least the Minimum Contract Value.

The Contractor must provide all pricing, management, stamped or unstamped design drawings, shop drawings, documents, labor, materials, parts (to include system

components), transportation, plant, supervision, and equipment needed to perform each Job Order. The Contractor must provide quality assurance as specified in strict accordance with the Contract.

In addition to the tasks and requirements stated in the Construction Task Catalog® and Task Specifications, the County may require Non-Pre-Priced Tasks incidental to work described in the Job Order. The parties will price these Non-Pre-Priced Tasks in accordance with the procedures set forth in the 'Administration of Job Orders'.

As Directed by the County in the performance specification, the Contractor will provide incidental architectural or engineering design services in accordance with applicable State laws and the County's insurance and indemnification requirements. All documents are subject to review and approval of the County. The County may require that design documents be prepared and provided in Computer Aided Design (CAD) format.

Each Job Order will be prepared under the direction of the County.

Job Order Contracting: The Owner may award an individual Job Order to any selected Contractor. Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures and based on one or more of the following criteria in no particular order:

- Rotational selection among all Contractors, unless otherwise determined by the Owner.
- Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
- Balancing of workload (Job Order dollar volume and construction backlog) among Contractors.
- Management of Job Order dollar volume within bonding limitations of the Contractor.
- Price, as it relates to the Owner's independent cost estimate.
- Contractor's responsiveness to the Owner on Job Orders.
- Other appropriate criteria as deemed in the best interest of the Owner.

As the need exists, County staff will notify the Contractor in writing of a Joint Scope Meeting to discuss a potential Job Order.

Prior to the Joint Scope Meeting, the County will provide the Contractor with all appropriate information and documentation, if any, pertaining to the potential Job Order. The Contractor and their primary trade(s) will participate in the Joint Scope Meeting and visit the proposed site with County staff. At the Joint Scope Meeting the following items will be discussed:

1. Job Order number and title
2. Existing site conditions

3. Presence of Hazardous Materials
4. Methods and alternatives for accomplishing work
5. Definition and refinement of requirements
6. General Scope of Work
7. Requirements for stamped & unstamped design drawings, sketches, submittals, catalogue cuts, samples, shop drawings, etc.
8. Tentative construction schedule (bar chart or critical path method schedule)
9. Preliminary quantity estimates
10. Staging areas and site access
11. Special conditions regarding unique facility operations
12. Safety requirements
13. Special insurance requirements
14. Job Order Proposal due date
15. Liquidated Damages

Making information available to Contractor is not to be construed in any way as a waiver of the aforesaid provisions, and **Contractor must satisfy themselves through their own investigations as to conditions to be encountered.**

Followed by a Request for Proposal and upon completion of the joint scoping process, the County will prepare a Detailed Scope of work referencing any sketches, drawings, photographs, and specifications required to accurately document the work to be accomplished. The Detailed Scope of Work will be the basis on which the Contractor will develop its Job Order Proposal. After careful review, evaluation, and acceptance of the Proposal, the County will prepare the Job Order Price Proposal and Final Detailed Scope of Work for signatures by both the Contractor and the County. The County will also sign and issue the Job Order Authorization and Notice to Proceed. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

Job Order Proposal Development:

The Contractor will prepare Proposals in accordance with the following:

1. Pre-priced Tasks: The Contractor will identify the task and quantities required from the Construction Task Catalog® (CTC). The Unit Price set forth in the CTC serves as the base price.
2. Non-Pre-Priced Tasks (NPP): NPP Tasks, if any, must be separately identified in the Proposal. Information submitted in support of NPP Tasks includes, but is not limited to, the following:
 - a. Complete specifications and technical data, catalog cuts, including task content, support drawings, task cost data, quality control and inspection requirements.
 - b. Work schedule.
 - c. Cost data will include a cost analysis report, establishing the basis for selecting the approach proposed for accomplishment of the task. Unless otherwise

directed by the County, cost data will be submitted demonstrating that if the work is to be subcontracted, the Contractor sought and received three price quotes. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If the Contractor will perform the work with its own forces, it shall provide an installed Unit Price (or demolition price if appropriate) which will include all costs required to accomplish the NPP Task. To the extent possible the Contractor shall use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®.

- d. The final price submitted for NPP Tasks which are performed by the Contractor will be according to the following formula:
 - 1. A=The number of hours for each labor classification and hourly rates
 - 2. B=direct material costs (supported by three independent quotes for all materials)
 - 3. C=direct equipment costs (supported by official posted state rental rates other than small tools)
 - e. Total Cost for self-performed work = $(A+B+C) \times$ Appropriate Adjustment Factor or 1.15 (whichever is less and only if A & B cannot be priced out of the CTC)
 - f. If the Work is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the County's approval as to why three quotes cannot be submitted. The final price submitted for NPP Tasks which are performed by a subcontractor is according to the following formula:
 - 1. D=subcontractor costs (supported by quotes)
 - g. Total cost of NPP Task = $D \times$ Appropriate Adjustment Factor or 1.15 (whichever is less)
 - h. Following approval by the County of a NPP Task, the NPP Task Unit Price will be entered into the computer data base and fixed as a permanent Pre-Priced Task which will no longer require price justification.
 - i. The total extended price for the NPP Task will be determined by multiplying the task Unit Price by the quantity required. The price offered in the Proposal will be determined by multiplying the total extended price by an Adjustment Factor of 1.00 (one).
 - j. The County's determination as to whether an item is a Pre-Priced Task or a NPP Task is final, binding, and conclusive as to the Contractor.
3. The Contractor's Proposal must include support documentation to indicate that adequate engineering and planning for the Job Order has been done, and that the

tasks proposed are reasonable for the Work to be performed. Documentation to be submitted with the Proposal must include, but not be limited to:

- a. Stamped & unstamped design drawings, calculations, specifications
- b. Catalog cuts
- c. Subcontractor and material supplier list
- d. Construction schedule
- e. Special Insurance
- f. For special equipment a copy of the warranty document may be required.
- g. Other requested documents

4. The Job Order Price shall be the value of the approved Job Order Price Proposal.
5. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all NPP Tasks.
6. Contractor's Proposal must be submitted by the date indicated on the RFP. The time allowed for preparation of the Contractor's Proposal will depend on the complexity and urgency of the Job Order. On complex Job Orders, such as Job Orders requiring engineering/architectural drawings and approvals and permits, adequate time will be provided for preparation and submittal of the necessary documents and the Proposal. In urgent situations and minor maintenance and repair Job Orders requiring immediate completion, the Proposal may be required quickly.
7. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Owner may permit the Contractor to be paid for such task as a NPP Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
8. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.

9. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.

Material Price Spike Adjustment:

Material price spike adjustment: For the purpose of this clause, a “major spike” is defined as a spike in a specific material cost of more than 25% above what the cost of that material was on the date the Construction Task Catalog® was issued.

In the event a major spike occurs in a specific material cost, the Contractor may submit a request for a price modification to a Unit Price or individual Job Order. In order to initiate such a request, the Contractor shall,

- a) identify the specific material that has experienced a major spike,
- b) identify Pre-priced Task(s) or Job Orders that require the material experiencing a major spike, and
- c) demonstrate that the spike exists by submitting a minimum of three quotes on material supplier letterhead to show that the current price meets the “major spike” definition above.

The County, after review of a request, may elect to adjust the Unit Price or Job Order by considering it a NPP item. The adjustment will be for the difference between the material cost at the time the Construction Task Catalog® was issued times the quantity stated in the Job Order. The adjustment will not include any other markup. The County, at its option, may also determine that a drastic decrease in a material cost warrants the same NPP adjustment downward in the Unit Price or a Job Order.

Review of Proposal

The County reserves the right to reject a Proposal for any reason. The County also reserves the right not to issue a Job Order if that is determined to be in the best interests of the County to do so or if the proposed cost exceeds the County's estimate. In these instances, the Contractor has no entitlement to reimbursement for Proposal preparation expense including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Owner. The County may pursue the performance of any Work by other means.

By submitting a Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal for the price submitted. It is the Contractor's responsibility to include all necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Owner.

If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

The County will evaluate the entire Job Order Proposal, including the correct tasks and quantities, and determine if the Contractor proposes to accomplish the Detailed Scope of Work in a manner acceptable to the County.

Issuance of the Job Order

A Job Order Authorization signed by the County will be provided to the Contractor. Each Job Order includes a Detailed Scope of Work. After the County issues a Job Order the Contractor's Job Order Price Proposal is of no significance. All provisions of this Contract are applicable to each Job Order. Job Order Authorizations will be written on an appropriate form.

The County may direct the Contractor to undertake and possibly complete urgent work prior to the issuance of a Job Order. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order upon the issuance by the County of a Not-to-Exceed Job Order Authorization. Upon Completion of the Work, Contractor will reconcile the Not-to-Exceed Job Order Authorization and submit to County for issuance of a formal Job Order. The Contractor will be compensated in accordance with the provisions of this Contract.

If the Contractor has failed to submit a Proposal or the parties fail to reach an agreement, the County may issue a Unilateral Job Order. Compensation for the Work shall be in accordance with the CTC and terms and conditions of the Contract. The Contractor must commence any work issued under a Unilateral Job Order in the time stated in the Job Order. Failure to commence Work will result in termination of this Contract for cause. The issuance of a Unilateral Job Order will not prejudice any of the Contractor's rights to make claims or appeal disputed matters.

The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:

- a. Will constitute or create a hazard to the work, or to persons or property;
- b. Will not produce finished Work in accordance with the terms of the Contract; or
- c. Unnecessarily increases the price of the Job Order when alternative means and methods are available.

Computer and Communications Equipment Requirements: *(See 011 Special Provisions with CLF language. 011 Special Provisions with CLF language shall apply)*

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor, and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

The County of San Mateo shall provide the Contractor with access to the Job Order Contracting software, eGordian®, under a license provided by The Gordian Group, Inc. eGordian® is a Job Order Contracting management tool that expedites the ordering and execution of work. The Contractor shall use eGordian® to prepare and submit Price Proposals, Subcontractor lists, and other requirements as determined by the County of San Mateo. eGordian® contains an electronic version of the Construction Task Catalog® for the Contractor's use in preparation of Job Order Price Proposals. Use, in whole or in part, of eGordian®, the Construction Task Catalog®, or any other Proprietary Information provided under the license from The Gordian Group, Inc. for any purpose other than to order and execute work under this Contract for County of San Mateo is strictly prohibited unless otherwise stated in writing by The Gordian Group, Inc.

6.3. GENERAL

The Contractor shall provide, maintain and remove upon completion of the Work, all tools, machinery, equipment, temporary rigging, scaffolding, hoisting equipment, rubbish chutes, barricades around openings and excavation, ladders between floors, fences around buildings, and all other items as required for safe completion of the Work, whether specifically designated or not and shall conform to all requirements in regard to operation, safety, and fire hazards of State and local authorities and of underwriters.

Deliver all materials and equipment in the manufacturer's original sealed, labeled containers and protect items against moisture, rust, dust, tampering, or damage.

Place all materials and equipment orders in time to avoid job delay or hindrance. Schedule deliveries to coincide with the construction schedule so that materials and equipment are promptly installed upon delivery.

Except as specifically noted otherwise, the installation and/or maintenance directions provided by the manufacturer shall be followed for all materials and equipment.

All materials and equipment shall be new, unless specifically marked otherwise.

All materials and equipment not conforming to the Contract Documents shall be rejected and shall be immediately removed from the site of the Work.

All utilities and services required by the Contractor including electrical power, water, temporary telephones, temporary sanitary facilities, and temporary heat as required for the proper installation of materials and the completion of the Work shall be provided by Contractor.

Shut down of utilities for any reason or duration shall be subject to approval by the Owner. The Owner requires a minimum of 14 days notice prior to authorizing a utility shut down. When shut-downs of 30 minutes or more are required, the Contractor shall provide

alternate service for normal occupancy requirements. Utility shut-downs shall be scheduled during non-business hours.

Prior to ordering materials, the Contractor shall verify all measurements at the site and shall be held responsible for their accuracy. No extra compensation will be allowed for differences between actual measurements and the dimensions shown on the Drawings.

Fences, office facilities, enclosures, storage sheds, etc., required by the Contractor in the performance of the Work shall be located where approved by the Owner.

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

During the progress of the Work, Contractor shall keep the premises orderly and safe and free from accumulation of waste materials and rubbish.

At the completion of the Work, Contractor shall remove all waste, surplus materials, and rubbish and shall clean all surfaces, removing all extraneous paint, mortar, dust, and stains, leaving the Work bright, clean and polished.

Job Orders are not exempt from any Federal, State or local taxes.

Royalty and License Fees incidental to the use of any patented material, device or process shall be paid by the Contractor and in the event of a Claim of alleged infringement of patent rights, the Contractor shall save the Owner free and harmless from loss on account thereof; and also defend, at his own expense, all suits that may be brought in such connection.

Contractor shall continuously maintain adequate protection of all Work and shall protect the Owner's property from damage or loss arising in connection with this Contract.

Precaution shall be exercised at all times for the protection of persons (including Contractor's and Owner's employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest safety orders of the State of California (General Industrial Safety Orders and Construction Safety Orders), and in compliance with the Occupational Safety and Health Administration.

All materials and workmanship shall be subject to inspection, examination, test and acceptance by the Owner at all times during manufacture and construction and at all places where such manufacture and construction are carried on.

6.4. EXISTING CONDITIONS

The Contractor by submitting a Job Order Proposal represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed and has correlated his site observations with the requirements of the Job Order Documents.

The Contractor shall carefully study and compare the Job Order Documents and existing conditions and dimensions and the connection of the Work to existing conditions and shall report to the Architect any error, conflict, inconsistency, omission, or any variance with laws, ordinances, codes, rules or regulations bearing on the Work. Contractor shall report such conditions to the Architect in writing at such time as to allow at least twenty (20) calendar days for a response with no delay to the Work. All necessary changes shall be accomplished in accordance with Section 2, Contract Modifications.

6.5. ADJACENT FACILITIES

The Contractor shall provide adequate protection for all parts of the Project site, and adjacent property, its improvements, and its occupants throughout the Work. All damage done to existing property shall be neatly repaired or replaced at the Contractor's expense.

Work shall be executed in careful, orderly manner, with the least possible disturbance to public and occupants of the area.

The Owner will continue to use adjacent facilities. Contractor shall take care to disrupt the Owner as little as possible. Contractor shall provide legal and safe access to all facilities at all times. In order to facilitate use of adjacent facilities Owner may order Contractor to alter or temporarily cease operations.

6.6. PERMITS

It shall be the responsibility of the Contractor to obtain and pay for all permits, licenses, certificates, approvals, utility connections and services necessary for the proper execution and completion of the Work. Contractor will be reimbursed for the direct cost of permit only through Supplemental Job Order unless coordinated with County Project Manager for direct payment by Department of Public Works.

All fees which are for temporary approvals or services, such as those which are necessary for construction procedures, shall be paid by the Contractor.

In the event the Special Provisions require the Owner to pay any fee, the Contractor shall notify the Owner in writing, twenty (20) calendar days in advance of a required fee payment.

It is the policy of the County to cooperate with State, County and City officials in regard to the construction of this Project, and it is the responsibility of the Contractor and all his Subcontractors to meet the requirements of government officials having responsibility for inspecting or observing construction by taking out permits for the Work, calling for inspections and adhering to safety practices in accordance with standard practice. In the

case of conflict of any of these provisions, the Owner shall be notified. The term Inspector means a Public Building Construction Inspector or an individual performing the inspection as required by building codes or jurisdiction.

6.7. LAWS

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work. If the Contractor performs any Work contrary to such laws, ordinances, rules and regulations, he shall bear all costs and delays arising therefrom.

Owner and Contractor have all rights provided by law not specifically waived by this contract.

6.8. EMERGENCIES

In an emergency affecting the safety of life, the Work, or property, the Contractor, without special instruction or authorization from the Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury; he shall so act without appeal if so instructed or authorized. Any compensation, claimed by the Contractor on account of emergency work, beyond Contractor's contractual obligations, shall be determined by agreement. The Contractor shall immediately notify the Owner in writing.

In an emergency affecting the safety of life, the Work, or property or if an unsafe condition exists, the Owner may, but is not obligated, take measures to mitigate the condition. Such measures may include expending labor or material, engaging other contractors, entering the Project site utilizing materials, equipment or facilities of Contractor. The Owner's actions may be performed immediately and without notice to Contractor. Contractor shall pay Owner for all costs which are attributable to Contractor.

6.9. SUBMITTALS

Submittals are shop drawings, product data, maintenance information, samples, manufactures instructions, certifications, and similar documents or items which demonstrate the way the Contractor proposes to conform the Work to the information in the Job Order Documents. Contractor shall review the entire Contract Documents for other provisions relating to submittals and individual submittal requirements, if any.

The Contractor shall review, stamp with his approval and submit to the Architect in orderly sequence so as to cause no delay in his Work or in the work of any other contractor, all submittals required for each Job Order. Submittals shall be properly identified with specification section. At the time of submission, the Contractor shall note in writing any deviation in the submittals from the requirements of the Job Order or Contract Documents. By approving and submitting shop drawings and samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data, and that he has checked and coordinated

each shop drawing and sample with the requirements of the Work, and of the Contract Documents.

The Architect will review submittals for conformance with the designed concept and with the information given in the Job Order Documents. A minimum of 14 calendar days is required for each submittal review. The Architect's review will not relieve the Contractor of responsibility for complying with the Contract Documents. If a submittal is required to be resubmitted, the time and cost of resubmission is the responsibility of the Contractor.

6.10. SUBSTITUTIONS

The intent of the Specifications is to specify high grade equipment and materials. It is not the intent of the Specifications to exclude or limit the products of any responsible manufacturer, except when the Owner has adopted a specific system or product which will be noted, "No Substitutions Allowed", or similar language. Where equipment, material, or process is specified by trade name or by patentee, manufacturer, or dealer, it shall mean the specified item or any other product which is equal in every respect including quality, utility, serviceability, and aesthetic effect. The Architect shall be the sole judge of equality between products, materials, or methods.

Should the Contractor wish to use equipment or materials different from those specified, he shall request approval for the desired substitution. His request shall include all substantiating data required for the Architect to make any evaluation of the request. No substitution shall be made without written approval of the Architect. The Architect's refusal to approve a substitution shall not affect the progress of the work and is not grounds for a Claim against the Owner.

The Contractor shall pay \$300, lump sum, for the time to review substitution requests. Payment shall be made in the form of a credit Supplemental Job Order.

6.11. CORRECTING WORK

The Contractor shall promptly correct all Work rejected by the Owner or Architect, whether observed before or after the Notice of Completion and whether or not fabricated, installed or completed. The Contractor shall not receive a time extension for correcting such rejected Work. All such defective or non-conforming Work shall be corrected to comply with the Contract Documents without cost to the Owner. The Contractor shall bear the cost of making good all Work of separate contractors destroyed or damaged by such removal or correction.

If any Work should be covered before it is inspected, the Contractor at his expense, must uncover the Work for inspection and then replace the cover.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provisions of the Contract Documents, the Owner may, after seven days written notice to the Contractor and without prejudice to any other

remedy Owner may have, and without Contract termination or ordering the Contractor to stop Work make good such deficiencies in any manner the Owner deems expedient. In such case an adjustment to the Job Order shall be made in accordance with section 2, Contract Modifications, deducting from the payment then or thereafter due the Contractor, the cost of correcting such deficiencies, including the cost of additional services made necessary by such default, neglect, or failure.

If the Owner deems it not expedient to correct Work damaged or not done in accordance with the Contract Documents, a deduction from the Job Order Price shall be made.

If the Contractor fails to correct defective Work or fails to supply materials or equipment in accordance with the Contract Documents, the Owner may order the Contractor to stop the Work or any portion thereof until the cause of such order has been eliminated. Contractor shall not receive a time extension or compensation as a result of stopping Work as required by this provision.

6.12. TESTING

The Owner will provide for testing of materials or workmanship as required by the Specifications. The Contractor shall coordinate and schedule tests directly with the testing firm. The costs of tests on materials at the Project site will be borne by the Owner, except for retesting, as specified below, the material required for testing, and the Contractor's labor required to facilitate the test or delayed by the test, which the Contractor shall furnish. The Contractor will cooperate with the Owner's testing representative in the taking of test Samples. The Contractor shall pay for all tests which are not at the job site.

Required tests are specified elsewhere in the Technical Specifications and Job Order Specifications.

Should the results of any required tests fail to meet the requirements of the Contract Documents, Contractor shall either correct the unacceptable condition or furnish new materials, as directed by the Owner. Additional tests shall be made at the Contractor's expense until the materials are found to meet the requirements of the Contract Documents.

Should the results of any soil compaction tests fail to meet the requirements of the Specifications, Contractor shall recondition and/or recompact the fill, and additional tests shall be made at the Contractor's expense until the compaction is found to meet the requirements of the Specifications.

Testing or inspection services required outside of regular working hours shall be paid for by the Contractor.

When existing building systems such as fire alarms, fire sprinkler systems, smoke detectors, halon systems, etc., are modified by the Work, the Contractor shall test the entire system at

the completion of the Work and demonstrate to the Owner that the system is functioning correctly and reliably.

6.13. RECORD DOCUMENTS

The Contractor shall maintain at the site record documents consisting of all Drawings, Specifications, addenda, approved shop drawings and samples, Revision Orders, Change Orders, instructions from the Architect, and other documents relating to the Project. All record documents shall be marked neatly and legibly by the Contractor to record all changes to the Work, field measurements, actual conditions, and adjustments made during construction.

Upon completion of the Work, Contractor shall transfer all record document information to a clean set of Drawing and Specifications and electronic media compatible with the Owner's software and deliver them to the Architect. CAD documents shall be in sheet format. Contractor shall provide any explanation or clarification of the record documents requested by Owner or Architect.

6.14. OPERATING AND MAINTENANCE MANUALS

Assemble and bind three (3) sets of all guarantees, certificates, warranties, operating instructions, as-built specification, and maintenance manuals into clearly organized files with an index, a list of Subcontractors and suppliers including their names, addresses, and phone numbers and present to Architect at the completion of the Work.

6.15. TRAINING OWNER'S REPRESENTATIVE

Contractor shall provide training to Owner's representative for all operating systems, features, and equipment. Training shall be sufficient to explain and demonstrate the location, function, and operation and shall be a minimum of four hours. Training shall be given by a person familiar with the Project. Operation and maintenance manuals must be available to the Owner prior to training and referenced during the training.

7. TIME

7.1. DEFINITION OF OFFICIAL DATES

The Job Order Completion Time is the period of time indicated in the Job Order Documents for achieving Substantial Completion of the Work. Time is of the essence of the Contract. The term day as used in reference to this Contract shall mean calendar day unless specifically designated otherwise.

The Job Order Notice to Proceed shall establish the official date the Work may commence and the start of the Contract Time.

The date of Substantial Completion of the Work is the date established by the Architect as herein provided. A date of beneficial occupancy or acceptance may be determined but they will not have official status in the Contract.

The date of Final Completion is the date established by the Architect after Substantial Completion when the Work is complete in every detail. Retention may be withheld until after Final Completion.

7.2. SUBSTANTIAL COMPLETION

Substantial Completion is the stage in the progress of the Work when the entire Work, or a designated portion thereof acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to allow the Owner to use and occupy the entire Work or portion as intended. Prior to Substantial Completion the Contractor shall have inspected the Work, completed corrective measures, obtained all approvals necessary for occupancy, placed into operation all equipment and systems, and obtained the Architects concurrence that Substantial Completion has been achieved.

When the Contractor considers that the Work, or designated portion thereof acceptable to the Owner, is substantially complete, the Contractor shall provide a written notice to the Architect and Owner in which the Contractor certifies that the Work or portion is Substantially Complete, lists all deficiencies, and requests inspection and acceptance. The failure to include any items on such list does not alter the responsibility of the Contractor to complete the Work in accordance with the Contract Documents.

Upon receiving notice in accordance with paragraph 7.2B the Architect and/or Owner will review the Work or designated portion thereof. If the Architect determines the Work or portion is substantially complete, the Architect will establish a date of Substantial Completion. If the Architect determines the Work or portion is not Substantially Complete the Contractor will be notified. Contractor is required to initiate a reinspection by providing notice in accordance with Section 7.2B and reimburse the Owner for the cost of the reinspection.

The guarantee period shall begin on the date of Substantial Completion. A separate date of Substantial Completion shall be established for designated portions of Work as agreed to by owner.

Any Work used by Contractor prior to Substantial Completion shall be made new as of the date of Substantial Completion. Such Work may include lights, filters and systems or equipment requiring periodic maintenance.

7.3. LIQUIDATED DAMAGES

Should the Work not be Substantially Complete, as defined herein, within the Job Order Completion Time as may be revised, damages will be sustained by the Owner. It is understood and agreed that it is or may be impracticable or extremely difficult to determine the actual number of damages the Owner will sustain in the event of and by reason of such delay in completing the Work; and it is therefore agreed that the Contractor will pay the Owner the amount specified in the Special Provisions, as and for the Owner's liquidated

damages. This amount covers Owner's damages only and is not in lieu of the indemnification obligations set forth separately at section 9 nor shall these liquidated damages cover damages, including delay damages, claimed by third parties. Third parties shall include other contractors working on the Project. In the event the Contractor fails to make such payment, the Owner may deduct the amount thereof from any money due or that may become due the Contractor under the Contract and should the balance due under the Job Order(s) not be sufficient to cover the amount owed, the Owner shall have the right to recover the balance from the Contractor, from other contracts between Contractor and Owner, or from the Contractor's sureties.

The Owner may allocate liquidated damages on a Job Order by Job Order Basis and to portions of a Job Order. In the event the Contractor fails to complete Work remaining after Substantial Completion within the time periods established or fails to adhere to the conditions as agreed for achieving Final Completion, liquidated damages, and third-party claims shall be charged to Contractor.

7.4. USE AND OCCUPANCY PRIOR TO SUBSTANTIAL COMPLETION

The Contractor agrees to use and occupancy of a portion of the Work by Owner before Substantial Completion.

Prior to the Owner occupying a portion of the Work, a list of Work to be completed or corrected shall be prepared jointly by the Contractor and Architect.

Occupancy by the Owner shall not be construed by the Contractor as being an acceptance by Owner of that part of the Work to be occupied.

The Contractor shall not be held responsible for any damage to the occupied part of the Work resulting from the Owner's occupancy.

Occupancy by the Owner shall not be deemed to constitute a waiver of any claims which Owner or Contractor may have.

Use and occupancy of a portion of the Work by the Owner prior to Substantial Completion does not relieve the Contractor of his responsibility to maintain all insurance and bonds required under the Contract until the Work is completed and accepted by Owner.

7.5. SCHEDULE

Contractor shall, with the Job Order Proposal, submit to the Owner and Architect a schedule for the Work. The schedule shall be a series of tasks representing the Contractor's plan for performing the Work including all activities both onsite and offsite, submittal due dates, submittal review periods, material purchasing, lead or fabrication times, a period for punchlist and corrections, final inspection and approvals, and other events or activities having an effect on the progress or completion of the Work. For each task, the schedule shall show the duration, the starting and finish dates, predecessors, successors, and the

average manpower and equipment planned. The schedule shall be submitted in bar chart and pert chart format and with a separate task list showing all data in spreadsheet format. No single task on the schedule may exceed two weeks in duration.

The schedule shall be revised as required by the progress and conditions of the Work, Supplemental Job Orders and all other factors that could influence the date of Substantial Completion.

Contractor shall post a schedule on the Project site in a location readily accessible to the Owner and Architect. The posted schedule shall be updated at least weekly by the Contractor to show actual progress. At least once a month, Contractor will provide a written progress report to the Owner in a format approved by Owner.

Weather shall be allowed for in the Contractor's Schedule. Additional time will be granted for adverse weather to the extent the number of scheduled workdays lost due to weather exceed: July 0, August 0, September 1, October 3, November 6, December 9, January 10, February 9, March 9, April 5, May 1, June 0.

8. PAYMENTS

8.1. JOB ORDER PRICE

The Job Order Price as stated in the Job Order, including adjustments authorized under the terms of the Contract, is the total amount payable by the Owner to the Contractor for the complete Job Order Work.

8.2. JOB ORDER PRICE BREAKDOWN

The Job Order Price Proposal Summary shall be used as the payment breakdown. The payment breakdown does not establish the value of Work for contract modifications.

8.3. PROGRESS PAYMENTS

The Owner will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Owner may make partial, monthly payments based on a percentage of the work completed as called for by the Contract Documents and approved Supplemental Job Orders. Not more often than once each month and on a day of each month agreed upon between the Owner and the Contractor, the Contractor shall submit to the Owner through the Architect an application for payment consisting of a Certificate of Payment, a calculation of completed Work based on the approved payment breakdown and, if required by Owner, receipts, releases, or other evidence showing the Contractor's payments for materials, labor, Subcontractors, and any such information as the Owner may require. Payment shall not be owed if the application does not conform to these requirements. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Project Manager concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.

Payment for materials and/or equipment stored on site which have not been permanently incorporated into the Work is at the discretion of the Owner. Payment for materials and/or equipment stored off-site, whether or not specially fabricated for the Project, can be made only when payment for such materials and/or equipment has been previously approved by the Owner and shown on the approved payment breakdown and such payment shall be conditional upon submission by the Contractor of a Bill of Sale in a form acceptable to the Owner or other such evidence as is required by the Owner to establish the Owner's title to such material and/or equipment. If materials and/or equipment cannot be stored at the Site they must be delivered and suitably stored at another local location agreed to in writing prior to execution of the job order, for example, a mutually acceptable bonded and insured warehouse. If materials and/or equipment are found they cannot be stored at the Site after execution of the job order, the above applies at no additional expense to the Owner.

The Contractor shall present the application for payment, as required herein, to the Architect for approval. Architect will review and adjust the Certificate of payment to such amount as he decides is properly due and deliver it to the Owner for payment.

The Owner will retain 5 percent of the amount of each payment due the Contractor until after the date of Final Completion.

No Certificate of Payment issued, nor payment made to the Contractor nor partial or entire use of occupancy of the Work by the Owner shall be an acceptance of any Work not in accordance with the Contract Documents.

The Contractor shall not assign any monies due or to become due hereunder without the written consent of the Owner and of all sureties executing bonds on behalf of the Contractor in connection with this Contract.

8.4. OWNER'S FAILURE TO ISSUE PAYMENT

Except as provided in paragraph 8.5, below, should the Owner fail to issue payment for approved amounts owned under the Contract within 30 calendar days after the Architect receives the application for payment from Contractor, then the Contractor may, upon fourteen days written notice to the Owner and provided the Owner does not pay the Contractor within said fourteen days, stop Work only until Contractor receives the approved amount owed.

8.5. PAYMENTS WITHHELD

The Owner may withhold payment, on account of subsequently discovered information, nullify the whole or a part of any progress payment or retention payment to such extent as may be necessary to protect the Owner from loss on account of:

1. Defective Work.
2. Third party claims or reasonable evidence indicating probable filing of third-party claims.

3. Failure of the Contractor to make payments to Subcontractors or for material, labor, or equipment.
4. The Owner's doubt that the Work can be completed for the unpaid portion of the Contract Amount.
5. Damage to another contractor's work.
6. Damage to Owner's property.
7. Failure to pay fees in accordance with the Contract Documents.
8. Owner's cost of correcting deficiencies in the Work or undertaking any Work.
9. Liquidated damages or anticipated liquidated damages.
10. Any amount owed to Owner or claimed by Owner.
11. Contractor's failure to deliver as-built drawings, guarantees, operating manuals or other documents.
12. Failure by Contractor to fulfill any Contract requirement.

8.6. FINAL PAYMENT AND RETENTION PAYMENTS

The final payment shall be the one made in response to the 100 percent complete application for payment which will bring the total paid to the Contractor to 95 percent of the Job Order Price. Contractor's acceptance of the final payment shall constitute a waiver of all claims by Contractor except those previously made in writing.

The Owner is entitled to retain 5 percent of the amount of each payment due Contractor until at least 35 days after the date of recording the Notice of Completion. At that time if any Work is still not complete, the Owner may continue to withhold all retention or, at the Owners option, the Owner may pay any portion of the retention.

As a prerequisite to the release of retention, Contractor shall sign a Release of Claims in a form prescribed by Owner.

Unless otherwise required by law, Contractor shall not be paid interest on retention.

9. INSURANCE

9.1. HOLD HARMLESS

To the full extent permitted by law, CONTRACTOR shall indemnify and save harmless the COUNTY, its officers, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including CONTRACTOR, its officers, employees and servants, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties or claims of damages resulting from CONTRACTOR'S failure to comply with applicable laws, or (D) any other loss or cost resulting from the CONTRACTOR'S negligent or reckless acts or omissions or willful misconduct in connection with the performance of any work required of CONTRACTOR or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of CONTRACTOR to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement.

9.2. INSURANCE

The Contractor shall not commence Work under this Contract until all required insurance has been obtained and such insurance has been approved by the Owner. The Contractor shall furnish the Owner with Certificates of Insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract. Certificates of Insurance shall be filed with the Owner within ten (10) days after award of the Contract. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy.

The Contractor shall have in effect during the entire life of this Contract Workers Compensation and Employers Liability Insurance providing full statutory coverage; and in case any work is sublet, the Contractor shall require all Subcontractors similarly to provide Workers Compensation and Employers Liability Insurance to full statutory limits. In signing this Contract, the Contractor makes the following certification, required by Section 1861 of the Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him and any Subcontractor performing Work covered by this Contract, from any and all Claims for damages for bodily injury, including accidental death, as well as any and all Claims for property damage including third party property damage to include coverage on property in the care, custody and control of the Contractor, and also including what are commonly known as the X, C and U exclusions (having to do with blasting, collapse, and underground property damage) which may arise from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below. Such insurance shall include:

- 1 Comprehensive General Liability \$2,000,000
- 2 Motor Vehicle Liability Insurance \$1,000,000

The Owner and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the Owner, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the Owner or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

The Contractor shall purchase and maintain at his expense All Risk Property Insurance, excluding Earthquake and Flood coverage, in an amount covering all work and materials in the Contract, including that of Subcontractors, in an amount equal to the Contract Amount including adjustments. Subcontractors shall be included as insured and the Owner shall be named as a Loss Payee as its interests may appear. Said insurance shall be maintained in complete coverage throughout the duration of the Contract Term.

9.3. FAILURE TO PROVIDE INSURANCE

If Contractor fails to provide insurance as required herein, the Owner, at its option, may take out and maintain such insurance as the Owner deems in its best interest and charge the cost thereof to the Contractor.

10. GUARANTEES

10.1. REQUIRED GUARANTEES

In addition to guarantees required elsewhere in the Contract Documents, the Contractor shall guarantee all of the work, and each Subcontractor shall guarantee his own Work, against defective material or faulty workmanship for a minimum of one year after the date of Substantial Completion. All guarantees must be submitted in triplicate to the Architect on the Contractor's own letterhead in the form prescribed by Owner.

In addition to the requirements of paragraph 10.1A, all standard manufacturer warranties shall be passed to the Owner which may extend the warranty period beyond one year.

In addition to the guarantees and warranties required by the Contract Documents, the Owner has all rights and remedies provided by law including those pertaining to latent defects.

10.2. REPAIR OF GUARANTEED WORK

If repairs are required in connection with guaranteed Work, the Contractor shall promptly upon receipt of notice from the Owner, and without expense to the Owner:

- 1 Place in satisfactory condition in every detail all of such guaranteed Work;

- 2 Make good all damage to the building, site, equipment, furniture, or contents which, in the opinion of the Owner, is the result of work not in accordance with the terms of the Contract Documents or disturbed in the process of correcting guaranteed Work.

If the Contractor disturbs any work guaranteed under another contract in fulfilling the requirements herein he shall restore such disturbed work to a condition satisfactory to the Owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.

A new full term guarantee period shall apply to repaired work upon completion of repairs.

If Contractor fails to proceed to comply with the terms of the guarantee or make repairs of defective work within 7 days of Notice from Owner, the Owner may remedy the Contractor's failure by whatever means the Owner deems expedient. The Owner may, at any time, take measures to mitigate damage or reduce undesirable effects of defective work. All costs expended by Owner pursuant to this Section shall be paid by Contractor.

+ + END OF GENERAL CONDITIONS + +



**Sample Agreement
JOC System License and Fee
Agreement**

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's Cloud JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights, and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use, or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of equal to the greater of either: 1) 1% of the value of work procured from Licensee by Client ("Contractor License Fee"); or the applicable

license fee assessed to the Contractor as otherwise set forth and agreed to by Licensee in the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within thirty (30) days of Licensee's receipt of a Job Order, Purchase Order, or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, 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 Licensee, subject to federal, state, and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.