

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE GORDIAN GROUP, INC.

This Agreement is entered into this __8th__ day of __August__, 2017 ____, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and The Gordian Group, Inc., hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of assisting the County in the maintenance and continuing support for the County's Department of Public Works Job Order Contracting program.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services
Exhibit B—Payments and Rates
Attachment I – JOC System License

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Five Hundred Thousand Dollars (\$500,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from August 8, 2017, through August 7, 2020, or upon the expenditure of the maximum contract amount set forth in Paragraph 3, whichever is earlier.

5. Termination

This Agreement may be terminated by Contractor or by the Director of Public Works or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") produced by the County or resulting from County's use of Contractor's JOC system under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law. The terms of this Paragraph 6 shall not apply to the Proprietary Information or associated documents as set forth in the JOC System License included as Attachment I.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (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, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which 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 by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

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

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is 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 Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents

while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of 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 amounts specified below:

(a) Comprehensive General Liability...	\$1,000,000
(b) Motor Vehicle Liability Insurance...	\$1,000,000
(c) Professional Liability.....	\$1,000,000

County 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 (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political

beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of

allegations covered by this subsection 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 a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records: Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause: Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law: Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

James C. Porter, Director of Public Works
County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063
Ph.: 650-599-4100
Fx.: 650-361-8220

In the case of Contractor, to:

Ammon T. Leshner, Vice President of Legal Affairs
The Gordian Group
30 Patewood Drive, Suite 350
Greenville, SC 29615
Ph.: 800-874-2291

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

19. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: **THE GORDIAN GROUP, INC.**


Contractor Signature

7/18/2017
Date

Ammon T. Leshner, VP of Legal Affairs
Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

The intent of this Agreement is that the Contractor shall perform all work necessary to maintain and support detailed and comprehensive Job Order Contract (JOC) documents customized exclusively for the County of San Mateo Department of Public Works' needs as well as provide optional services at the County's request for Job Order development, construction management, and estimating for the facilitation of JOC projects. During the course of the contract the Contractor will provide ongoing support for the administration of the Job Order Contract process, to include software support, maintenance, and training of JOC contractors and County of San Mateo Department of Public Works personnel as necessary. The Contractor shall provide key services and tasks anticipated as necessary to accomplish the identified scope of services including, but not necessarily limited to, the following:

I. Gordian JOC Solution™

Program Support

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

Procurement & Document Maintenance Support (On-Site)

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

Procurement & Document Maintenance Support (Off-Site)

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

Training Support

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

eGordian[®] Software Support

- Provide unlimited access to the eGordian[®] software
- Provide software technical support, including:
 - Maintain software access for current staff
 - Set-up software access for new staff
 - Provide systems support in connection with the software Provide access to all new releases of the software
- Write, test and finalize modifications to existing reports, as requested
- Write, test and finalize new reports, as requested
- Provide toll free software telephone support from 8 AM EST – 8 PM EST Monday thru Friday.

Additionally, and as required, Contractor shall:

- Provide experienced on site staff that will be fully responsible for the complete JOC program. The staff will report to the County and shall assist the County with any JOC related issues.
- Customize all pricing, specifications, forms, software configuration, formats, etc. to meet the specific needs of the County of San Mateo. If requested, provide a single hard copy of all JOC documentation, including unit price book/s and technical specifications.
- Attend meetings with County staff and management as appropriate. Provide progress reports and updates as requested.
- Update, enhance, and publish customized Unit Price Book(s)/Construction Task Catalog(s)®, each containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction. Unit price list will be edited to include the many unique construction components utilized within County of San Mateo's facilities and to reflect the County's "Building Standards". Unit prices will be adjusted to reflect current market conditions as they relate to County of San Mateo projects. Update crew composition and local productivity factor for each of the construction tasks in the unit price books on a regular basis and maintain a comprehensive database containing each of the individual construction tasks and their corresponding unit prices.
- Update, enhance, and publish a comprehensive and customized set of technical specifications describing the materials, performance and installation requirements for each of the construction tasks listed in the Construction Task Catalog.
- Provide and/or maintain an automated JOC system software capable of generating all of the JOC documents including contractor cost proposals, cost estimates, work orders and all other applicable reports and forms.
- Provide designated County users unlimited concurrent access to your web based software system as requested to log on, update the system and use the data. Reports shall have export capability and shall be in formats meeting industry standards and be capable of being downloaded to County data base systems. All data input by the County and any data attached to the respective work order by the system shall be owned by the County of San Mateo and shall not be restricted to its usage on County projects. For emergency and prevention of data loss, the system software will provide backup and restore capability. All application software and data must be able to be backed up. All procedures must be documented and approved by the County Information Systems Department.
- Regularly update all JOC execution procedures and policies and update the detailed and comprehensive JOC training program for County staff. Training program shall include a

comprehensive training manual with sample work orders, flow charts, forms and all other documents as needed to fully describe the JOC program. Training shall be tailored to include actual County projects and shall incorporate all applicable County policies and procedures. Provide all training aids and associated materials.

- Assist the County in establishing appropriate safeguards into the JOC program to insure the prevention of fraud, waste and abuse.
- Conduct outreach efforts to maximize contractor participation in bidding on the JOC program construction contract. As a minimum, it is expected that this work will involve contacting qualified contractors and meeting with local contracting organizations to explain the JOC program in detail, and conducting pre-bid meetings.
- Assist the County during the bidding of the JOC construction contract. Work will include, but not be limited to, attendance and participation in pre-bid conferences, assistance in answering bidders' questions and or/providing clarifications, preparation of addenda, evaluating the qualifications of potential bidders, and review and evaluation of submitted bids.
- Train each new JOC contractor on all aspects of the JOC program including the automated software program.
- During the term of this Agreement, provide periodic on-site support. On-site services will include, but not be limited to: providing assistance and oversight relative to preparation and issuance of all JOC contract documents; train County staff to conduct joint scope meetings, prepare detailed scopes of work, and develop and review Price Proposals; provide eGordian® software training; prepare status reports requested by the County; assist County staff with resolving issues and questions that arise during the development and execution of work orders; and provide overall JOC program monitoring and guidance.
- Provide the County with continuous documents maintenance support. Support would include updating of construction tasks, unit prices, technical specifications, execution procedures, training materials and all other applicable documents. New updated document sets would be provided to County upon request and as required.
- Provide continuous telephonic support to the County, including debugging and other systems-related support.
- Conduct periodic training sessions for new employees as required.

II. Optional JOC Complete Solution®

- 1) When requested by the County, and for the consideration set forth in Exhibit B, Article II, Contractor shall provide Job Order Development services for each Job Order as set forth below:

- When a project is identified, Contractor will contact County and assist with determining whether the project is appropriate for JOC.
- In the event the County has multiple JOC contractors, Contractor will assist the County in identifying the appropriate JOC contractor for the project based on the type of work involved and the location of the project.
- Contractor will schedule a Joint Scope Meeting at the project site to assist the County and the JOC contractor in determining the details of the work that the JOC contractor will perform.
- Contractor will assist in preparing the Detailed Scope of Work that describes the JOC contractor will perform. Contractor will also assist with resolving issues when project plans and actual conditions vary.
- After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, Contractor will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.
- After the JOC contractor prepares and submits a Price Proposal, the Contractor will review the Price Proposal to ensure the JOC contractor has selected the appropriate tasks and quantities, and will submit any required changes to the JOC contractor. Contractor will also obtain and review any County required information submitted by the JOC contractor such as a construction schedule and a list of proposed subcontractors. Then Contractor will submit the Price Proposal and related documents to the County.
- Once the County approves the Price Proposal and related documents, Contractor will assist the County with the issuance of a job/task order to the selected JOC contractor.
- During construction, the County's project managers will follow its standard internal policies and procedures for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or the County desires to change the Detailed Scope of Work, a Supplemental Job Order is developed in the same manner as the original Job Order.

III. Optional JOC Complete Solution *Plus*™

- 1) When requested by the County, and for the consideration set forth in Exhibit B, Article II, Contractor shall provide construction management services for each Job Order as set forth below:
 - Contractor will conduct a pre-construction meeting with County representative(s), the JOC contractor and, if applicable, the architect or engineer. The Contractor's construction manager will coordinate and share any preconstruction information with County, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.

- During construction, the Contractor's construction manager will monitor the JOC contractor's work in-progress, manage the JOC contractor's compliance with the approved safety plan and complete a report for each site visit.
- The Contractor's construction manager will provide weekly construction status reports to County conduct project progress meetings with all JOC contractors and staff on a periodic basis, and coordinate any required technical and code inspections.
- In the event there are unforeseen conditions or County requests changes to the scope after the work has begun, the Contractor's construction manager will analyze and process a supplemental Job Order by utilizing the procedures used to develop the initial Job Order.
- The Contractor's construction manager will review and recommend for approval, or direct necessary revisions to, the JOC contractor's applications for payment and obtain County's approval of the work. Final acceptance of the work will be the responsibility of County. Technical and code inspections will be the responsibility of the appropriate inspection agencies.
- As the final step in the process, the Contractor's construction manager will enter all Job Order related information into the eGordian® information management system and collect any required as-builts, warranties, etc., from the JOC contractor.

IV. Additional Services

- 1) Upon request by the County, Contractor shall provide professional construction cost estimating services on an as-needed basis. Contractor's professional construction cost estimators shall provide project estimating services on JOC and non-JOC projects as requested, which shall consist of building rough order of magnitude estimates, using national construction cost data, from stated scopes and/or construction documents.
- 2) The County may, from time to time, request changes in the services to be performed by Contractor ("Additional Services"). No such change, including any increase or decrease in the compensation amount, which shall be mutually agreed upon by the Owner and Contractor, shall be effective and enforceable until and unless a written amendment to this Agreement has been executed by the parties and attached hereto.

V. County Obligations

County understands that, in order to enable Contractor to meet the stated requirements, County shall:

- a. review all documentation and respond to requests for information submitted by The Gordian Group in a timely manner.
- b. provide full information regarding requirements for the JOC Program, including but not limited to, facilities lists, current County procedures, programs, technical specifications and bidding information.
- c. designate, in writing, a representative who shall render or obtain decisions

pertaining to the JOC program in a timely manner.

d. provide work space and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by Contractor's JOC development team.

e. provide reproduction services for the "Construction Task Catalog®", Technical Specifications, Contract and General Conditions, Instructions to Bidders and Proposal Forms.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

- I. In consideration for maintaining and providing on-going technical support to the Job Order Contract (JOC) program, as described in Exhibit A, Article I, the County agrees to pay The Gordian Group a license fee of 1.95% (One and ninety-five hundredths percent) of the value of work ordered through the JOC program.
- II. In consideration for the Job Order Development services, to be provided upon request by the County and as described in Exhibit A, Article II, the County agrees to pay The Gordian Group a Job Order Development fee of 3.05% (Three and five hundredths percent) of the value of each Job Order for which the County elects to receive the Job Order Development services.
- III. In consideration for the Construction Management services, to be provided upon request by the County and as described in Exhibit A, Article III, the County agrees to pay The Gordian Group a Construction Management fee of 5.95% (Five and ninety-five hundredths percent) of the value of each Job Order for which the County elects to receive the Construction Management services.
- IV. The above license fee, Job Order Development and Construction Management fees when applicable, shall be billable to the County Department of Public Works when each Job Order is issued. An individual invoice shall be submitted for each Job Order.
- V. In consideration for the services set forth in Exhibit A, Article IV, the County agrees to pay The Gordian Group a fee of \$150 per hour for the duration of this Agreement.
- VI. Any increase or decrease in the compensation and/or Agreement amount, shall be mutually agreed upon by the Owner and Contractor, and is only effective and enforceable after a written amendment to this Agreement has been executed by the parties and attached hereto.

Attachment I – JOC System License

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

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

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

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

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