

# **County of Monterey**

Board of Supervisors Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901



## **Meeting Agenda - Final**

**Friday, July 25, 2025**

**12:00 PM**

**50+ page Advance Reports for the Board of Supervisors meeting on Tuesday,  
August 5, 2025.**

**Advance Reports Over 50 Pages**

**The following reports are scheduled for the Board of Supervisors meeting on Tuesday, August 5, 2025. The reports are being distributed 11 + days prior to the Board of Supervisors meeting due to the large volume of information. These reports are not numbered at this time.**

**Natividad Medical Center - Consent**

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute renewal & amendment No. 3 to the Addendum with The Gordian Group to the Sourcewell Contract 050421 for administrative services of the Job Order Contracting (JOC) program extending the agreement an additional one year period (June 8, 2025 through June 7, 2026) for a revised agreement term of September 16, 2021 through June 7, 2026 and adding \$125,000 for a revised total spending limit not to exceed \$725,000.

**Attachments:**     [Board Report](#)  
                          [The Gordian Group Amendment No. 1](#)  
                          [The Gordian Group Amendment No. 2](#)  
                          [Gordian Group Addendum w Sourcewell Agreement](#)

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute amendment No. 2 to the agreement (A-15549) with Vigilant Neuromonitoring LLC for intraoperative neurophysiological monitoring services, with no changes to the agreement term of October 1, 2021 through September 30, 2026, and adding \$200,000 for a revised total agreement amount not to exceed \$400,000.

**Attachments:**     [Board Report](#)  
                          [Vigilant Neuromonitoring Amendment No. 2](#)  
                          [Vigilant Neuromonitoring Renewal and Amendment No. 1](#)  
                          [Vigilant Neuromonitoring Agreement](#)



# County of Monterey

Item No.

## Board Report

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

Legistar File Number: A 25-303

August 05, 2025

Introduced: 7/11/2025

Current Status: Natividad Medical Center -  
Consent

Version: 1

Matter Type: BoS Agreement

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute renewal & amendment No. 3 to the Addendum with The Gordian Group to the Sourcewell Contract 050421 for administrative services of the Job Order Contracting (JOC) program extending the agreement an additional one year period (June 8, 2025 through June 7, 2026) for a revised agreement term of September 16, 2021 through June 7, 2026 and adding \$125,000 for a revised total spending limit not to exceed \$725,000.

### **RECOMMENDATION:**

#### **It is recommended the Board of Supervisors:**

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute renewal & amendment No. 3 to the Addendum with The Gordian Group to the Sourcewell Contract 050421 for administrative services of the Job Order Contracting (JOC) program extending the agreement an additional one year period (June 8, 2025 through June 7, 2026) for a revised agreement term of September 16, 2021 through June 7, 2026 and adding \$125,000 for a revised total spending limit not to exceed \$725,000.

### **SUMMARY/ DISCUSSION:**

In April 9, 2013, the Board of Supervisors approved an agreement between the County of Monterey and The Gordian Group, Inc. to provide administrative services for the Job Order Contracting (JOC) System. Sourcewell (formerly the National Joint Powers Alliance, aka "NJPA") is a public agency operating under the enabling authority outlined in Minnesota Statute 123A.21, which allows participating nationwide government and education agencies ("Members") to reduce the cost of purchasing by leveraging their combined national purchasing power through cooperative efforts. On May 4, 2021, Sourcewell released RFP 050421 for Indefinite Quantity Construction Contracting Systems and Related Services and The Gordian Group (Gordian) responded and was awarded a service contract. Services offered and accepted within Gordian's proposal in response to the Sourcewell RFP include Job Order Contracting (JOC) administrative services.

The County of Monterey is a member of Sourcewell and per the terms of the RFP 050421 which allow all public agencies within the U.S. to procure off of the contract awarded from RFP 071415, NMC is procuring administrative services rendered for Job Order Contracting (JOC) projects from Gordian by piggybacking off the Sourcewell Contract agreement 050421-GGI Other Monterey

County departments also currently utilize Gordian's services for JOC projects by piggybacking off the Sourcewell contract as well. NMC is one of the implementers of the County's Job Order Contracting (JOC) program for the County. The County contracts with The Gordian Group, Inc. (Gordian) to provide the JOC system.

The Gordian contract is procured through a cooperative award made by Sourcewell (formally National Joint Powers Association). Natividad Medical Center is requesting to increase the Sourcewell Contract 050421 total spending limit in the amount of \$125,000 for a revised total spending limit not to exceed \$725,000 without needing to change the contract term. To incorporate the County's standard risk provisions and other relevant terms and conditions into the service obligations, NMC and Gordian executed a new Sourcewell on September 16, 2021 through June 7, 2026 in the amount of \$725,000.

The JOC program currently provided to the County by The Gordian Group, Inc. is referred to as the JOC Complete Solution®, which includes assistance with developing each job order from identification to job order issuance.

In addition to job order development services, the County has identified the need for The Gordian Group, Inc. to provide the JOC Complete Solution Plus™ option, which includes construction management services to manage job orders from job order issuance to completion of the punch list to job order close-out, construction estimating services, and project budgeting and planning, on a project-by-project basis as requested by the County.

A five percent (5%) License Fee to utilize the JOC Program is payable to The Gordian Group, Inc. only when a Job Order is issued to a JOC Contractor. Optionally, as needed, the County may utilize JOC Project Management services for an additional 5.95% fee. The Gordian Group, Inc. fees are contained in the overall eligible project budgets.

#### **OTHER AGENCY INVOLVEMENT:**

The Office of County Counsel has reviewed and approved renewal & amendment No. 3 as to form, and the Auditor-Controller has reviewed and approved as to payment provisions. The renewal & amendment No. 3 has also been reviewed and approved by NMC's Finance Committee and by its Board of Trustees on June 9, 2025.

#### **FINANCING:**

The cost for this renewal & amendment No. 3 is \$125,000 of which \$70,000 is included in the Fiscal Year 2025-26 Recommended Budget. Amounts for remaining years of the agreement will be included in those budgets as appropriate.

#### **BOARD OF SUPERVISORS STRATEGIC INITIATIVES:**

Construction projects help facilitate the overall patient experience and improve physical hospital infrastructure.

- ☐ Economic Development
- ☐ Administration
- ☐ Health and Human Services
- ☒ Infrastructure
- ☐ Public Safety

Prepared by: Brian Griffin, Project Manager, 783-2605

Approved by: Charles R. Harris MD, Chief Executive Officer, 783-2504

Attachments:

Renewal & Amendment No. 3 to Addendum with The Gordian Group  
Amendment No. 2 to Addendum with The Gordian Group  
Amendment No. 1 to Addendum with The Gordian Group  
Addendum with The Gordian Group to the Sourcewell Contract 050421  
Sourcewell Contract 050421 with Gordian Group  
Sourcewell RFP #050421 for Construction Contracting System Services

Attachments on file with the Clerk of the Board



# County of Monterey

Item No.

## Board Report

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

Legistar File Number: A 25-303

August 05, 2025

Introduced: 7/11/2025

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute renewal & amendment No. 3 to the Addendum with The Gordian Group to the Sourcewell Contract 050421 for administrative services of the Job Order Contracting (JOC) program extending the agreement an additional one year period (June 8, 2025 through June 7, 2026) for a revised agreement term of September 16, 2021 through June 7, 2026 and adding \$125,000 for a revised total spending limit not to exceed \$725,000.

### **RECOMMENDATION:**

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### **SUMMARY/ DISCUSSION:**

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The County of Monterey is a member of Sourcewell and per the terms of the RFP 050421 which allow all public agencies within the U.S. to procure off of the contract awarded from RFP 071415, NMC is procuring administrative services rendered for Job Order Contracting (JOC) projects from Gordian by piggybacking off the Sourcewell Contract agreement 050421-GGI Other Monterey County departments also currently utilize Gordian's services for JOC projects by piggybacking off the Sourcewell contract as well. NMC is one of the

implementers of the County's Job Order Contracting (JOC) program for the County. The County contracts with The Gordian Group, Inc. (Gordian) to provide the JOC system.

The Gordian contract is procured through a cooperative award made by Sourcewell (formally National Joint Powers Association). Natividad Medical Center is requesting to increase the Sourcewell Contract 050421 total spending limit in the amount of \$125,000 for a revised total spending limit not to exceed \$725,000 without needing to change the contract term. To incorporate the County's standard risk provisions and other relevant terms and conditions into the service obligations, NMC and Gordian executed a new Sourcewell on September 16, 2021 through June 7, 2026 in the amount of \$725,000.

The JOC program currently provided to the County by The Gordian Group, Inc. is referred to as the JOC Complete Solution®, which includes assistance with developing each job order from identification to job order issuance.

In addition to job order development services, the County has identified the need for The Gordian Group, Inc. to provide the JOC Complete Solution Plus™ option, which includes construction management services to manage job orders from job order issuance to completion of the punch list to job order close-out, construction estimating services, and project budgeting and planning, on a project-by-project basis as requested by the County.

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#### **OTHER AGENCY INVOLVEMENT:**

The Office of County Counsel has reviewed and approved renewal & amendment No. 3 as to form, and the Auditor-Controller has reviewed and approved as to payment provisions. The renewal & amendment No. 3 has also been reviewed and approved by NMC's Finance Committee and by its Board of Trustees on June 9, 2025.

#### **FINANCING:**

The cost for this renewal & amendment No. 3 is \$125,000 of which \$70,000 is included in the Fiscal Year 2025-26 Recommended Budget. Amounts for remaining years of the agreement will be included in those budgets as appropriate.

#### **BOARD OF SUPERVISORS STRATEGIC INITIATIVES:**

Construction projects help facilitate the overall patient experience and improve physical hospital infrastructure.

- ☐ Economic Development
- ☐ Administration
- ☐ Health and Human Services

☒ Infrastructure  
☐ Public Safety

Prepared by: Brian Griffin, Project Manager, 783-2605

Approved by: Charles R. Harris MD, Chief Executive Officer, 783-2504

Attachments:

Renewal & Amendment No. 3 to Addendum with The Gordian Group

Amendment No. 2 to Addendum with The Gordian Group

Amendment No. 1 to Addendum with The Gordian Group

Addendum with The Gordian Group to the Sourcewell Contract 050421

Sourcewell Contract 050421 with Gordian Group

Sourcewell RFP #050421 for Construction Contracting System Services

Attachments on file with the Clerk of the Board





## Monterey County Board of Supervisors

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066  
[www.co.monterey.ca.us](http://www.co.monterey.ca.us)

A motion was made by Supervisor Chris Lopez, seconded by Supervisor John M. Phillips to:

**Agreement No.: A-15831; Amendment No.: 1**

- a. Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute amendment No. 1 to the Addendum with The Gordian Group to the Sourcewell Contract 050421 for administrative services of the Job Order Contracting (JOC) program, with no change to the agreement term of September 16, 2021 through June 7, 2025 and adding \$250,000 for a revised total spending limit not to exceed \$350,000.
- b. Authorize the Chief Executive Officer for NMC or his designee to execute up to three (3) future amendments to the agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) (\$10,000) of the original cost of the agreement.

PASSED AND ADOPTED on this 7<sup>th</sup> day of June 2022, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams

NOES: None

ABSENT: None

(Government Code 54953)

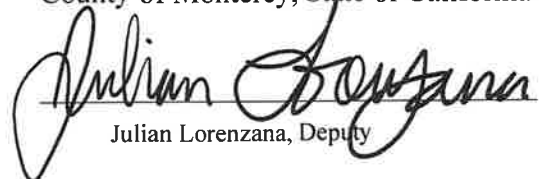
I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting June 7, 2022.

Dated: June 13, 2022

File ID: A 22-253

Agenda Item No.: 26

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

  
Julian Lorenzana, Deputy

**AMENDMENT NO. 1  
TO SERVICES AGREEMENT  
BETWEEN THE GORDIAN GROUP, INC. AND  
THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD MEDICAL CENTER  
FOR  
JOB ORDER CONTRACTING (JOC) ADMINISTRATIVE SERVICES  
RENDERED UNDER THE SOURCEWELL CONTRACT #050421-GCI**

This Amendment No. 1 to the Services Agreement ("Agreement") which was effective on August 26, 2021, is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and The Gordian Group, Inc. ("CONTRACTOR"); **From this point forward, the party referenced previously as "NMC" shall be referenced as "COUNTY" and collectively, COUNTY and CONTRACTOR are referred to as the "Parties" to this Agreement, with respect to the following:**

**RECITALS**

**WHEREAS**, Sourcewell (formerly the National Joint Powers Alliance, aka "NJPA") is a public agency operating under the enabling authority outlined in Minnesota Statute 123A.21, which allows participating nationwide government and education agencies ("Members") to reduce the cost of purchasing by leveraging their combined national purchasing power through cooperative efforts.

**WHEREAS**, NJPA released RFP #050421 for Indefinite Quantity Construction Contracting Systems and Related Services on May 4, 2021; and

**WHEREAS**, Gordian was awarded Contract #050421-CGI ("Sourcewell Contract"), effective June 6, 2021 as a responsive Proposer to RFP #050421; and

**WHEREAS**, COUNTY and CONTRACTOR currently wish to amend the Agreement with a \$250,000 increase in order for services to continue for a total Agreement amount of \$350,000 with no change to the Agreement term of September 16, 2021 through June 7, 2025 and no change to the scope.

**AGREEMENT**

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

The Addendum is hereby amended on the terms and conditions as set forth in the Addendum except as specifically set forth below.

1. Paragraph 6 shall be amended to the following:

**"The total amount for services described herein shall not exceed \$350,000."**

2. Except as provided herein, all remaining terms, conditions and provisions of the Addendum are unchanged and unaffected by this Amendment No. 1 and shall continue in full force and effect as set forth in the Addendum.
3. A copy of this Amendment No. 1 shall be attached to the Addendum.
4. This Amendment No. 1 shall be effective when signed by both Parties.

Amendment No. 1 to Agreement  
With The Gordian Group, Inc. for  
JOC Administrative Services

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 1 on the basis set forth in this document and have executed this Amendment No. 1 on the day and year set forth herein.

**COUNTY OF MONTEREY on behalf of  
NATIVIDAD MEDICAL CENTER**

By: [Signature]  
for Charles R. Harris, CEO

Date: 6-21-22

**APPROVED AS TO LEGAL PROVISIONS**

By: [Signature]  
Monterey County Deputy County Counsel  
Chief Deputy County Counsel

Date: May 16, 2022

**APPROVED AS TO FISCAL PROVISIONS**

By: [Signature]  
Monterey County Deputy Auditor/Controller

Date: 5-16-2022

**CONTRACTOR**

The Gordian Group, Inc.

**CONTRACTOR's Business Name**

\*\*\*See instructions below\*\*\*

DocuSigned by:  
By: Ammon T. Leshner  
4EBB3165336C4E3  
(Signature Of: Client, Consultant, or Vice-President)

Ammon T. Leshner Vice President  
Name and Title

Date: 05/11/2022 | 12:24 PM EDT

DocuSigned by:  
By: Jay Mackerer  
791E34237A-RE49F  
(Signature Of: Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)

Jay Mackerer CFO  
Name and Title

Date: 05/12/2022 | 5:03 PM EDT

**\*\*\*Instructions\*\*\***

If **CONTRACTOR** is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

If **CONTRACTOR** is a partnership; the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).

If **CONTRACTOR** is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).





## Monterey County Board of Supervisors

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

[www.co.monterey.ca.us](http://www.co.monterey.ca.us)

A motion was made by Supervisor Mary L. Adams, seconded by Supervisor Chris Lopez to:

**Agreement No.: A-15831 ; Amendment No.: 2**

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute amendment No. 2 to the Addendum with The Gordian Group to the Sourcewell Contract 050421 for administrative services of the Job Order Contracting (JOC) program, with no change to the agreement term of September 16, 2021 through June 7, 2025 and adding \$250,000 for a revised total spending limit not to exceed \$600,000.

PASSED AND ADOPTED on this 24<sup>th</sup> day of October 2023, by roll call vote:

AYES: Supervisors Alejo, Church, Lopez, Askew, and Adams  
NOES: None  
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting October 24, 2023.

Dated: November 1, 2023  
File ID: A 23-492  
Agenda Item No.: 51

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

Vicente Ramirez, Deputy

**AMENDMENT NO. 2  
TO SERVICES AGREEMENT  
BETWEEN THE GORDIAN GROUP, INC. AND  
THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD MEDICAL CENTER  
FOR  
JOB ORDER CONTRACTING (JOC) ADMINISTRATIVE SERVICES  
RENDERED UNDER THE SOURCEWELL CONTRACT #050421-GCI**

This Amendment No. 2 to the Services Agreement (“Agreement”) which was effective on August 26, 2021 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (“NMC”), and The Gordian Group, Inc. (“CONTRACTOR”); **From this point forward, the party referenced previously as “NMC” shall be referenced as “COUNTY” and collectively, COUNTY and CONTRACTOR are referred to as the “Parties” to this Agreement, with respect to the following:**

**RECITALS**

**WHEREAS**, Sourcewell (formerly the National Joint Powers Alliance, aka “NJPA”) is a public agency operating under the enabling authority outlined in Minnesota Statute 123A.21, which allows participating nationwide government and education agencies (“Members”) to reduce the cost of purchasing by leveraging their combined national purchasing power through cooperative efforts.

**WHEREAS**, NJPA released RFP #050421 for Indefinite Quantity Construction Contracting Systems and Related Services on May 4, 2021; and

**WHEREAS**, Gordian was awarded Contract #050421-GGI (“Sourcewell Contract”), effective June 7, 2021 as a responsive Proposer to RFP #050421; and

**WHEREAS**, COUNTY and CONTRACTOR amended the Agreement on June 21, 2022 with a \$250,000 increase in order for services to continue for a total Agreement amount of \$350,000 with no change to the Agreement term of September 16, 2021 through June 7, 2025 and no change to the scope; and

**WHEREAS**, COUNTY and CONTRACTOR currently wish to amend the Agreement with a \$250,000 increase in order for services to continue for a total Agreement amount of \$600,000 with no change to the Agreement term of September 16, 2021 through June 7, 2025 and no change to the scope.

**AGREEMENT**

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

The Addendum is hereby amended on the terms and conditions as set forth in the Addendum except as specifically set forth below.

1. Paragraph 6 shall be amended to the following:

**“The total amount for services described herein shall not exceed \$600,000.”**

2. Except as provided herein, all remaining terms, conditions and provisions of the Addendum are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect as set forth in the Addendum.
3. A copy of this Amendment No. 2 shall be attached to the Addendum.

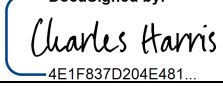
4. This Amendment No. 2 shall be effective when signed by both Parties.

*The remainder of this page was intentionally left blank.*

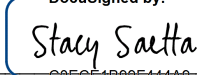
*~ Signature page to follow ~*

**IN WITNESS WHEREOF**, the Parties hereto are in agreement with this Amendment No. 2 on the basis set forth in this document and have executed this Amendment No. 2 on the day and year set forth herein.


**COUNTY OF MONTEREY on behalf of  
NATIVIDAD MEDICAL CENTER**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Charles R. Harris, CEO  
 11/7/2023 | 6:59 AM PST  
 Date: \_\_\_\_\_

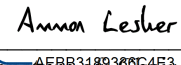
**APPROVED AS TO LEGAL PROVISIONS**

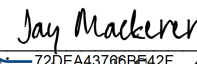
DocuSigned by:  
  
 By: \_\_\_\_\_  
 Monterey County Deputy County Counsel  
 10/10/2023 | 10:51 AM PDT  
 Date: \_\_\_\_\_

**APPROVED AS TO FISCAL PROVISIONS**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Monterey County Deputy Auditor/Controller  
 10/10/2023 | 11:38 AM PDT  
 Date: \_\_\_\_\_

**CONTRACTOR**

The Gordian Group, Inc.  
**CONTRACTOR's Business Name**  
 \*\*\*See instructions below\*\*\*  
 DocuSigned by:  
  
 By: \_\_\_\_\_  
 (Signature of: Chair, President, or Vice-President)  
 Ammon Leshner Vice President  
 Name and Title  
 10/04/2023 | 8:17 AM EDT  
 Date: \_\_\_\_\_

DocuSigned by:  
  
 By: \_\_\_\_\_  
 (Signature of: Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)  
 Jay Mackerer CFO  
 Name and Title  
 10/04/2023 | 3:29 PM EDT  
 Date: \_\_\_\_\_

**\*\*\*Instructions\*\*\***

**If CONTRACTOR** is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

**If CONTRACTOR** is a partnership; the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).

**If CONTRACTOR** is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).



**Solicitation Number: RFP #050421****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and The Gordian Group Inc., 30 Patewood Drive, Bldg. 2, Suite 350, Greenville, SC 29615 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for JOC or IQCC Program Management Consulting Services from which Vendor was awarded a contract.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

**1. TERM OF CONTRACT**

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires June 7, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.
- C. **SURVIVAL OF TERMS.** Articles 11 through 14 survive the expiration or cancellation of this Contract.

**2. EQUIPMENT, PRODUCTS, OR SERVICES**

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Vendor warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized dealers, distributors, and/or resellers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

### **3. PRICING**

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable

time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcwell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

B. SALES TAX. Each Participating Entity is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcwell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcwell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

#### **4. PRODUCT AND PRICING CHANGE REQUESTS**

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcwell Price and Product Change Request Form to the assigned Sourcwell Contract Administrator. This form is available from the assigned Sourcwell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcwell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing

restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

## **5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS**

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

## **6. PARTICIPATING ENTITY USE AND PURCHASING**

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Participating Entity will issue an order directly to Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. **ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract. Vendor will require the use of Vendor's then-current standard License Agreement for the use of its proprietary JOC system and related materials (the JOC System License). In the event of a conflict in terms and conditions between the JOC System License and any other terms and conditions of this Contract, or any transaction document between Vendor and the Participating Entity (including a purchase order), the JOC System License terms and conditions will take precedence.

C. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Participating Entity and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. **TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity.

E. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

## **7. CUSTOMER SERVICE**

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. **BUSINESS REVIEWS.** Vendor must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

## **8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT**

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcewell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State/Province;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. **ADMINISTRATIVE FEE.** In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Vendor may not charge Participating Entities more than the contracted

price to offset the Administrative Fee. The parties agree that as a condition precedent to Vendor's obligation to remit the Administrative Fee, Vendor must first receive payment from the Participating Entity. In the event Vendor does not receive payment from the Participating Entity in full, for any reason, Vendor will only be liable to Sourcewell for payment of the Administrative Fee calculated as a percentage of the fees received by Vendor.

The Vendor will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Vendor's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter in which Vendor receives payment from the Participating Entity.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

## **9. AUTHORIZED REPRESENTATIVE**

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

## **10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE**

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.



C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

D. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

E. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

## **11. LIABILITY**

Vendor must indemnify, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of the performance of this Contract by the Vendor or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications.

## **12. GOVERNMENT DATA PRACTICES**

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

## **13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT**

### **A. INTELLECTUAL PROPERTY**

#### **1. *Grant of License.*** During the term of this Contract:

- a. Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use the Trademark(s) provided to Vendor by Sourcewell in advertising and



promotional materials for the purpose of marketing Sourcewell's relationship with Vendor.

b. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.

2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

a. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.

b. Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.

c. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws.

5. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

#### **14. GOVERNING LAW, JURISDICTION, AND VENUE**

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

#### **15. FORCE MAJEURE**

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

#### **16. SEVERABILITY**

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

#### **17. PERFORMANCE, DEFAULT, AND REMEDIES**

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed

work, any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed will be borne by the Vendor.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

## **18. INSURANCE**

A. **REQUIREMENTS.** At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage  
\$1,000,000 Personal and Advertising Injury  
\$2,000,000 aggregate for Products-Completed operations  
\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Professional/Technical, Errors and Omissions, and/or Miscellaneous Professional Liability.* During the term of this Contract, Vendor will maintain coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Vendor's professional services required under this Contract.

Minimum Limits:

\$2,000,000 per claim or event

\$2,000,000 – annual aggregate

6. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. **CERTIFICATES OF INSURANCE.** Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. **ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE.** Vendor agrees that Sourcewell and its Participating Entities, including their officers, agents, and employees, must be covered as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

## **19. COMPLIANCE**

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Vendor must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Participating Entities.

## **20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION**

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

## **21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS**

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Vendor’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to

laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.



E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.



J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

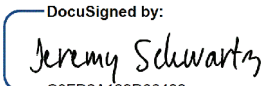
L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

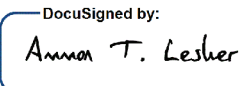
## 22. CANCELLATION

Sourcwell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcwell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcwell


The Gordian Group Inc.

DocuSigned by:  
  
 By: C0FD2A139D06489...  
 Jeremy Schwartz  
 Title: Chief Procurement Officer  
 Date: 6/3/2021 | 2:51 PM CDT

DocuSigned by:  
  
 By: 2905845C404D406...  
 Ammon T. Leshner  
 Title: Vice President and General Counsel  
 Date: 6/7/2021 | 11:21 AM CDT

050421-GGI

Approved:

DocuSigned by:  
  
7E42B8F817A64CC...  
By: \_\_\_\_\_  
Chad Coauette  
Title: Executive Director/CEO  
6/7/2021 | 12:23 PM CDT  
Date: \_\_\_\_\_

# RFP 050421 - JOC or IQCC Program Management Consulting Services

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## Vendor Details

Company Name: Gordian  
Address: 30 Patewood Drive, Suite 350  
Greenville, SC 29615  
Contact: Matthew Peterson  
Email: m.peterson@gordian.com  
Phone: 218-851-9913  
Fax: 800-874-2291  
HST#:

## Submission Details

Created On: Monday March 29, 2021 06:51:25  
Submitted On: Tuesday May 04, 2021 13:46:09  
Submitted By: Deborah Bates  
Email: d.bates@gordian.com  
Transaction #: 74727ce2-4aba-454d-aad0-1c0628ba9924  
Submitter's IP Address: 174.227.18.63

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## Specifications

**Table 1: Proposer Identity & Authorized Representatives**

**General Instructions** (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (and applicable d/b/a, if any):	The Gordian Group, Inc.	*
2	Proposer Address:	30 Patewood Drive Bldg. 2, Suite 350 Greenville, SC 29615	*
3	Proposer website address:	www.gordian.com	*
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Ammon T. Leshner Vice President and General Counsel 30 Patewood Drive, Bldg. 2, Suite 350 Greenville SC 29615 A.Leshner@gordian.com 800-874-2291 Toll Free 864-752-4545 Direct	*
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Ammon T. Leshner Vice President and General Counsel 30 Patewood Drive, Bldg. 2, Suite 350 Greenville SC 29615 A.Leshner@gordian.com 800-874-2291 Toll Free 864-752-4545 Direct	*
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Matthew Peterson Account Manager, National Accounts 30 Patewood Drive, Bldg. 2, Suite 350 Greenville, SC 29615 M.Peterson@gordian.com 800-874-2291 Toll Free 218-851-9913 Mobile	

**Table 2: Company Information and Financial Strength**

Line Item	Question	Response *
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7	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>The Gordian Group, Inc. ("Gordian") is the most qualified and experienced firm in existence for implementing and supporting a customized Job Order Contracting (JOC) for Sourcewell Members ("Sourcewell"). Since our Incorporation in 1990, Gordian has been providing JOC solutions to help public and private facility and infrastructure owners, like Sourcewell Members, control and fast track their construction repairs and alterations. Since Harry Mellon created JOC and co-founded Gordian, our primary focus has been the advancement and improvement of efficient and effective processes across the entire construction lifecycle. During that time, we have developed a wealth of data, technology, process and human resources that are unmatched in the industry. Gordian has continued to innovate and refine our JOC products and services and the underlying components that form them to meet the varying needs of our clients. All of our JOC solutions are designed to minimize the amount of effort required by the owner while maximizing the benefits. During these 30+ years, we have successfully implemented and supported JOC programs for over 250 clients around the country.</p> <p>Gordian's JOC solutions are a turnkey procurement approach, which tailor components to form a unique, comprehensive and high-performing JOC program for each of our clients. Job Order Contracting procurement was pioneered and tested by our founder, Ret. Lt. Colonel Harry H. Mellon, for the U.S. military more than 40 years ago. It is an increasingly popular construction procurement method among facility and infrastructure owners to quickly and easily accomplish repair, alteration and construction projects. For the first 24 years, Gordian's only business was the development, implementation and support of Job Order Contracting programs using industry leading software, data and expert services. In 2014 Gordian acquired additional construction cost data assets and expertise through the purchase of R.S. Means Company, LLC. This acquisition expanded Gordian's ability to create, collect, maintain and analyzed the leading construction cost database in North America; and added construction cost estimating software to Gordian's product offerings. In 2015 Gordian further expanded its product offerings through the acquisition of Sightlines, LLC, which introduced Assessment &amp; Planning, ROPA, Space Utilization and Sustainability. Gordian maintains a culture of continuous improvement where each of these product lines are evaluated and maintained to ensure we are delivering the highest quality solutions to our customers.</p> <p>Since 2015, Gordian JOC systems have enabled the procurement of more than \$10 billion dollars in renovation, repair, maintenance and new construction work, with more than \$4 billion dollars procured in the past two years alone. Our JOC solutions combine and integrate a complete set of our proprietary JOC components, uniquely customized for each individual owner to drive maximum performance. These solutions are the result of our experience, innovation, and a willingness to invest in state-of-the-art products and follow best practices. Please also see our document titled Company Information and Financial Strength in the documents section of our proposal response.</p>	*
8	What are your company's expectations in the event of an award?	Gordian's seeks to establish a contract award for the development, implementation and support of a JOC program that customers can access to procure our services more efficiently and cost-effectively. If potential customers have questions about Sourcewell, we anticipate a Sourcewell representative will be available to answer any such questions.	*
9	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Gordian is a wholly-owned subsidiary of Fortive Corporation, a publicly-held corporation with annual revenues of more than \$4.3 billion dollars and a market capitalization of approximately \$24 billion dollars. Accordingly, any disclosure of financial information is issued by Fortive in accordance with SEC rules and regulations. More information on Fortive's financial disclosures can be found at <a href="https://investors.fortive.com/overview/default.aspx">https://investors.fortive.com/overview/default.aspx</a> .	*
10	What is your US market share for the solutions that you are proposing?	Job Order Contracting is an alternative form of construction procurement focused on the control and fast track of construction repairs and alterations. Gordian is not aware of its market share for its services relative to the overall construction procurement solutions market in the United States.	*
11	What is your Canadian market share for the solutions that you are proposing?	Job Order Contracting is an alternative form of construction procurement focused on the control and fast track of construction repairs and alterations. Gordian is not aware of its market share for its services relative to the overall construction procurement solutions market in Canada.	*
12	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No.	*

13	<p>How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.</p> <p>a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?</p> <p>b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?</p>	<p>Gordian is best described as a manufacturer and direct service provider. Our Job Order Contract products and services are provided utilizing only in-house resources. Gordian is the leading firm in the nation that provides JOC solutions with single point responsibility for all of the products and services necessary for a turnkey JOC program. Our comprehensive JOC solutions are provided with in-house staff and include the proprietary data, technology, processes and staff resources necessary for our clients to achieve successful JOC programs. We do not "private label" the products from other companies, nor do we rely on third parties or independent vendors or subcontractors. Gordian employs a nationwide network of sales executives, account managers and full-time employees dedicated to marketing, developing, managing and supporting Gordian's products and services.</p>	*
14	<p>If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.</p>	Not applicable.	*
15	<p>Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.</p>	<p>Neither Gordian nor any principle, officer or authorized representative of Gordian has been suspended or debarred at any time in its history.</p>	*

**Table 3: Industry Recognition & Marketplace Success**

Line Item	Question	Response *	
16	Describe any relevant industry awards or recognition that your company has received in the past five years	A growing list of national organizations have recognized the results of Gordian's programs for clients including public procurement (NIGP), Housing (NAHRO), and American Public Works Association (APWA). Gordian received Sourcewell's 2017 Legacy Award for exemplifying commitment, innovation and persistence in creating uncharted business concepts. Since 2007, Gordian has partnered with Sourcewell to deliver a unique and streamlined bidding and contracting process for construction called ezIQC®. An organization we hold in highest regard, and one of our largest clients, the United States Postal Service, has also honored our work. The USPS recognized Gordian with its 2016, 2019 and 2020 Supplier Performance Award for superior supply chain management efforts through Job Order Contracting, allowing the Postal Service to more effectively provide exceptional mail service to the American public. Gordian's JOC experts are frequently called upon to speak and offer workshops at industry trade conferences both nationally and regionally. In the last year we have made presentations to gatherings of NIGP, APPA, NAHRO and NASFA, among others. Our expertise draws national media recognition almost monthly, as well. In the last year, several national journals have educated their readers on JOC principles, practices and trends with "unpaid" feature articles written by Gordian experts, which have been published in American School & University, School Construction News, CEFPI Educational Facility Planner, Today's Facility Manager, Construction Executive and others.	*
17	What percentage of your sales are to the governmental sector in the past three years	Gordian's average government sector sales for the last three years exceeds 80% of total sales annually.	*
18	What percentage of your sales are to the education sector in the past three years	Gordian's percentage of sales to the education sector is approximately 30%. This percentage is included in the 80% of sales to the government sector since the many are K-12, public universities, community colleges, and other public education facilities.	*
19	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Sales volumes shown are years 2018, 2019 and 2020, respectively: Sourcewell - \$11,912,827 / \$11,789,447 / \$13,250,158 Cooperative Educational Services - \$735,435 / \$1,353,738 / \$1,673,337 Buyboard - \$960,062 / \$854,744 / \$836,783 Capital Region Council of Governments - \$570,308 / \$572,165 / \$987,183 Keystone Purchasing Network - \$1,069,773 / \$1,810,026 / \$1,737,016 Educational Services Commission of New Jersey - \$1,494,775 / \$2,568,573 / \$1,737,016 Arizona Department of Administration - \$1,700,867 / \$2,565,213 / \$2,133,822 Indiana Department of Administration - \$234,938 / \$413,997 / \$1,552,687 Utah Division of Purchasing - \$581,805 / \$666,315 / \$562,257 PACE Purchasing Cooperative - \$35,146 / \$220,443 / \$79,312 Goodbuy Purchasing Cooperative - \$-0- all 3 years Equalis - \$ -0- all 3 years OMNIA - \$ -0- all 3 years	*
20	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	GSA Contract No. GS35F0081Y - 2018 (\$408,040), 2019 (\$414,691), 2020 (\$511,956)	*

**Table 4: References/Testimonials**

Line Item 21. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Capitol Region Council of Governments	Kim Bona, Program Manager	860-522-2217	*
New York City Department of Education	John Shea, Chief Executive Officer	718-349-5410	*
Indiana Department of Administration	Carl Brown, Deputy Director	317-232-3015	*

**Table 5: Top Five Government or Education Customers**

**Line Item 22. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.**

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
Pennsylvania Department of General Services	Government	Pennsylvania - PA	Implementation and Support of a Job Order Contracting Program, including Job Order Development and Construction Management Services	Varies	\$104,827,821	*
New York City Department of Education	Education	New York - NY	Implementation and Support of a Job Order Contracting Program, including Job Order Development and Construction Management Services	Varies	\$1,105,304,045	*
State of Hawaii Department of Education	Education	Hawaii - HI	Implementation and Support of a Job Order Contracting Program, including Job Order Development and Construction Management Services	Varies	\$ 990,328,732	*
Chicago Housing Authority	Government	Illinois - IL	Implementation and Support of a Job Order Contracting, and Section 3 Program	Varies	\$175,278,596	*
Orange County	Government	California - CA	Implementation and Support of a Job Order Contracting	Varies	\$137,083,327	*

**Table 6: Ability to Sell and Deliver Service**

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
23	Sales force.	Within its total staff count of more than 600 employees, Gordian has more than 80 employees throughout its sales force in the United States and Canada. Our Sales force is discussed in the additional document titled Capabilities with Sales and Service attached and referenced in question #25 below.	*
24	Dealer network or other distribution methods.	Gordian does not utilize dealers or distributors and sells directly to customers and end users.	*



25	Service force.	<p>Providing Job Order Contracting products and services is Gordian's primary business. Within a total staff count of more than 600, Gordian employs more than 80 Sales professionals, 300 JOC professionals, 40 engineers, and dozens of data scientists, cost researchers, software developers, product managers and others dedicated solely to our JOC products and services. Our teams that have extensive experience in all areas of consulting, planning, construction, information management systems, database administration, construction cost data, estimating, training, project management, operations and maintenance. The vast knowledge and experience of our employees helps us to fully understand the complexities that our clients face each and every day. We deliver our products with state-of-the-art computers, cloud servers, third-party Internet providers and redundant back-up systems. Support for our JOC System is provided from our well-established corporate facilities located in Greenville, South Carolina. Account Managers work with Sales and Marketing team members to provide the client and community support.</p> <p>Gordian is an extremely flat organization that provides several advantages, including decentralized decision making, maximum flexibility, rapid responsiveness to our clients, and a unique and attractive corporate culture for employees. Gordian's more than 600 employees have extensive experience in all areas of consulting, planning, engineering, construction, automated management systems, training, operations and maintenance. The vast knowledge and experience of our employees help us to understand fully the problems and complexities that our clients face each and every day. We operate under a team concept that allows for the liberal transfer of personnel, ideas and information, providing our clients with a truly integrated project delivery approach. As a result, we have assembled a team of professionals who have extraordinary JOC qualifications and experience.</p> <p>Gordian's procurement Solutions Sales team provides nationwide coverage, and is solely focused on selling the JOC products and services contemplated in this RFP. Our sales directors and field sales representatives are dispersed throughout the country and are responsible for territories where they are familiar with the local market economies, politics, construction environments, etc... This approach has proven successful as evidenced by the substantial growth of our partnership with Sourcewell since 2010.</p> <p>Gordian's Vice President and General Manager for SLED leads the Operations and Sales division for Gordian's nationwide SLED procurement initiatives. Consisting of twelve Regions led by three Vice Presidents, the team has 25 sales associates and more than 215 account managers operating nationwide. In addition our General Manager of Higher Education and General Manager of Healthcare lead national sales teams marketing and selling our JOC solutions into each vertical. Louis Patin leads our National Cooperative Programs and will be the management contact for Sourcewell and our internal teams working in collaboration with Sourcewell's marketing efforts.</p> <p>Each of these teams are directly supported by substantial resources focused in areas such as product, data, customer support, customer success, marketing, training and engineering. Gordian's back office operations include Finance, Accounting, Human Resources and Legal operations. Please see our additional document titled "Company Capabilities with Sales and Service Force."</p>
26	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>Gordian's Customer Support and Success team members are dedicated resources for our customers when called upon for assistance. The Planning customer-specific account team is also prepared to assist with any requests or issues.</p> <p>Core responsibilities for these team members are focused on pre &amp; post sale activities. Focus areas include:</p> <ul style="list-style-type: none"> <li>• On-Boarding New Customers</li> <li>• Training / Demos</li> <li>• Product Support</li> <li>• User Access</li> <li>• User Navigation</li> <li>• Defect Escalation &amp; Tracking</li> <li>• Updating Payment Information</li> <li>• New Requirement / Modifications Requests for Products</li> <li>• New Release Inquiries</li> </ul> <p>The Customer Support and Success team can be contacted via phone at 800-874-2291 or via email at <a href="mailto:gordiansupport@gordian.com">gordiansupport@gordian.com</a>. Hours of operation are Monday – Friday 8am EST to 10PM EST, excluding holidays. The Planning account team is available for specific project-related requests; their contact information will be available upon team assignment.</p> <p>Service Level Agreements (SLA) of issue resolution are expected under 24 hours once notified and logged into our Salesforce CRM ticket tracking system. Key tracking metrics are monitored daily which include: Service Level, Abandon Rate, First Contact Resolution (FCR), Customer Effort (CES) &amp; Agent performance.</p>

27	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Gordian currently has a client presence in 47 states. We are willing and able to provide products and services to all 50 states and additional territories.	*
28	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Gordian currently has a client base in the British Columbia and Ontario provinces of Canada and welcomes further participation in Canada for all of our products and services.	*
29	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Gordian can provide products and services throughout the identified geographic areas.	*
30	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Gordian will participate in all sectors and does not have an existing contracts limiting promotion of the contract.	*
31	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Gordian has existing contracts in Hawaii and Alaska. We can accommodate specific requirements for those states and in the US Territories.	*

**Table 7: Marketing Plan**

Line Item	Question	Response *
32	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<p>If awarded, Gordian will incorporate Sourcewell messaging into our robust marketing plan already in place. Our corporate-wide marketing plan is composed of a comprehensive communications plan layered with strategic industry components supporting the SLED, Higher Ed, Healthcare, Federal and AEC markets. Gordian's global marketing strategy is focused around building Gordian's market reputation through strong digital presence, 3rd party partnerships, events and other promotional channels driving demand generation, supporting sales enablement, and fostering repeat business and brand evangelism through engagement.</p> <p>Gordian will issue a co-branded press release and develop co-branded collateral pieces. Gordian is experienced in developing External Marketing and Outreach Programs to raise awareness of available programs, primarily through seminars. Gordian also uses seminars to facilitate minority and woman-owned business participation through prime contracts, if available opportunities exist, or networking opportunities with prime contractors.</p> <p>In addition to incorporating Sourcewell into our existing demand generation and nurture and digital marketing efforts, Gordian's marketing team will also develop specific targeted initiatives aligned by region and industry promoting Sourcewell messaging. A marketing representative would work directly with Sourcewell's marketing team at contract kick-off to ensure marketing messaging is aligned and develop a Sourcewell specific marketing plan with quarterly check-ins.</p> <p>Gordian's strong national marketing presence with various associations could be leveraged to promote the Contract.</p>
33	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	<p>Gordian's comprehensive digital marketing strategy focuses on acquiring new customers and engaging current customers with personalized, authentic digital interactions where they participate in their own buying journey. This strategy includes but is not limited to digital advertising, search engine optimization (SEO), social media marketing, email marketing and interactive content marketing. Gordian's robust social media marketing operation utilizes LinkedIn, Facebook, Twitter, Instagram, YouTube and other sites that are targeted by region, industry, organization type and personas. In addition to incorporating a new Sourcewell contract into our existing demand generation and nurture and digital marketing efforts, Gordian's marketing team will also develop specific targeted initiatives aligned by region to promote the program and the benefits available through it.</p>
34	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	<p>Upon award, Gordian's marketing team will focus on sales enablement and will work alongside Gordian's National Cooperative Team, lead by Louis Patin, and Sourcewell to immediately develop an internal Sourcewell training program. This would encompass an initial roll-out training to our internal sales and operations team along with regular trainings throughout the duration of the contract. This training program would sales reference materials, FAQs and sales collateral.</p> <p>As outlined in the marketing plan, Sourcewell would include Gordian generated success stories and relevant materials in member communications. Gordian and Sourcewell would work together to create co-branded collateral as necessary.</p>
35	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	No.

**Table 8: Value-Added Attributes**

Line Item	Question	Response *
36	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>Gordian has configured, tested and is currently maintaining the JOC Software for over 700 locations. After a customer's system is up and running effectively, we will provide the following technical support services for the JOC Software using multiple communication methods.</p> <p>Many support tasks, including additional training, report writing, and merely answering basic questions, will be handled by our on-site representative. Our representatives have extensive experience in the JOC Software and can handle almost every assignment without additional assistance. Our representatives will conduct a substantial number of JOC Software training sessions for our clients. We believe that working on-site is the best way to accomplish most tasks.</p>

37	Describe any technological advances that your proposed products or services offer.	Gordian's JOC solutions are managed on Gordian Cloud, an easy-to-use, collaborative online platform. Gordian's Job Order Contracting software is designed to meet JOC best practices and provides instant access to a customized CTC, ensuring price certainty and procurement speed. The member and the awarded contractors can manage the Job Order workflow from creation to closeout with transparency, auditability and control. In addition to creating a more efficient and effective workflow, Gordian Cloud enables the capture and reporting of critical data that can be used to provide a snapshot of the program at any given time, or can be used to evaluate program performance over time and enable proactive control to ensure best practices are consistently followed.	*
38	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>As a Fortive operating company Gordian is committed to sustainable business practices that minimize environmental impacts and ensure the health and safety of our associates, customers and our local communities nationwide. Gordian operates in accordance with our Environmental, Health and Safety Policy utilizing the following principles in conducting our business:</p> <ul style="list-style-type: none"> <li>• Compliance with applicable environmental, health and safety laws and regulations and applicable corporate and business unit policies, standards and procedures.</li> <li>• Periodic, formal evaluation of our compliance.</li> <li>• Integrity and accountability in personal conduct:</li> </ul> <p>Gordian employees are expected to understand the environmental, health and safety issues associated with their jobs and to act in an environmentally responsible, sustainable and safe manner.</p> <ul style="list-style-type: none"> <li>• Continuous improvements in EHS performance, waste minimization, prevention of pollution, promotion of sustainable practices and policies, and prevention of workplace accidents and injuries.</li> <li>• Integration of sound environmental, health and safety programs and practices into applicable business functions, including procurement, product design, product testing, product support, service, and facilities and real-estate operations.</li> <li>• Sensitivity to community concerns about environmental, health and safety issues.</li> </ul> <p>In addition, Gordian adheres to the company-wide corporate social responsibility vision, Accelerating Progress Toward a Sustainable Future, which is described in greater detail at <a href="http://www.fortive.com/csr">www.fortive.com/csr</a></p>	*
39	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	While Gordian's products included in this proposal do not possess the certifications listed in this section, our construction cost database includes numerous construction tasks that include equipment and materials that have energy efficiency certifications and each year millions of dollars of construction work is accomplished through Gordian's JOC solutions that is designed to enhance, upgrade and increase energy efficiency in public buildings.	*
40	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	Gordian has no small business certifications. The Gordian Group, Inc. Is a wholly owned subsidiary of Fortive Corporation, a public company.	*

41	<p>What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?</p>	<p>As the creators of the Job Order Contracting (JOC) project delivery method, the Gordian team has decades of experience implementing and supporting successful JOC programs across the United States. Gordian's award-winning JOC solutions offer a unique combination of accurate cost data, purpose-built software and unmatched industry expertise. Each Gordian JOC project follows a proven process to make sure the Scope of Work is clearly defined, agreed-upon and executed as efficiently as possible. Local, preset pricing in the Construction Task Catalog® ensures accurate project costs. All Job Order Contracts are accessed in a secure, cloud-based software application that tracks project milestones, spend limits and This purpose-built software allows owners to set milestones that tracks end dates, spend limits and Key Performance Indicators (KPIs), for easy contract management. The Gordian team will conduct a line-by-line review to each project proposal to eliminate inefficiencies and confirm every relevant task necessary to complete the project is included. This end-to-end support and JOC expertise is why hundreds of organizations rely on Gordian's JOC solutions to execute more than \$2.4B in construction volume each year.</p> <p>Gordian is the best-qualified firm to provide the requested products and services for the following reasons:</p> <ul style="list-style-type: none"> <li>• We are the leading firm that can provide single point responsibility for a JOC program. We prepare, customize and support, with in-house staff, the Contract Documents, Construction Task Catalog®, Technical Specifications and the JOC Information Management System that we provide to our clients. We do not rely on third parties or independent vendors, and we do not subcontract or white label third-party products. We will be 100% responsible for the success of your JOC program using in-house resources for software, data and services.</li> <li>• Gordian has successfully implemented and supported our JOC solutions for over 250 public owners throughout the United States,</li> <li>• Building a JOC program takes more than preparing customized documents and providing software. The devil is in the details. Our experience provides us with the knowledge to develop a comprehensive, fully functioning JOC program that will deliver the most value possible. In 2019 more than \$2.3 billion dollars of construction work was procured using Job Order Contracting programs implemented and supported by Gordian.</li> <li>• Our approach to developing your JOC program will be a source of substantial benefits for the Region's local, minority and women owned business programs. We have a proven track record of substantially increasing the use of local, minority and women owned firms through the incorporation of diversity goals into the JOC contracts, and monitoring utilization through our JOC software.</li> <li>• Gordian is uniquely equipped to market and drive adoption of our JOC solutions to Sourcewell members across the country.</li> </ul>
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**Table 9: Performance Standards or Guarantees**

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *
42	Describe any performance standards or guarantees that apply to your services	<p>Gordian's contract are performance-based and therefore do not require any guarantees or warranties to cover the risk of deficient performance. Customers only remit payment to Gordian for their actual use of the JOC system, and are not obligated to make any minimum purchase after Gordian implements the program at no cost to the member. The performance-based approach does require that Gordian track and monitor both internal and customer performance to ensure the program is optimized and the Member is obtaining the efficiencies and savings afforded by our JOC solution. Gordian uses several key performance indicators to demonstrate the value of our JOC solution, and to benchmark performance from an established baseline. These key performance indicators, which can be tracked and reported through our Gordian Cloud software, include metrics on time and cost savings, with examples of each provided below:</p> <ul style="list-style-type: none"> <li>- Total Procurement Time</li> <li>- Time from Project Initiation to Joint Scope Meeting</li> <li>- Time from Request for Price Proposal to Price Proposal Approved</li> <li>- Time from Price Proposal Approved to Construction Start</li> <li>- Final Cost Compared to Budget</li> <li>- Cost of Initial Price Proposal to Final Price Proposal</li> </ul> <p>Gordian's program analysts and program management teams ensure that these, and other internal performance metrics, are tracked and evaluated to confirm that each program is operating at a high level. When key performance indicators evidence deficient performance relative to the program goals, Gordian employs our problem-solving approach to identify the root cause of the gap, implement countermeasures, and drive performance to ensure any gaps are closed.</p>
43	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	<p>Gordian has established customer support and customer success standards that are utilized for our JOC solutions. Gordian's Customer Support and Customer Success team members are dedicated resources for our customers when called upon for assistance. These two teams consist of 12 team members that are focus on post-sale activities including:</p> <ul style="list-style-type: none"> <li>- On-Boarding New Customers</li> <li>- Training / Demos</li> <li>- Product Support <ul style="list-style-type: none"> <li>o Product Installations</li> <li>o User Access</li> <li>o User Navigation</li> <li>o Defect Escalation &amp; Tracking</li> <li>o Liaison Contact for Engineer Inquires</li> <li>o Updating Payment Information</li> <li>o New Requirement / Modifications Requests for Products</li> </ul> </li> </ul> <p>They can be contacted via phone at 800-874-2291 or via email at <a href="mailto:gordiansupport@gordian.com">gordiansupport@gordian.com</a>. Hours of operation are Monday – Friday 8am EST to 10PM EST. Service Level Agreements (SLA) of issue resolution are expected under 24 hours once notified and logged into our Salesforce CRM ticket tracking system. Key tracking metrics are monitored daily which include: Service Level, Abandon Rate, First Contact Resolution (FCR), Customer Effort (CES) &amp; Agent performance.</p>

**Table 10: Payment Terms and Financing Options**

Line Item	Question	Response *	
44	What are your payment terms (e.g., net 10, net 30)?	Payment terms are Net 30 from the date of invoice.	*
45	Describe any leasing or financing options available for use by educational or governmental entities.	Not applicable.	*
46	Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell participating entities' purchase orders.	The proposed order process consists of the direct development, revision and execution of a contract document with each Sourcewell member that procures Gordian's JOC solutions through the Sourcewell contract as each member typically requires additional terms and conditions to those contained in the Sourcewell agreement. Once the contract is executed Gordian will initiate and complete the program implementation process at no cost to the Sourcewell member. Each contract executed with a Sourcewell member that utilizes the Sourcewell contract to procure Gordian's JOC solutions will be entered and tracked in our Netsuite ERP system. Upon the issuance of a Job Order from a member Gordian will accrue the applicable revenue, which is calculated through our Netsuite system, and upon receipt of payment for each purchase, Gordian's ERP system will calculate and report all administrative fees owed to Sourcewell. Gordian will be solely responsible for the contracting, invoicing, collection and administrative fee payment process.	*
47	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	At the present time, Gordian does not accept P-card in the payment process. We are exploring adding that functionality in the future.	*



**Table 11: Pricing**

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcwell Price and Product Change Request Form.

Line Item	Question	Response *	
48	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcwell discounted price) on all of the items that you want Sourcwell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Gordian employs a performance-based fee structure that does not include any upfront fees to implement a JOC program. We do not succeed unless the customer succeeds. Our fees are assessed as a percentage of the value of construction procured through the JOC system, and are dependent on the level of services provided. Our JOC Solution, which includes all of the products, services and training necessary to implement and support a client-run JOC program is provided at a fee equal to five percent (5%) of the first eight million dollars (\$8,000,000) of construction procured through the JOC system, and a reduced fee of 1.95% of the value of construction procured thereafter. In consideration for the Job Order Development services set forth in the proposal, customers shall be assessed a Job Order Development fee equal to three and five hundredths percent (3.05%) of the value of construction procured utilizing these services. In the event a customer elects to utilize Job Order Development services during the procurement of the first eight million dollars (\$8,000,000) of construction the 5% fee referenced above is inclusive of the Job Order Development Fee and the fee shall not exceed 5%. In consideration for the Project Management services described in the proposal customers shall be assessed a Project Management Fee, in addition to the fees referenced above, equal to five and ninety-five hundredths percent (5.95%) of the value of construction work for which the Project Management services are provided. A detailed description of the fees and invoicing is provided in the Table 11 Pricing attachment uploaded with this proposal.	*
49	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The pricing set forth in this proposal represents a 2% discount against standard rates based on the proposed 2% administrative fee proposed to be remitted to Sourcwell, which Gordian will remit to Sourcwell without increasing its standard rates.	*
50	Describe any quantity or volume discounts or rebate programs that you offer.	Gordian's quantity or volume discounts are not offered through cooperative contracts.	*
51	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Not applicable.	*
52	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with products purchased or services performed that are not directly identified elsewhere in Table 11. For example, list costs for items like inspection, installation, set up, mandatory training, licensing fees, or expense reimbursements. Identify any parties that impose such costs and their relationship to the Proposer.	All costs are included in the pricing provided with this proposal.	*
53	If freight, delivery, or shipping is an additional cost to the Sourcwell participating entity, describe in detail the complete freight, shipping, and delivery program.	Not applicable.	*
54	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Not applicable.	*

**Table 12: Pricing Offered**

Line Item	The Pricing Offered in this Proposal is: *	Comments
55	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	



**Table 13: Audit and Administrative Fee**

Line Item	Question	Response *
56	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.	All procurements by Sourcewell members require a complete contracting process that includes the incorporation of the Sourcewell contract SOW and pricing as part of the contract with each Sourcewell member. Upon execution of the contract, the customer contract information, including designation as a Sourcewell procurement, are entered into our contract management platform, SpringCM. Gordian's Netsuite accounting software and SpringCM are integrated to ensure that any customer invoices submitted to customers designated as Sourcewell procurements are tagged and administrative fees are accrued as future payables upon the receipt of payment for those invoices. This ensures that all invoices and payments from customers procuring through a Sourcewell contract are properly accounted for and full reports are provided to Sourcewell designating each payment collected from Sourcewell members. Gordian also conducts self-imposed audits intermittently to ensure that all Job Orders issued by customers procuring through Sourcewell are accounted for, and all complete projects have been marked and invoiced accordingly. Gordian prides itself on contract compliance in all phases, and we will ensure full compliance with the Sourcewell contract.
57	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	The primary metric for measuring success through the Sourcewell contract is the number of customers designated as Sourcewell piggybacks, and the volume of construction procured through those programs over time. Gordian's performance-based fee structure ensures that we are only successful if the customer is successful, and therefore the award of a contract is only the first step in the process. In order to have a truly successful contract members must utilize the JOC program to procure construction, and Gordian in turn invoices the customers based on the volume of construction they procure. Accordingly, Gordian will closely monitor each customer to ensure construction volume is in line with, or exceeds, expectations in order to measure the success of this contract, and the JOC programs implemented pursuant to it.
58	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	2%

**Table 14A: Depth and Breadth of Offered Equipment Products and Services**

Line Item	Question	Response *
59	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	<p>The Gordian JOC Solution has helped facility and infrastructure owners control and fast track their repair, maintenance and construction projects for over three decades. This solution provides the software, data and services necessary to develop, implement and support a JOC program for owners that have the in-house resources necessary to manage their own JOC programs. The Gordian JOC Solution includes the following products, services and deliverables:</p> <p>Experienced Account Managers - Gordian will provide experienced account managers that are responsible for the implementation and support of the Member's JOC program. This staff will report directly to the Member and will be available to assist the client with any JOC related issues.</p> <p>Establish JOC Program Guidelines - Gordian will be responsible for conducting the activities necessary for establishing the structure of the Member's JOC program. Responsibilities include preparing Member specific Execution Procedures that will be used to execute the JOC program.</p> <p>JOC Program Documents - Gordian will be responsible for preparing the JOC program Contract and General Conditions, Bid Documents and Technical Specifications and for providing a customized Construction Task Catalog.</p> <p>JOC Software Applications - Gordian will be responsible for providing a license for an unlimited number of Member staff to access Gordian's web-based JOC System,</p>

which includes the Gordian Cloud information management software integrated with the Construction Task Catalog. The JOC System will be capable of generating the JOC documents including independent cost estimates, contractor Price Proposals, Job Orders, and management reports and forms. The client's standard reports and forms will be incorporated as requested.

Marketing - Gordian will be responsible for marketing the JOC program by informing internal Member staff about JOC, conducting pre-bid seminars for the JOC construction contractors, and assisting with procurement of the JOC contracts.

Training - Gordian will be responsible for developing and conducting a comprehensive JOC training program for the Member and JOC construction contractor staff, which will include different course modules that will provide specialized training to each element of Member and JOC construction contractor staff.

Ongoing Support and Maintenance - Gordian will be responsible for providing full-time, onsite assistance during the 90-day period immediately following the award of the first Member JOC contract, and for providing comprehensive JOC follow-up support to the Member for the administration of its JOC program. Gordian will monitor the overall program and prepare any status reports required by the Member. Support services will include, but are not limited to: unlimited toll-free software and technical support; access to applicable software updates and additional functionality; updating for each new JOC construction contract the Construction Task Catalog, Technical Specifications, Contract and General Conditions and Bid Documents; providing procurement assistance for new JOC contracts; providing training for new Member and JOC contractor staff; and preparing customized forms and reports requested by the Member.

Gordian's also provides value-added services to JOC Solution customers that can be provided on a project-by-project basis, or as part of a comprehensive support package for all Job Orders issued through a Member's JOC program. We refer to the first of these as Job Order Development services. Developing the Job Order is the most critical step in the JOC process for controlling costs because this is the step where it is determined that the Member is paying for the correct quantity at the correct competitively bid price for each project. It is very important that experienced, qualified project managers develop each and every Job Order. Many of our clients have determined that they desire help with developing Job Orders and have selected our Job Order Development services. Some have chosen it because they lack staff capacity, and others because they recognize the significant value of using Gordian's experienced, qualified account managers to develop Job Orders, which includes reviewing each and every Price Proposal submitted by the JOC contractors.

Whatever the reason, we are confident that these services will bring the most economic benefit to Sourcewell Members with long term cost savings. A detailed list of the tasks required to develop Job Orders is as follows:

Project Identification – When a project is identified, Gordian's account managers will work with the Member and assist with determining whether the project is appropriate for JOC.

Contractor Identification – In the event the Member has multiple JOC contractors, we will assist with identifying the appropriate JOC contractor for the project based on the type of work involved, location of the project, and other factors such as remaining contract capacity, work on hand, and contractor performance.

Joint Scope Meeting – After identification of the JOC Contractor a Gordian account manager will promptly schedule a Joint Scope Meeting at the project site to help the Member and the JOC contractor agree on the details of the work that the JOC contractor will perform. The scoping process allows the JOC contractor to inspect the site and ask questions before submitting a Price Proposal. This upfront open communication eliminates the misunderstandings and mistakes that lead to most change orders and often results in more cost effective collaborative solutions.

Develop Detailed Scope of Work – Next, the Gordian account manager will assist in preparing a Detailed Scope of Work that describes the work the JOC contractor will perform. We will also assist with resolving issues when project plans and actual conditions vary.

Request for Price Proposal – After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, the Gordian account manager will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.

Prepare the Price Proposal – Next, the JOC contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Construction Task Catalog. Gordian's JOC software will automatically calculate the total cost for each line item by multiplying the unit price of the task by the required quantities and the JOC contractor's competitively bid Adjustment Factor. The JOC contractor will also prepare additional Member required information (e.g., construction schedule, list of proposed local subcontractors, etc.).

Price Proposal Review – Then, the Gordian account manager will review the Price Proposal to make sure the JOC contractor has selected the appropriate tasks and quantities and will ask the JOC contractor to make any required changes. We will also obtain and review any Member required information submitted by the JOC contractor such as a construction schedule and list of proposed subcontractors. Then the Gordian account manager will submit the Price Proposal and related documents to the Member.

		<p>Issue Job Order – Once the Member approves the Price Proposal and related documents, and decides to move forward with the project, the Member simply issues a purchase order to the contractor.</p> <p>The Job Order Development services described above ensure the efficient, compliant and cost-effective procurement of each construction project through the JOC program. In addition, Gordian can provide Project Management support on a project-by-project basis, or as part of a "cradle-to-grave" support package for every project procured through the JOC program. Utilizing our Project Management services will enable Members to assign projects to Gordian to manage from Job Order issuance to close out. Whether due to peak volumes, staff shortages, or new strategic staff directives, our Project Management services can provide onsite experts, using our proven methods, to relieve the Members project workload. Our staff becomes the Member's staff. A detailed list of Gordian's standard Project Management services, which we can modify as necessary to meet the needs of each client, is as follows:</p> <p>Preconstruction – First, a Gordian project manager will conduct a pre-construction meeting with the Member representative(s), the JOC contractor and, if applicable, the architect or engineer. The project manager will coordinate and share any preconstruction information with the Member, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.</p> <p>Site Visits – During construction, the Gordian project 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.</p> <p>Communication – The Gordian project manager will provide weekly construction status reports to the Member, conduct project progress meetings with all JOC contractors and staff on a periodic basis, and coordinate any required technical and code inspections.</p> <p>Supplemental Job Orders – In the event there are unforeseen conditions or the Member requests changes to the scope after the work has begun, the Gordian project manager will analyze and process a supplemental Job Order by utilizing the procedures used to develop the initial Job Order.</p> <p>Approvals – The Gordian project manager will review and approve, or direct necessary revisions to, the JOC contractor's applications for payment and obtain the Member's approval of the work. Final acceptance of the work will be the responsibility of the Member. Technical and code inspections will be the responsibility of the appropriate inspection agencies.</p> <p>Project Close-out – As the final step in the process, the Gordian project manager will enter all Job Order related information into the Gordian Cloud information management system and collect any required as-builts, warranties, etc., from the JOC contractor.</p> <p>Gordian's JOC solutions combine and integrate a complete set of our proprietary JOC components and expert services, uniquely customized for each individual owner to drive maximum performance. Our JOC solutions are the result of our experience, innovation, and a willingness to invest in state-of-the-art products and follow best practices. Gordian's results are unsurpassed, and have been demonstrated in many side-by-side comparisons and independent audits over the years. We are proud to propose our JOC products and services to Sourcewell and its Members. For a more detailed description of the JOC program development, implementation and support services please see the Table 14 Products and Services attachment included with the proposal.</p>	
60	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Not applicable.	*

**Table 14B: Depth and Breadth of Offered Equipment Products and Services**

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
61	Development and design of a JOC or IQCC program	<input checked="" type="radio"/> Yes <input type="radio"/> No	<p>JOC enables facility and infrastructure owners to efficiently complete a series of projects with a single, competitively bid contract. The Job Order Contract defines the overall relationship between the owner and the contractors. Each Job Order Contract is awarded through a competitive bidding process for an indefinite quantity of construction work, typically has a term of one or more years, and features an estimated or maximum dollar value. A summary of the tasks and workflow necessary for implementing a JOC program is provided at the end of this section. We will utilize this process to develop, implement and support a JOC program customized for the Member. The overall program structure will depend on several factors including preferred bid methods, anticipated annual volume, geographic presence, software configuration and the number of JOC contracts that will be solicited and awarded.</p>

Our Approach uniquely crafts the four major resource areas of Data, Technology, People and Process to create the industry leading and tailored programs we build. Gordian's Construction Cost Database, the largest of its kind, will be the starting point for compiling the specific cost items for each Construction Task Catalog (also known as a unit price book). Gordian will provide unlimited access to our IMS (the "JOC Software") that is required to run a Gordian JOC program. Our JOC Software is capable of generating all of the JOC documents, including the contractor's Price Proposal, the independent estimate, Job Orders, and all management reports and forms. Our proven software was specifically designed to support JOC programs and will be configured to meet the information management needs of the Member's JOC program. It is essential to optimizing the efficiency and convenience of a Gordian JOC system. Gordian's JOC Software is a web solution, making it accessible anytime and anywhere there is an Internet connection. Best of all, the JOC Software can handle an unlimited number of Users, Job Orders, Construction Task Catalogs and other information. As part of the JOC System License the Member will receive with a Gordian JOC solution, they will be provided with unlimited access to the JOC Software for the term of the contract.

The Program Development process incorporates all the activities necessary to establish the structure of the Member's JOC program. While JOC is a method of procurement, it is very different from the traditional methods and many factors must be considered when organizing a JOC program. We will assist the Member in making educated decisions about the structure of its JOC program, from the minimum and maximum value of the contracts to the geographic area supported by each contract. We will not reinvent the wheel or learn as we go. We will bring with us our experience and knowledge gained from other similar facility and infrastructure owners.

To ensure a successful JOC program, the proper policies and procedures must be prepared and implemented. Our experience will enable us to develop a comprehensive set of Execution Procedures that adhere to the Member's general operating and organizational philosophies, as well as the applicable statutes governing construction procurement in the Member's jurisdiction. These Execution Procedures must incorporate all phases of the JOC process. Specific issues that must be addressed include:

- Project Initiation

How is a JOC project identified? Who approves projects for JOC? When is a JOC Project Number assigned? How is the JOC Project Number to be structured?

- Project Development

How will a preliminary Detailed Scope of Work be documented and refined? Who needs to attend the Joint Scope Meeting? What documentation will a contractor submit with the Price Proposal? Will liquidated damages apply?

- MWBE Compliance Procedures

What compliance forms will the contractor submit with each Price Proposal? Who will verify compliance? What documentation will need to be developed?

- Permit Procedures

Are permits required for a specific project? Are permit requirements different for different buildings or uses? How and when will permits be submitted? Who will verify permits? What documentation will need to be developed?

- Project Review and Approval

Who will prepare the independent estimate? What pricing source will be used to develop the independent estimate? Who will verify the estimate? What documentation will need to be developed? Who will review the contractor's Price Proposal and how? Who will approve and sign Job Orders?

- Construction Inspection and Acceptance

Who will inspect the ongoing JOC work? Who will accept the final JOC project? Who will provide quality assurance? How will submittals and shop drawings be handled? What documentation will need to be developed?

- Project Close Out Procedures

Who will certify final completion? How will the close out documentation provided by the contractor be handled? How will warranty information be filed and tracked?

- Payment Policy and Process

Who will certify final payment? What documentation needs to be submitted with a JOC payment request? What is the step by step payment process?

Our experience has given us insight into each of these issues and allows us to make proven, efficient and cost-effective recommendations. We propose to organize and manage a series of conferences and meetings with key Member staff to identify and detail specific internal Execution Procedures. Each procedural step and policy will be fully documented in written Execution Procedures for the prevention of fraud, waste and abuse. The remaining steps in the implementation process include compilation of the customized Construction Task Catalog, assistance with the procurement process, software configuration and training; each of which is covered in greater detail in the following sections of this response.

62	Identification and selection of program platform or resource materials	<input checked="" type="radio"/> Yes <input type="radio"/> No	<p>Gordian's JOC Solution is built on best-in-class data and software that can be tailored to fit each customer's construction needs, workflow and program processes. Gordian's Information Management System, ("IMS" or "JOC Software"), will meet and exceed all expectations. Our JOC Software is capable of generating all of the JOC documents, including the contractor's Price Proposal, the independent estimate, Job Orders, and all management reports and forms. Our proven software was specifically designed to support JOC programs and will be configured to meet the information management needs of the Member's JOC program. Gordian's JOC Software is a web solution, making it accessible anytime and anywhere there is an Internet connection. Best of all, the JOC Software can handle an unlimited number of Users, Job Orders, Construction Task Catalogs and other information. We will configure it's use to meet the individual needs of the Member. Gordian's JOC IMS is currently in use at more than 250 public agencies, and supports the procurement of more than \$2 billion dollars of construction annually. Gordian's Construction Cost Database, the largest of its kind, will be the starting point for compiling the specific cost items for each Construction Task Catalog (also known as a unit price book). The construction cost data we provide is unmatched and provides the most comprehensive, accurate and detailed cost data available in the market today. When we build a new Construction Task Catalog, we start with our 380,000 task database that is continually improved and updated. As part of our ongoing support role, we produce updated Construction Task Catalogs for each JOC solicitation, which can be intended for general construction or a range of specialty work including paving, painting, electrical, plumbing, demolition and more. Gordian's dedicated construction cost data team works nonstop, year after year, to ensure our JOC clients are using the most accurate, up-to-date construction cost data available. Each construction task catalog is accompanied by a corresponding set of technical specifications, which describe the work the contractor is obligated to perform and the quality of workmanship and materials required for each construction task. Customization of the technical specifications enables Members to utilize Gordian's standard library of specifications, or incorporate a Member's own specifications in order to meet established standards and policies already in place. The Construction Task Catalog and technical specifications combine to form the cost basis for bidding the JOC contracts, which may be awarded through several competitive-bidding methods including best value, or lowest responsive bidder. The bidding methodology will dictate the form of the bid documents, including the general terms and conditions of an award. Gordian has a dedicated Development &amp; Implementation team that collectively has supported the solicitation and award of thousands of JOC contracts over the past decade, and is equipped to assist any Member in the implementation phase, regardless of the number of contracts, type of work, or bidding methodology employed. No other firm can match Gordian's ability to integrate it's commercial software and cost data with a tailored approach that fits each customer's unique needs. No matter the program platform or resource materials needed, Gordian has it covered.</p>
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63	Performance of procurement-related processes and tasks	<input checked="" type="radio"/> Yes <input type="radio"/> No	<p>In addition to compiling a customized Construction Task Catalog and technical specifications, as explained in greater detail in the foregoing sections, Gordian provides comprehensive procurement support for the term of the agreement with its customers. Gordian recognizes that each client is unique and our history shows that the best JOC results are achieved when a program is tailored to fit the client's requirements. Gordian has supported the procurement of thousands of JOC contracts across the United States and understands how to ensure compliance with all applicable procurement statutes. The Contract and General Conditions are critical to the JOC process since they establish all of the contract requirements and compliance procedures. A poorly developed document can lead to bid protests and claims, and can breakdown the non-adversarial relationship that is essential to a successful JOC program. The challenge of creating these documents is that standard state and local contract language and forms must be integrated with JOC specific language and clauses. Since JOC is a different procurement process, a great deal of the contract language that has been adopted for traditional construction contracting does not apply. We will draft a full set of bid documents, including the Contract and General Conditions, and will coordinate those documents with the various departments of each Member. An essential part of any contract package is the Bid Documents. These documents need to be carefully customized for a JOC program in order to enhance competition and minimize the possibility of a bid protest. The Bid Documents need to be prepared and presented to the bidder in a manner that minimizes uncertainties. The "tighter" the Bid Documents the better the bid prices will be. Gordian will assist each Member in the preparation of all documents needed for the Member's JOC program.</p> <p>A critical objective of many Job Order Contracting programs is to achieve and improve upon the participation goals for minority and female owned business enterprises. Gordian will work to ensure that appropriate goals, compliance procedures and contract language are included in the Contract Documents. Since work under JOC is identified and accomplished on a project-by-project basis rather than up front, as in traditional contracting, minority subcontracting compliance procedures, policies and forms may be integrated and included in the Contract and General Conditions. As part of our ongoing support role, Gordian will produce updated documents for each new JOC contract solicitation including the Construction Task Catalog, contracts, bid documents, and general conditions.</p> <p>In addition to the tasks above, Gordian will assist with external marketing and promotion of the JOC program and contract solicitations. Prior to the advertisement of the JOC contracts, Gordian will coordinate and conduct the external marketing of the JOC concept to the local contractor community. We will accomplish this portion of the program by meeting with various contractor groups, trade organizations and bonding companies, as necessary, in order to solicit support for the JOC program. Intending bidders will have many questions and concerns that must be fully addressed before they will feel comfortable in submitting a bid. A central feature of Gordian's procurement plan for Job Order Contracting is the pre-bid seminar for intending bidders, which is conducted after the solicitation has been advertised. Since most facility owners want to attract local contractors, but often many of the local contractors are not familiar with the JOC process, it is essential that a proactive educational program occur prior to bidding. Gordian believes that the increased information exchange between the owner and the intending bidders will lead to a better understanding of the JOC program, less bid risk for the contractors and ultimately, lower bids.</p> <p>The first section of the pre-bid seminar focuses on explaining the overall JOC process, the number, size and types of JOC contracts being bid, and an in-depth discussion of the owner's expectations for the JOC contractor.</p> <p>The second section presents information on understanding and applying the Construction Task Catalog, the costs that must be included in the Adjustment Factors, and different methods for the contractors to calculate their Adjustment Factors. Contractors are also taught how to build sample Price Proposals. This section concludes with an extensive question and answer session. If the client prefers, this seminar can be presented in two separate sessions.</p> <p>We will take the lead in reaching out to local contractors to inform them about JOC. We will prepare and conduct extensive pre-bid conferences that have been refined over time to secure for the Member the very best qualified contractors at a meaningful, competitive price.</p> <p>Gordian assists each of its customers throughout the procurement process.</p>
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64	Technology, software, application, or platform solutions	<input checked="" type="radio"/> Yes <input type="radio"/> No	<p>Gordian will include unlimited access to our JOC Software that is required to run a Gordian JOC program as part of our deliverables. Our JOC Software is capable of generating all of the JOC documents, including the contractor's Price Proposal, the independent estimate, Job Orders, and all management reports and forms. Our proven software was specifically designed to support JOC programs and will be configured to meet the information management needs of the Member's JOC program. It is essential to optimizing the efficiency and convenience of a Gordian JOC system. Gordian's JOC Software is a web solution, making it accessible anytime and anywhere there is an Internet connection. Best of all, the JOC Software can handle an unlimited number of Users, Job Orders, Construction Task Catalogs and other information. As part of the JOC System License, the Member will receive with a Gordian JOC solution, you will be provided with unlimited access to the JOC Software for the term of the contract.</p> <p>The JOC Software is a critical component of any JOC program, and it must be designed and configured specifically for JOC. Gordian's JOC Software was developed using 30+ years of experience in managing JOC programs, and it ensures efficiency, ease of use, and maximum control at each step in the JOC process. For instance, our JOC Software enables tracking of price proposal revisions to ensure no changes go unnoticed, locks adjustment factors and unit prices to ensure no price manipulation can occur, and can generate custom reports and forms which will enable the Member to tailor the software to its workflow, and ensure proactive management with advanced reporting capabilities.</p> <p>The JOC Software contains functionality that is used to track and report on Job Orders. The primary modules are for Price Proposal development and review, but others include the ability to manage budgets, contractor evaluations, invoices, logs, meetings, submittals, tracking dates and more. Gordian will work with the Member to develop the program and infrastructure procedures and administration processes necessary for success. Our implementation experts are experienced with working with information system professionals in coordinating all aspects of the system software. Members will find that our JOC Software is extremely powerful and flexible when it comes to security, integration and reporting. The JOC Software features and functionality are explained in greater detail in the Table 14 attachment included with our proposal.</p>
65	Training, program administration, technical and contractor support, hosting, and customization services	<input checked="" type="radio"/> Yes <input type="radio"/> No	<p>Gordian will be responsible for providing a comprehensive JOC Master Training Program, which will include different course modules so that all elements of Member and JOC contractor staff will receive specialized training. Gordian will develop and publish all training aids and materials necessary to support the JOC training courses. The JOC Master Training Program will be modified to fit the Member's processes and procedures.</p> <p>Gordian's JOC Master Training Program has been fine-tuned over the last two decades and is designed to provide the maximum effectiveness and flexibility for Member staff. The training program will be comprised of multiple training modules so that training sessions can be structured to the specific audience. The training courses will stress a hands on practical application of the JOC solution selected by the Member. The training sessions will be unique to the Member and will not be "canned" sessions.</p> <p>This "cafeteria structure" allows us to train selected groups in only those modules of value to them. Our modular approach to JOC training eliminates wasteful duplication and lost time on the part of participants. Each module is scheduled for one to four hours and will be given as often as requested. The total number of classroom hours and extent of field training is dependent on the experience and abilities of the participants being trained.</p> <p>Gordian's JOC Master Training Program has been fine-tuned over the last two decades and is designed to provide the maximum effectiveness and flexibility for Member staff. The training program will be comprised of multiple training modules so that training sessions can be structured to the specific audience. The training courses will stress a hands on practical application of the JOC solution selected by Member. The training sessions will be unique to the Member and will not be "canned" sessions. This "cafeteria structure" allows us to train selected groups in only those modules of value to them. Our modular approach to JOC training eliminates wasteful duplication and lost time on the part of participants. Each module is scheduled for one to four hours and will be given as often as requested. The total number of classroom hours and extent of field training is dependent on the experience and abilities of the participants being trained.</p> <p>In addition to Member staff training, Gordian will be responsible for training all JOC contractor staff on the JOC process, the JOC software, interpretation and use of the Construction Task Catalog, as well as the Job Order development process. Refresher training for new Member and JOC contractor staff is also provided at any time during the term of the contract at no additional cost. A complete overview of the training sessions provided for each JOC program implementation is included in the Table 15 attachment provided with this proposal.</p> <p>During the term of the contract Gordian will provide ongoing technical and administrative support in a number of areas including:</p> <ul style="list-style-type: none"> <li>• Provide the Member updated JOC Contract Documents for all new JOC contracts and JOC re bids. This support will include: updating Construction Task Catalogs and Technical Specifications; monitoring recent changes and recommending</li> </ul>

improvements to the Contract and General Conditions to clearly specify the requirements of the Member; further developing and implementing pre-award criteria; identifying new processes to further define contract requirements and contractor capabilities to ensure that the Member retains qualified JOC contractors; and customizing the JOC process and documents to meet the ever changing needs of the Member.

- Work closely with the project managers on existing contracts, to identify non prepriced tasks, price those tasks, and insert them in the next Construction Task Catalog to minimize the number of non-prepriced items.
- Provide procurement and marketing support during the solicitation of new JOC contracts. This support will include preparing all necessary documents and notices, preparing and participating in all pre-bid conferences, external marketing to the local contracting community, evaluating the contractor's proposed management plan, staffing and personnel plans, and assisting new contractors during mobilization.

**Contract Implementation Support**  
During the term of the contract, Gordian will provide continuing contract implementation and support services as follows:

- Train Member staff to administer the JOC program.
- Conduct complete training sessions on an as needed basis for new Member and JOC contractor staff in the execution of JOC and the use of the JOC Software.
- Conduct periodic refresher training sessions for existing Member staff and JOC contractors in the execution of JOC and the use of the JOC Software.
- Continue to develop and customize the Execution Procedures, training materials, forms and reports to facilitate the management and execution of JOC.
- Work closely with Member and participating agency staff and the JOC contractors to ensure that both parties are executing JOC in accordance with the established procedures.
- Assist the Member in dealing with the contractors to ensure that they have adequate and experienced staff and are meeting the terms of the contract.

**Software Support and Maintenance**  
Gordian has configured, tested and is currently maintaining the JOC Software for over 700 locations. After your system is up and running effectively we will provide the following technical support services for the JOC Software using multiple communication methods to serve the Member in a convenient and efficient manner.

**On-Site Personnel**  
Many support tasks, including additional training, report writing, and merely answering basic questions, will be handled by our on-site representative. Our representatives have extensive experience in the JOC Software and can handle almost every assignment without additional assistance. Our representatives have conducted a substantial number of JOC Software training sessions and have customized some of the most challenging reports for our clients. We believe that working on-site is the best way to accomplish most tasks.

**Remote Access**  
Remote access applications such as GoToMeeting, pcAnywhere and NetMeeting allow us to connect to a user's computer to analyze and correct specific problems the user is experiencing. Through a basic dial-up modem or Internet connection, our support representative can work on the user's computer as if they were sitting at the user's desk. GoToMeeting provides the same capability and works with most firewall and security settings. For those times when the on-site representative is not present, this remote access solution provides nearly all the benefits of an on-site visit and has been very successful in delivering real time solutions and support.

**Toll Free Support Line**  
Calling our toll free software user support line will connect the user with an information technology specialist who will promptly assist the user concerning their immediate software questions. The support line is staffed by knowledgeable and trained personnel.

The primary reason JOC programs developed and implemented by Gordian are so successful is the on-going support we provide to our clients.

**Table 15: Industry Specific Questions**

Line Item	Question	Response *
66	Describe your approach to developing, implementing, and supporting JOC or IQCC programs for governmental or educational entities.	See Table 14B. The development, implementation and support of a JOC program described therein relates to government, educational and healthcare entities.



67	Describe the JOC or IQCC unit pricing method(s) employed by your organization and how it is developed and maintained.	<p>The construction cost data we provide is unmatched and provides the most comprehensive, accurate and detailed cost data available in the market today. When we build a new Construction Task Catalog, we start with our 380,000 task database that is continually improved and updated. As part of our ongoing support role, we produce updated Construction Task Catalogs for each JOC solicitation, which can be intended for general construction or a range of specialty work including paving, painting, electrical, plumbing, demolition and more. Gordian's dedicated construction cost data team works nonstop, year after year, to ensure our JOC clients are using the most accurate, up-to-date construction cost data available.</p> <p>The construction cost database is continuously researched through a structured, formulaic methodology that ensures accuracy and consistency across all tasks. Each line item contains national, regional or local material, labor and equipment costs, targeting the appropriate source for each. Our construction cost database is built using unmatched expertise that relies on exhaustive research coupled with decades of historical data analyzed by our team of data scientists to ensure any pricing anomalies are identified, reviewed and verified prior to publication. No firm in the world can match the level of resources we've dedicated to ensuring the accuracy and breadth of our construction cost database. During the past 30 years, our team of experienced cost estimators has prepared more than 3,000 customized Construction Task Catalogs, specifically designed for JOC programs. Gordian CTC's support over 380,000 construction tasks, with prices that are localized and time specific for each contract publishing. This work involves a team of over 50 people including cost engineers, cost researchers, data scientists, quality control experts, and data collection tool developers. The data consistency is a product of over 22,000-man hours of cost research efforts every year. Construction tasks are derived from the combination of materials, labor and equipment cost compiled together by an algorithm, that proportions each element as it is required to complete each task, and a determination of the hours of work (productivity) involved per task UOM. Data science and quality control contribute to the consistency and the segmentation of cost, to determine drivers that are statistically defensible at the local, regional or national level, utilizing 100 years of cost collection data delivery. Every year Gordian revalidates tasks (27,000 last year) to update work to today's construction standards. The results of this work produce fair and equitable, mean costs, that represent the midpoint of localized bare construction cost data (does not include overhead or profit for the prime or sub-contractors). The adjustment factor submitted should include these costs. Gordian continually enhances the breadth of our task portfolio to keep up with current construction trends and utilizes our experience with over 600 active JOC programs to provide the construction tasks that make for a successful program.</p> <p>As part of our ongoing support role, we will produce an updated Construction Task Catalog for each new Member JOC contract, priced to the applicable region where the work is being awarded. When we notice areas for improvement, we bring in our cost estimating and engineering team to incorporate the improvement into the very next published book using our DMAP (Database Manager and Publishing) software and its component pricing capability. As described above, Gordian has substantial resources dedicated to the continuous tracking, updating and development of construction costs. Our construction cost database is updated every day to ensure that the unit prices provided as part of each bid package are the most accurate on the market today. Updates are not an "as-needed" exercise; they are performed continuously across all markets to ensure that when updated cost data is required, it's readily available in all 930 geographic regions served by Gordian's Construction Task Catalog. No other firm can come close to matching the dedicated resources and expertise of Gordian when it comes to building an updated, accurate and flexible construction cost database. In addition to continuous updates, Gordian's account team will work with our Data and Engineering team to develop and publish any construction tasks identified as recurring non-prepriced tasks during a previous JOC contract term.</p> <p>We use local prevailing wages and local material and equipment costs (which we obtain directly from local subcontractors and suppliers) to price our Construction Task Catalog. That allows us to be extremely accurate. The pricing of the Construction Task Catalog will be specific for the Member and will incorporate current actual local equipment and material prices, along with local area prevailing wage rates. Gordian currently serves several agencies in metropolitan areas across the country including Los Angeles, San Francisco, Houston, Chicago, New York, Atlanta and Miami, to name just a few. As a result of this work, we are already continuously collecting, analyzing and compiling new and updated construction tasks within the city and across the United States.</p> <p>If any items are not already included in our database, Gordian will gladly develop them for the Member. These new tasks will be for the exact construction product or material that the Member requires for its projects including, if necessary, unique owner supplied material and equipment. Prior to the publication of any new Construction Task Catalog, Gordian can identify and provide all non-prepriced tasks approved by the Member under the previous contracts. Working directly with the Member, Gordian can create line items for recurring non-prepriced tasks which are anticipated for the new contracts. We understand that new technologies and materials are being developed every day, as these materials become available, Gordian will assist the Member with incorporating these new tasks into current and future Construction Task Catalogs.</p>
68	Describe the JOC or IQCC program training available to participating entity staff and contractor personnel.	Program Training for all staff and contractor personnel is detailed in Table 14B.

69	Explain your method of addressing change orders within the JOC or IQCC program.	With Job Order Contracting, firm, preset prices are utilized for all work conducted by the contractor, whether that work is part of an original Job Order, or a supplemental Job Order developed after work has started. Accordingly, any unforeseen conditions or changes in the scope of the work are priced out of the Construction Task Catalog and determined by multiplying the unit price x the contractor's adjustment factor x the quantity. This means there is no project stoppage while the supplemental Job Order is developed thorough the same process as all other Job Orders. With JOC, the contractor simply delivers the facility owner another Price Proposal, which is reviewed and revised as necessary, and the owner issues a new Job Order covering the additional work, or crediting back any reduction in the scope of work. Since every change order is priced the same as the original Price Proposal, contractors cannot use change orders to increase profit margins later in the project, and owners cannot attempt to squeeze contractors for additional work at the same price when unforeseen conditions arise. Effective construction work requires communication and collaboration between a facility owner and contractor team. With JOC, even change orders are handled through a collaborative process based on preset pricing, and do not create the same type of disruptions typically seen on traditional bid construction projects.
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## Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

### Documents

#### Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
  - [Financial Strength and Stability](#) - Company Information, Financial Strength and Stability with 2020 Annual Report.pdf - Tuesday May 04, 2021 13:08:07
  - [Marketing Plan/Samples](#) - Marketing Plan with Sample 8rochure.pdf - Tuesday May 04, 2021 13:09:25
  - WM8E/M8E/S8E or Related Certificates (optional)
  - Warranty Information (optional)
  - [Pricing](#) - Pricing - Table 11.pdf - Tuesday May 04, 2021 13:40:27
  - [Upload Additional Document](#) - Additional Documents.zip - Tuesday May 04, 2021 13:32:46

**Proposer's Affidavit****PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
  1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
  2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
  3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Ammon Leshner, Vice President and General Counsel, The Gordian Group, Inc.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes    ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_2_JOC_IQCC_Program_Mgmt_RFP_050421 Wed April 28 2021 10:44 AM	<input checked="" type="checkbox"/>	1
Addendum_1_JOC_IQCC_Program_Mgmt_RFP_050421 Fri April 23 2021 03:06 PM	<input checked="" type="checkbox"/>	1

**ADDENDUM BY AND BETWEEN  
THE GORDIAN GROUP AND  
THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD**

This Addendum is by and between is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter, “the County”), on behalf of Natividad, a general acute care teaching hospital wholly owned and operated by the County, and The Gordian Group (“Gordian”).

**WHEREAS**, the National Joint Powers Alliance (“NJPA”) is a public agency operating under the enabling authority outlined in Minnesota Statute 123A.21, which allows participating nationwide government and education agencies (“Members”) to reduce the cost of purchasing by leveraging their combined national purchasing power through cooperative efforts.

**WHEREAS**, NJPA released RFP #050421 for Indefinite Quantity Construction Contracting Systems and Related Services on May 4, 2021; and

**WHEREAS**, Gordian was awarded NJPA Contract #050421-GGI (“NJPA Contract”), effective June 24, 2021, as a responsive Proposer to RFP #050421; and

**WHEREAS**, the County of Monterey is a member of NJPA and as such, and as per the terms of the RFP #050421 which allows all public agencies within the U.S. to procure off of the contract awarded from RFP #050421, Natividad intends to procure such services from Gordian piggybacking off the NJPA Contract; and

**WHEREAS**, COUNTY and Gordian agree to additional terms and conditions relevant specifically to work for Natividad as defined herein this Addendum.

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

1. COUNTY and Gordian agree that Gordian shall provide administrative services for the County’s Job Order Contracting (JOC) program for Natividad, assuming the obligations set forth within EXHIBIT A DESCRIPTION OF SERVICES/PAYMENT PROVISIONS attached to this Addendum.

2. Gordian agrees to adhere the following insurance requirements:

a. Evidence of Coverage:

Prior to commencement of this Agreement, Gordian shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, Gordian upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to Natividad’s Contracts/Purchasing Department, unless otherwise directed. GORDIAN shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and Natividad has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of Gordian.

b. Qualifying Insurers: All coverage’s, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A-VII, according to the current Best’s Key Rating Guide or a company of equal financial stability that is approved by Natividad’s Contracts/Purchasing Director.

- c. Insurance Coverage Requirements: Without limiting Gordian's duty to indemnify, Gordian shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance, If Gordian employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, Gordian shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

- d. Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to Natividad and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Gordian completes its performance of services under this Agreement.

Each liability policy shall provide that Natividad shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Gordian and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

**Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Gordian's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any**

**insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Gordian's insurance.** The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the COUNTY, Gordian shall file certificates of insurance with Natividad's Contracts/Purchasing Department, showing that Gordian has in effect the insurance required by this Agreement. Gordian shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Gordian shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Natividad, annual certificates to Natividad's Contracts/Purchasing Department. If the certificate is not received by the expiration date, Natividad shall notify Gordian and Gordian shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Gordian to maintain such insurance is a default of this Agreement, which entitles the County of Monterey on behalf of Natividad, at its sole discretion, to terminate the Agreement immediately.

2. COUNTY and Gordian agree to the following Indemnification clause:
  - a. Gordian shall indemnify, defend, and hold harmless the County of Monterey, including Natividad (hereinafter County), its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with Gordian's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "Gordian's performance" includes Gordian's action or inaction and the action or inaction of Gordian's officers, employees, agents and subcontractors.
3. COUNTY agrees to the terms and conditions stated within EXHIBIT B JOC SYSTEM LICENSE attached hereto this Addendum.
4. This Addendum shall be effective retroactive to September 16, 2021.
5. COUNTY and Gordian agree that services shall be rendered during the term of the NJPA Contract only which is between September 16, 2021 through June 25, 2025 with an option for NJPA and Gordian to extend for one additional year.
6. The total amount for services described herein shall not exceed \$100,000.



IN WITNESS WHEREOF, the Parties hereto are in agreement with this Addendum on the basis set forth in this document and have executed this Addendum on the day and year set forth herein.

<b><u>Natividad Medical Center</u></b>  <u>Dr. Charles R. Harris</u> Charles R. Harris, Interim CEO <u>8/26/21</u> Date  <b><u>Approved as to Legal Provisions:</u></b> <u>[Signature]</u> Monterey County Deputy County Counsel Senior Deputy County Counsel 8/24/2021 Date  <b><u>Approved as to Fiscal provisions:</u></b> <u>Gary Giboney</u> Monterey County Chief-Deputy Auditor- Controller 8-24-2021 Date	<b><u>The Gordian Group</u></b>  <u>[Signature]</u> Signature of Chair, President or Vice-President Ammon T. Leshner, Vice President Printed Name and Title  <u>8/9/21</u> Date  <u>James Mackerer</u> Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer James Mackerer, CFO Printed Name and Title <u>8/9/21</u> Date  <b><u>Signature Instructions</u></b> For a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).
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## EXHIBIT A TO ADDENDUM - DESCRIPTION OF SERVICES/PAYMENT PROVISIONS

### A.1 JOC Complete Solution®

The JOC Complete Solution is a turnkey procurement approach that tailors Job Order Contracting components to form a unique, comprehensive and high-performing “complete” JOC program. The JOC Complete Solution includes all of the products and services provided by the Gordian JOC Solution and, **in addition, Gordian will provide account managers to assist with developing Job Orders from project identification to issuing the Job Order.**

Developing the Job Order is the most critical step in the JOC process for controlling costs because this is the step where it is determined that Natividad is paying for the correct quantity at the correct competitively bid price for each project. It is very important that experienced, qualified project managers develop each and every Job Order. The JOC Complete Solution will bring the most economic benefit to Natividad with long term cost savings. A detailed list of the steps required to develop each Job Order are as follows:

- a. **Project Identification** – When a project is identified, Gordian’s account managers shall work with the County and assist with determining whether the project is appropriate for JOC.
  - b. **Contractor Identification** – In the event the County has multiple JOC contractors, we will assist Natividad with identifying the appropriate JOC contractor for the project based on the type of work involved, location of the project, and other factors such as remaining contract capacity, work on hand, and contractor performance.
  - c. **Joint Scope Meeting** – After identification of the JOC Contractor a Gordian account manager shall promptly schedule a Joint Scope Meeting at the project site to help Natividad and the JOC contractor agree on the details of the work that the JOC contractor will perform. The scoping process allows the JOC contractor to inspect the site and ask questions before submitting a Price Proposal. This upfront open communication eliminates the misunderstandings and mistakes that lead to most change orders and often results in more cost-effective collaborative solutions.
  - d. **Develop Detailed Scope of Work** – Next, the Gordian account manager shall assist in preparing a Detailed Scope of Work that describes the work the JOC contractor will perform. Gordian shall also assist with resolving issues when project plans and actual conditions vary.
  - e. **Request for Price Proposal** – After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, the Gordian account manager shall send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.
  - f. **Prepare the Price Proposal** – Next, the JOC contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Construction Task Catalog. Gordian’s JOC software will automatically calculate the total cost for each line item by multiplying the unit price of the task by the required quantities and the JOC contractor’s competitively bid Adjustment Factor. The JOC contractor will also prepare additional Natividad required information (e.g., construction schedule, list of proposed local subcontractors, etc.).
  - g. **Price Proposal Review** – Then, the Gordian account manager shall review the Price Proposal to make sure the JOC contractor has selected the appropriate tasks and quantities and shall ask
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the JOC contractor to make any required changes. Gordian shall also obtain and review any Natividad required information submitted by the JOC contractor such as a construction schedule and list of proposed subcontractors. Then the Gordian account manager shall submit the Price Proposal and related documents to Natividad.

- h. Issue Job Order** – Once Natividad is 100% satisfied with the Price Proposal and related documents, and decides to move forward with the project, Natividad simply issues a purchase order to the contractor.
- i. Construction Management** – During construction, Natividad’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 Natividad desires to change the Detailed Scope of Work, a supplemental Job Order is developed in the same manner as the original Job Order. With JOC, changes to the work are pre-priced.

### **A1.1 JOC Complete Solution<sup>®</sup> FEES**

The License Fees for the JOC Complete Solution consist of a client paid license fee (“Natividad License Fee”) and Job Order Development Fee paid by Natividad, and a contractor paid license fee (“Contractor License Fee”) paid by the JOC contractor as follows:

<b><u>Natividad License Fee:</u></b>	<b>1.95% of the value of the work ordered; and</b>
<b><u>Job Order Development Fee:</u></b>	<b>3.05% of the value of the work ordered; and</b>
<b><u>Contractor License Fee:</u></b>	<b>1.00% of the value of the work ordered.</b>

*(Totals (6%) of the value of the work ordered)*

JOC Complete Solution Fees are payable when a Job Order is issued to the JOC contractor. Natividad License Fee and Job Order Development Fee will be payable upon the issuance of a Job Order, purchase order, or similar purchasing document to the JOC contractor by Natividad. The Contractor License Fee shall be invoiced to the JOC contractor and is not a cost assessed to Natividad. JOC Complete Solution services can be provided as part of a comprehensive JOC solution, or can be provided on a project-by-project basis, with the Job Order Development Fee being assessed only when these services are requested by Natividad.

**A.2 JOC Complete Solution *Plus* (Construction Management Services)**- Gordian agrees to provide its JOC Complete Solution *Plus*<sup>TM</sup> services on a project-by- project basis through its contract with the National Joint Powers Alliance. Utilizing our JOC Complete Solution *Plus* services option which includes **construction management services will allow Natividad to manage Job Orders from Job Order issuance to Job Order close-out**. Whether due to peak volumes, staff shortages, or new strategic staff directives, Gordian's JOC Complete Solution *Plus* services shall provide on-site construction management experts, using Gordian's proven methods, to carry out day-to-day JOC operations and relieve Natividad's project workload burden. A detailed list of Gordian's standard construction management services, which we modify as necessary to meet the needs of Natividad, is as follows:

- a. **Preconstruction** – First, a Gordian construction manager shall conduct a pre-construction meeting with Natividad representative(s), the JOC contractor and, if applicable, the architect or engineer. The construction manager will coordinate and share any preconstruction information with Natividad, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.
- b. **Site Visit** – During construction, the Gordian construction manager shall 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
- c. **Communicate** – The Gordian construction manager shall provide weekly construction status reports to the County, conduct project progress meetings with all JOC contractors and staff on a periodic basis, and coordinate any required technical and code inspections.
- d. **Supplemental Job Orders** – In the event there are unforeseen conditions or Natividad requests changes to the scope after the work has begun, the Gordian construction manager will analyze and process a supplemental Job Order by utilizing the procedures used to develop the initial Job Order.
- e. **Approvals** – The Gordian construction manager shall review and approve, or direct necessary revisions to, the JOC contractor's applications for payment and obtain Natividad's approval of the work. Final acceptance of the work will be the responsibility of Natividad. Technical and code inspections will be the responsibility of the appropriate inspection agencies.
- f. **Project Close-out** – As the final step in the process, the Gordian construction manager shall enter all Job Order related information into the eGordian<sup>®</sup> information management system and collect any required as-builts, warranties, etc., from the JOC contractor.

#### **A2.1 JOC Complete Solution *Plus*<sup>TM</sup> FEES**

Gordian's fee to provide the JOC Complete Solution *Plus* level of services consists of the Construction Management Fee below, in addition to the fees set forth above:

**Construction Management Fee: Five and ninety-five hundredths percent (5.95%) of the value of the work ordered.**

The Construction Management Fee is payable when construction of the Job Order has been completed and accepted by the County, and will only apply when the JOC Complete Solution *Plus* services are requested by the County on a project- by-project basis. The JOC Complete

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Solution *Plus* services can be provided on a project-by-project basis, at the County's discretion.

**A3 JOC System License**

Gordian's JOC solutions are subject to Gordian's standard JOC System License. A copy of the JOC System License is attached to this Addendum as EXHIBIT B.

**A4 REPORTS**

Gordian shall submit written reports as requested by Natividad. Format for the content of such reports shall be determined by Natividad. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

**A5 Natividad LIAISON**

In performing the services described herein, Gordian's liaison with Natividad will be:

**Natividad Medical Center  
Brian Griffin, Project Manager  
1441 Constitution Blvd  
Salinas, CA 93906  
Phone: 831-783-2605  
Email: GriffinB@natividad.com**

**B1 OTHER PAYMENT PROVISIONS:**

- a. No charges shall be incurred under this Addendum nor shall any payments become due to Gordian until reports, services, or both required as per this Addendum are received from Gordian and approved by Natividad as being in accordance with this Addendum. In no event shall Natividad be liable for interest or late charges for any late payments.
- b. Gordian shall submit invoices once monthly at the completion of services and not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by Gordian for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Natividad shall certify the invoice, either in the requested amount or in such other amount as Natividad approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- c. Unless approved otherwise by the Natividad, Gordian shall, within three (3) days after receipt of payment by Natividad specified in this Exhibit pay to all of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and any amounts due and payable to the Gordian by those subcontractors.
- d. Such invoices shall be at a minimum, (i) mechanically accurate, (ii) substantially and properly supported with supporting documents and (iii) in compliance with Gordian's and subcontractors' generally accepted accounting principles.
- e. Natividad reserves the right to withhold payment(s) otherwise due Gordian in the event of Gordian's material non-compliance with any of the provisions of this Addendum and may continue the withholding until Gordian has provided evidence of compliance which is acceptable to Natividad.
- f. Natividad and Gordian agree that there shall be no travel nor expense reimbursement.

### **JOC SYSTEM LICENSE**

The Gordian Group, Inc. ("Gordian") hereby grants to the County of Monterey (hereinafter, 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 Resource Management Agency's (hereinafter, RMA) Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to, Gordian's PROGEN<sup>®</sup> and/or eGordian<sup>®</sup> applications and support documentation, Construction Task Catalog<sup>®</sup> (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<sup>®</sup> Access<sup>®</sup>.

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.

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# County of Monterey

Item No.

## Board Report

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

Legistar File Number: A 25-311

August 05, 2025

Introduced: 7/14/2025

Current Status: Natividad Medical Center -  
Consent

Version: 1

Matter Type: BoS Agreement

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute amendment No. 2 to the agreement (A-15549) with Vigilant Neuromonitoring LLC for intraoperative neurophysiological monitoring services, with no changes to the agreement term of October 1, 2021 through September 30, 2026, and adding \$200,000 for a revised total agreement amount not to exceed \$400,000.

### **RECOMMENDATION:**

#### **It is recommended the Board of Supervisors:**

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute amendment No. 2 to the agreement (A-15549) with Vigilant Neuromonitoring LLC for intraoperative neurophysiological monitoring services, with no changes to the agreement term of October 1, 2021 through September 30, 2026, and adding \$200,000 for a revised total agreement amount not to exceed \$400,000.

### **SUMMARY/DISCUSSION:**

Vigilant Neuromonitoring is a company that provides intraoperative neuromonitoring (IONM) and neurodiagnostic services. They specialize in using electrical signals from the nervous system during surgery to minimize the risk of neurological damage after the procedure.

### **OTHER AGENCY INVOLVEMENT:**

The Office of County Counsel reviewed and approved this amendment No. 2 as to form, and the Auditor-Controller reviewed and approved as to payment provisions. The amendment No. 2 has also been reviewed and approved by NMC's Finance Committee and by its Board of Trustees on July 11, 2025.

### **FINANCING:**

The cost for this amendment No. 2 is \$200,000 of which \$85,000 is included in the FY 2025-26 Adopted Budget. Amounts for remaining years of the agreement will be included in those budgets as appropriate. Funding will be provided from NMC's Enterprise Fund 451-9600-6613.

**BOARD OF SUPERVISORS STRATEGIC INITIATIVES:**

Vigilant will provide intraoperative neuromonitoring for patients undergoing Neuro Procedures in the Operating Room. Technologists shall monitor patient's nervous system via a computer monitor with real time remote supervision by a Group Physician in accordance with Hospital Rules

- ☐ Economic Development
- ☐ Administration
- ☒ Health and Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared by: Wally Sayles Director Surgical services 831 772-7771

Approved by: Charles R. Harris, Chief Executive Officer, 783-2553

Attachments:

- Vigilant Neuromonitoring Amendment No. 2
- Vigilant Neuromonitoring Renewal and Amendment No. 1
- Vigilant Neuromonitoring Agreement

Attachments on file with the Clerk of the Board



# County of Monterey

Item No.

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☐ Economic Development

☐ Administration

☒ Health and Human Services

☐ Infrastructure

☐ Public Safety

Prepared by: Wally Sayles Director Surgical services 831 772-7771

Approved by: Charles R. Harris, Chief Executive Officer, 783-2553

Attachments:

Vigilant Neuromonitoring Amendment No. 2

Vigilant Neuromonitoring Renewal and Amendment No. 1

Vigilant Neuromonitoring Agreement

Attachments on file with the Clerk of the Board

*Agreement A-15549*

**AMENDMENT NO. 2  
TO THE SERVICES AGREEMENT  
BETWEEN NATIVIDAD MEDICAL CENTER (COUNTY OF MONTEREY) AND  
VIGILANT NEUROMONITORING, LLC  
FOR  
INTRAOPERATIVE NEUROPHYSIOLOGICAL MONITORING**

This Amendment No. 2 to the County of Monterey, Natividad Medical Center (NMC) Agreement for Services is made and entered into, by and between the County of Monterey (hereinafter "County"), a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and Vigilant Neuromonitoring, LLC (hereinafter "CONTRACTOR"); **From this point forward, the party referenced previously as "NMC" shall be referenced as "COUNTY" and collectively, COUNTY and CONTRACTOR are referred to as the "Parties" to this Agreement, with respect to the following:**

**RECITALS**

**WHEREAS**, COUNTY and CONTRACTOR had previously entered into an Agreement for Services (hereinafter "Agreement") on October 1, 2021 to provide intraoperative neurophysiological monitoring services for Natividad Medical Center with a two year term and a total Agreement amount not to exceed \$200,000; and

**WHEREAS**, the Agreement expired on September 30, 2023; and

**WHEREAS**, COUNTY and CONTRACTOR renewed and amended the Agreement on January 17, 2024 retroactively to October 1, 2023, to extend the term for an additional three (3) year period for a revised full Agreement term of October 1, 2021 through September 30, 2026, with no change to the total Agreement amount not to exceed \$200,000; and

**WHEREAS**, COUNTY and CONTRACTOR currently wish to amend the Agreement with no changes to the Agreement term of October 1, 2021 through September 30, 2026 and no changes to the original scope of work with a \$200,000 increase for a revised not to exceed agreement amount of \$400,000.

**AGREEMENT**

**NOW THEREFORE**, the Parties agree to amend the Agreement as follows:

The Agreement is hereby renewed on the terms and conditions as set forth in the original Agreement and Renewal and Amendment No. 1, and Amendment No. 2 incorporated herein by this reference, except as specifically set forth below.

1. **Section 2.1.** Section 2.1 to the Agreement is hereby amended to read in its entirety the following:  
**"2.1 Compensation.** Hospital shall pay to Contractor the amount determined in accordance with **Exhibit 2.1** (the "**Compensation**"), upon the terms and conditions set forth therein. The total amount payable by the Hospital to the Contractor under this Agreement shall not exceed Four Hundred Thousand Dollars (\$400,000)."
2. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 2 and continue in full force and effect as set forth in the Agreement and Renewal and Amendment No. 1.
3. A copy of this Amendment No. 2 shall be attached to the Agreement.

4. This Amendment No. 2 shall be effective when signed by both Parties.

*The remainder of this page was intentionally left blank.*

*~ Signature page to follow ~*

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 2 on the basis set forth in this document and have executed this Amendment No. 2 on the day and year set forth herein:

**COUNTY OF MONTEREY on behalf of**  
**NATIVIDAD MEDICAL CENTER**

By: \_\_\_\_\_  
Charles R. Harris, CEO

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL PROVISIONS**

Signed by:  
By: Stacy Sautta  
Monterey County Deputy County Counsel

Date: 6/26/2025 | 4:49 PM PDT

**APPROVED AS TO FISCAL PROVISIONS**

DocuSigned by:  
By: Patricia Ruiz  
Monterey County Chief Deputy Auditor-Controller

Date: 6/27/2025 | 9:59 AM PDT

**CONTRACTOR**

**VIGILANT NEUROMONITORING LLC**

**CONTRACTOR's Business Name**

**\*\*Signature instructions below\*\***

By: Terry Sisco  
(Signature of Chair, President, or Vice-President)

TERRY SISCO, CEO  
Name and Title

Date: 06-24-2025

By: Steven Graham  
(Signature of Secretary, Asst. Secretary,  
CFO, Treasurer, or Asst. Treasurer)

Steven Graham CFO  
Name and Title

Date: 6-25-2025

**RENEWAL AND AMENDMENT NO. 1  
TO THE SERVICES AGREEMENT  
BETWEEN NATIVIDAD MEDICAL CENTER (COUNTY OF MONTEREY) AND  
VIGILANT NEUROMONITORING, LLC  
FOR  
INTRAOPERATIVE NEUROPHYSIOLOGICAL MONITORING**

This Renewal and Amendment No. 1 to the County of Monterey, Natividad Medical Center (NMC) Agreement for Services is made and entered into, by and between the County of Monterey (hereinafter "County"), a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and Vigilant Neuromonitoring, LLC (hereinafter "CONTRACTOR"); **From this point forward, the party referenced previously as "NMC" shall be referenced as "COUNTY" and collectively, COUNTY and CONTRACTOR are referred to as the "Parties" to this Agreement, with respect to the following:**

**RECITALS**

**WHEREAS**, COUNTY and CONTRACTOR had previously entered into an Agreement for Services (hereinafter "Agreement") on October 1, 2021 to provide intraoperative neurophysiological monitoring services for Natividad Medical Center with a two year term and a total Agreement amount not to exceed \$200,000; and

**WHEREAS**, the Agreement expired on September 30, 2023; and

**WHEREAS**, COUNTY and CONTRACTOR wish to renew and amend the Agreement retroactive to October 1, 2023, to extend the term for an additional three (3) year period through September 30, 2026 for a revised full Agreement term of October 1, 2021 through September 30, 2026 to allow for continued need of CONTRACTOR's services, and no change to the total Agreement amount not to exceed \$200,000.

**AGREEMENT**

**NOW THEREFORE**, the Parties agree as follows:

The Agreement is hereby renewed and amended on the terms and conditions as set forth in the original Agreement incorporated herein by this reference, except as specifically set forth below.

1. Section 5.1 "Term" Section in the Agreement shall be amended to the following:  
**"The term of this Agreement is from October 1, 2021 through September 30, 2026 unless sooner terminated pursuant to the terms of this Agreement"**
2. If there is any conflict or inconsistency between the provisions of Agreement or this Renewal and Amendment No. 1, the provisions of this Renewal and Amendment No. 1 shall govern.
3. This Renewal and Amendment is effective retroactively on October 1, 2023.



IN WITNESS WHEREOF, the Parties hereby execute this Renewal and Amendment No. 1 as follows:

**COUNTY OF MONTEREY on behalf of**  
**NATIVIDAD MEDICAL CENTER**

DocuSigned by:  
 By: Charles R. Harris  
 4E1F837D204E481...  
 Charles R. Harris, CEO

Date: 1/17/2024 | 8:19 AM PST

**APPROVED AS TO LEGAL PROVISIONS**

DocuSigned by:  
 By: Stacy Saelta  
 C0E0CE1B99F444A9...  
 Monterey County Deputy County Counsel

Date: 1/16/2024 | 5:09 PM PST

**APPROVED AS TO FISCAL PROVISIONS**

DocuSigned by:  
 By: Patricia Ruiz  
 E79EF04E57454F0...  
 Monterey County Chief Deputy Auditor-Controller

Date: 1/17/2024 | 7:54 AM PST

**\*\*\*SIGNATURE INSTRUCTIONS\*\***

If CONTRACTOR is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. (2 signatures required)

If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. (2 signatures required)

If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement. (1 signature required)

**CONTRACTOR**

Vigilant Neuromonitoring

**CONTRACTOR's Business Name**

**\*\*Signature instructions below\*\***

By: Isis Caouette  
 (Signature of Chair, President, or Vice-President)

Isis Caouette Director of Operations  
 Name and Title

Date: 1/8/2024

By: \_\_\_\_\_  
 (Signature of Secretary, Asst. Secretary,  
 CFO, Treasurer, or Asst. Treasurer)

\_\_\_\_\_  
 Name and Title

Date: \_\_\_\_\_



## Monterey County Board of Supervisors

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066  
[www.co.monterey.ca.us](http://www.co.monterey.ca.us)

A motion was made by Supervisor Mary L. Adams, seconded by Supervisor Chris Lopez to:

**Agreement No.: A-15549**

- a. Authorize the Interim Chief Executive Officer for Natividad or his designee to execute an Agreement with Vigilant Neuromonitoring LLC for intraoperative neurophysiological monitoring services at Natividad for an amount not to exceed \$200,000 for the term October 1, 2021 through September 30, 2023.
- b. Authorize the Interim Chief Executive Officer for Natividad or his designee to execute up to three (3) future amendments to the agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) of the original cost of the agreement per each amendment.

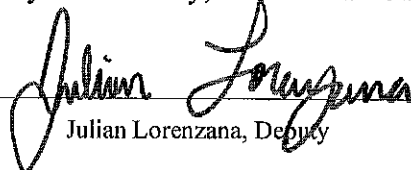
PASSED AND ADOPTED on this 28<sup>th</sup> day of September 2021, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams  
NOES: None  
ABSENT: None  
(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting September 28, 2021.

Dated: October 1, 2021  
File ID: A 21-481  
Agenda Item No.: 24

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

  
Julian Lorenzana, Deputy

**PROFESSIONAL SERVICES AGREEMENT**  
**by and between**  
**NATIVIDAD MEDICAL CENTER (“Hospital”)**  
**and**  
**VIGILANT NEUROMONITORING, LLC (“Contractor”)**

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this “**Agreement**”) is entered into as of October 1, 2021, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**Hospital**”), and VIGILANT NEUROMONITORING, LLC, a Delaware limited liability company (“**Contractor**”). County, Hospital and Contractor are sometimes referred to in this Agreement as a “**Party**” or, collectively, as the “**Parties**.”

### RECITALS

A. County owns and operates Hospital, a general acute care teaching hospital facility located in Salinas, California under its acute care license.

B. Contractor is a limited liability company organized under the laws of the State of Delaware, consisting of employees and contractors, including physicians board certified for the practice of medicine in the specialty of neurology (collectively, “**Group Physicians**” and each, a “**Group Physician**”), and technologists certified in intraoperative neurophysiologic monitoring by the American Board of Registration of Electrodiagnostic Technology (collectively, “**Technologists**” each, a “**Technologist**” and together with Group Physicians, the “**Group Providers**”).

C. Hospital must arrange for the provision of intraoperative neurophysiological monitoring of patients undergoing surgical procedures at Hospital (collectively, the “**Patients**”), without regard to any consideration other than medical condition.

### AGREEMENT

#### THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I.

##### CONTRACTOR’S OBLIGATIONS

**1.1 Professional Services.** Contractor shall provide the intraoperative neurophysiological monitoring and other neurodiagnostic services as set forth in Exhibit 1.1 (the “**Services**”) to Patients, upon the terms and subject to the conditions set forth in this Agreement.

**1.2 Time Commitment.** Contractor shall cause Group Providers to provide the Services on an as needed basis as requested by Hospital from time to time. Technician shall arrive one (1) hour before the scheduled start time of the surgery. Hospital shall forward to Contractor a list of all Patients who require such Services on or before the day of surgery.

**1.3 Availability.** Contractor shall ensure that one (1) or more of its Technologists and one (1) or more of its Group Physicians are available to provide the Services on a twenty-four (24) hour per day, seven (7) day per week basis. Group Providers shall use their best efforts to adjust such schedule of availability if reasonably requested by Hospital in order to meet Hospital’s needs for the Services.

**1.4 Medical Staff.** Each Group Physician shall be a member in good standing and active on the Hospital's Medical Staff and have and maintain all clinical privileges at Hospital necessary for the performance of Group Physician's obligations under this Agreement. If, as of the Effective Date (as defined in Section 5.1), any Group Physician is not a member in good standing or active on the Medical Staff or does not hold all clinical privileges at Hospital necessary for the performance of Group Physician's obligations hereunder, such Group Physician shall have a reasonable amount of time, which in no event shall exceed sixty (60) calendar days from the Effective Date, to obtain such membership and/or clinical privileges; provided, however, that such Group Physician diligently pursues such membership and/or clinical privileges in accordance with the normal procedures set forth in the Medical Staff bylaws; and provided, however, that, at all times, Group Physician has been granted privileges to perform the Services. Any Group Physician may obtain and maintain medical staff privileges at any other hospital or health care facility at Group Physician's sole expense.

**1.5 Professional Qualifications.**

(a) Each Group Physician shall have and maintain an unrestricted license to practice medicine in the State. Each Group Physician shall be board certified in neurology by the applicable medical specialty board approved by the American Board of Medical Specialties. Each Group Physician shall have and maintain a valid and unrestricted United States Drug Enforcement Administration ("DEA") registration.

(b) Each Technologist shall have and maintain certification as a Certified Neurophysiologic Intraoperative Monitoring ("CNIM") Technologist, or be eligible for certification as a CNIM Technologist by the American Board of Registration of Electroencephalographic and Evoked Potential Technologists. Contractor shall ensure that Technologists who are only eligible for certification obtain such certification within one (1) year of being granted clinical privileges at Hospital.

**1.6 Review of Office of the Inspector General ("OIG") Medicare Compliance Bulletins.** The OIG from time to time issues Medicare compliance alert bulletins. To the extent applicable to Contractor's performance under this Agreement, Contractor and each Group Provider shall undertake to review, be familiar with and comply with all applicable requirements of such OIG compliance bulletins.

**1.7 Performance Standards.** Contractor and each Group Provider shall comply with all bylaws, Medical Staff policies, rules and regulations of Hospital and the Medical Staff (collectively, the "**Hospital Rules**"), and all protocols applicable to the Services or the Hospital (the "**Protocols**").

**1.8 Code of Conduct.** Contractor hereby acknowledges receipt of Hospital's Code of Conduct which is attached to this Agreement as Exhibit 1.8 (the "**Code**"), and agrees that Contractor and each Group Provider has been given ample opportunity to read, review and understand the Code. With respect to Contractor's and the Group Providers' business dealings with Hospital and their performance of the Services described in this Agreement, neither Contractor nor any Group Provider shall act in any manner which conflicts with or violates the Code, nor cause another person to act in any manner which conflicts with or violates the Code.

Contractor and each Group Provider shall comply with the Code as it relates to their business relationship with Hospital or any Affiliate, subsidiaries, employees, agents, servants, officers, directors, contractors and suppliers of every kind.

**1.9 Continuing Medical Education.** Contractor shall ensure that each Group Provider participates in continuing medical education as necessary to maintain licensure, professional competence and skills commensurate with the standards of the medical community and as otherwise required by the medical profession.

**1.10 Use of Space.** Contractor and each Group Provider shall use Hospital's premises and space solely and exclusively for the provision of the Services, except in an emergency or with Hospital's prior written consent.

**1.11 Notification of Certain Events.** Contractor shall notify Hospital in writing within twenty-four (24) hours after the occurrence Provider any one or more of the following events:

(a) Contractor or any Group Provider becomes the subject of, or materially involved in, any investigation, proceeding, or disciplinary action by: Medicare and Medicaid programs or any other Federal health care program, as defined at 42 U.S.C. Section 1320a-7b(f) (collectively, the "**Federal Health Care Programs**") or state equivalent, any state's medical or certification board, as applicable, any agency responsible for professional licensing, certification, standards or behavior, or any medical staff;

(b) the medical staff membership or clinical privileges of any Group Provider at any hospital are denied, suspended, restricted, revoked or voluntarily relinquished, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) any Group Provider becomes the subject of any suit, action or other legal proceeding arising out of Contractor's professional services;

(d) any Group Provider voluntarily or involuntarily retires from the practice of medicine or the provision of CNIM, as applicable;

(e) any Group Provider's license to practice medicine or certification, as applicable, in the State is restricted, suspended or terminated, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(f) Contractor or any Group Provider is charged with or convicted of a criminal offense;

(g) Contractor changes the location of Contractor's office;

(h) any act of nature or any other event occurs which has a material adverse effect on Contractor's or any Group Provider's ability to provide the Services; or

(i) Contractor or any Group Provider is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program or state equivalent.

**1.12 Representations and Warranties by Contractor.** Contractor represents and warrants that: (a) no Group Provider's license to practice medicine or certification, as applicable, in any state has ever been suspended, revoked or restricted; (b) neither Contractor nor any Group Provider has ever been reprimanded, sanctioned or disciplined by any licensing, certification or medical specialty board; (c) neither Contractor nor Group Provider has ever been excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program; (d) no Group Provider has ever been denied membership and/or reappointment to the medical staff of any hospital or health care facility; (e) no Group Provider's medical staff membership or clinical privileges at any hospital or health care facility have ever been suspended, limited or revoked for a medical disciplinary cause or reason; and (f) no Group Provider has ever been charged with or convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of medical services or the practice of medicine.

**1.13 Nondiscrimination.** Neither Contractor nor any Group Provider shall differentiate or discriminate in performing the Services on the basis of race, religion, creed, color, national origin, ancestry, sex, physical disability, mental disability, medical condition, marital status, age, sexual orientation or payor, or on any other basis prohibited by applicable law.

**1.14 Exclusive Services.**

(a) During the term of this Agreement, Hospital shall not, except as otherwise set forth in **Exhibit 1.14**, without the prior written consent of Contractor, employ or contract with any person or entity other than Contractor to provide the Services. Nothing in this Section is intended or shall be construed to preclude Hospital from granting clinical privileges to any other physician or technologist consistent with the Hospital Rules that would permit such physician or technologist to provide professional services.

(b) In the event Contractor fails to or is reasonably anticipated to be unable to provide staffing and/or coverage for provision of the Services in accordance with the terms and conditions of this Agreement, Hospital shall have the right, at its option and notwithstanding any provision of this Agreement to the contrary, to make alternative arrangements for the provision of the Services. Hospital's rights under this Section shall not (i) relieve Contractor of its obligations under this Agreement, (ii) affect Hospital's right to terminate this Agreement, or (iii) adversely affect Hospital's right to seek indemnity as a result of the breach of this Agreement by Contractor.

**1.15 Compliance with Grant Terms.** If this Agreement has been or will be funded with monies received by Hospital or County pursuant to a contract with the state or federal government or private entity in which Hospital or County is the grantee, Contractor and Group Providers shall comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, Hospital shall deliver a copy of said contract to Contractor at no cost to Contractor.

**1.16 Medical Records and Claims.**

(a) Contractor shall ensure that each Group Provider prepares complete, timely, accurate and legible medical and other records with respect to the services and treatment furnished to patients, in accordance with the Hospital Rules, federal and state laws and regulations, and standards and recommendations of such nationally recognized accrediting organization as Hospital designates from time to time. All such information and records relating to any patient shall be: (i) prepared on forms developed, provided or approved by Hospital; (ii) the sole property of Hospital; and (iii) maintained at Hospital in accordance with the terms of this Agreement and for so long as is required by applicable laws and regulations.

(b) Contractor shall maintain and upon request provide to patients, Hospital, and state and federal agencies, all financial books and records and medical records and charts as may be necessary for Contractor and/or Hospital to comply with applicable state, federal, and local laws and regulations and with contracts between Hospital and third party payors. Contractor shall cooperate with Hospital in completing such claim forms for patients as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors. Contractor shall retain all such records and information for at least ten (10) years following the expiration or termination of this Agreement. This Section 1.16(b) shall survive the expiration or termination of this Agreement.

**1.17 Records Available to Contractor.** Both during and after the term of this Agreement, Hospital shall permit Contractor and Contractor's agents to inspect and/or duplicate, at Contractor's sole cost and expense, any medical chart and record to the extent necessary to meet Contractor's professional responsibilities to patients, to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent, and/or to fulfill requirements pursuant to provider contracts to provide patient information; provided, however, such inspection or duplication is permitted and conducted in accordance with applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. Contractor shall be solely responsible for maintaining patient confidentiality with respect to any information which Contractor obtains pursuant to this Section.

**1.18 Group Providers.**

(a) Contractor shall employ, contract with, or otherwise engage Group Providers. Contractor has initially engaged those Group Providers listed (and identified by NPI number) on **Exhibit 1.18(a)** to provide the Services, which Group Providers are hereby approved and accepted by Hospital.



(b) Contractor may from time to time engage one (1) or more additional Group Provider (including locum tenens physicians) to provide the Services under this Agreement, subject to Hospital's prior written approval, which approval may be given, withheld or conditioned by Hospital in its sole discretion. In the event Hospital withholds approval with respect to any additional Group Provider, such Group Provider shall not be entitled to any "fair hearing" or any other hearing or appellate review under any provision of the Medical Staff Bylaws, unless Hospital determines that the withholding of approval is reportable to any state's medical board or other agency responsible for professional licensing, standards or behavior.

(c) Contractor shall ensure that, during the term of this Agreement, any and all Group Providers (including locum tenens physicians) providing the Services satisfy the professional standards and qualifications set forth in this Article I of this Agreement.

(d) Contractor shall provide prompt written notice to Hospital in the event any Group Provider resigns, is terminated by Contractor, or otherwise ceases to provide the Services.

(e) Contractor shall ensure that the Services are performed only by Group Providers who have been approved and accepted by Hospital, and have not been removed in accordance with this Agreement.

(f) Contractor shall cause each Group Provider providing the Services to comply with all obligations, prohibitions, covenants and conditions imposed on Contractor pursuant to this Agreement. Contractor shall cause each Group Provider to execute and deliver to Hospital a letter of acknowledgment in the form attached as Exhibit 1.18(f) prior to providing any Services under this Agreement.

**1.19 Quarterly Reports.** Contractor shall provide quarterly reports. Reports shall include data that may be used to analyze quality, utilization review and risk management for future quality and efficiency of surgeries.

## **ARTICLE II. COMPENSATION**

**2.1 Compensation.** Hospital shall pay to Contractor the amount determined in accordance with Exhibit 2.1 (the "Compensation"), upon the terms and conditions set forth therein.

**2.2 Billing and Collections.** Contractor shall be solely responsible for billing and collecting for all Services rendered to Patients pursuant to this Agreement ("**Contractor Services**"). Contractor agrees that such collections shall be Contractor's sole compensation for Contractor Services. All billing shall be in compliance with applicable laws, customary professional practice, the Medicare and Medicaid Programs and other third party payor programs, whether public or private.

(a) **Billing Compliance.** Contractor shall comply with all applicable Laws, including those of the Federal Health Care Programs, customary professional practice, and other third party payor programs, whether public or private, in connection with billing and coding for Contractor Services provided pursuant to this Agreement. Contractor shall adopt and maintain billing and coding compliance policies and procedures to ensure Contractor's compliance with applicable Laws, including those of the Federal Health Care Programs. Hospital shall have reasonable access to Contractor's records in order to assure Contractor's compliance with this Agreement.

(b) **Patient Information.** Hospital shall take all necessary and reasonable steps to provide Contractor appropriate patient information to facilitate Contractor's billing for the Contractor Services rendered pursuant to this Agreement.

(c) **Separate Billing.** Neither Contractor nor Hospital shall bill for, guarantee the ability to collect, or have any claim or interest in or to the amounts billed or collected by the other Party. Contractor shall cooperate with Hospital in completing such claim forms for Patients as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors.

(d) **Debt Collection Practices.** Contractor shall comply, and shall ensure that any collection agency engaged by Contractor complies, with the Fair Debt Collection Practices Act (15 U.S.C. 1692, et seq.) and Section 1788, et seq. of the California Civil Code (collectively, the "**Debt Collection Acts**"). Contractor shall not, and shall ensure that any collection agency engaged by Contractor does not, with respect to any Hospital patient who is not enrolled in any HMO, PPO, POS or other third party payor plan or program, or Medicare, Medicaid or any other government funded health care benefit plan or program: (i) use wage garnishments or liens on primary residences as a means of collecting unpaid bills for Contractor Services rendered by Contractor pursuant to this Agreement, or (ii) report adverse information to a consumer credit reporting agency or commence civil action against any such patient for nonpayment at any time prior to one hundred fifty (150) days after initial billing for Contractor Services rendered by Contractor pursuant to this Agreement.

(e) **Collection Agencies.** Hospital shall have the right to object to Contractor's use of any collection agency that engages in conduct that violates the Debt Collection Acts or Section 2.2(d) of this Agreement, or that results in the unreasonable annoyance or harassment of patients. Contractor shall either cure this problem or discharge the collection agency within thirty (30) days following written notice of objection by Hospital. If this problem occurs a second time, Contractor shall discharge the collection agency within thirty (30) days following written notice of objection by Hospital.

### **2.3 Third Party Payor Arrangements.**

(a) Contractor shall cooperate in all reasonable respects necessary to facilitate Hospital's entry into or maintenance of any third party payor arrangements for the provision of services under Federal Health Care Programs or any other public or private health and/or hospital care programs, including insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations.

(b) To enable Hospital to participate in any third party payor arrangement, Contractor shall, not more than ten (10) business days following Hospital's request:

- (i) Initiate enrollment as a provider (if required by the third party payor), separate from Hospital, with any third party payor or intermediate organization (including any independent practice association) (each, a "**Managed Care Organization**") designated by Hospital for the provision of Professional Services to Hospital patients covered by such Managed Care Organization;
- (ii) Complete any documents (e.g., CAQH Universal Provider Datasource form) as may be reasonably necessary or appropriate to effectuate enrollment;
- (iii) Enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of Professional Services to Hospital patients covered by such Managed Care Organization; and/or
- (iv) Enter into a written agreement with Hospital regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of Professional Services to Hospital patients covered by such Managed Care Organization.

### **ARTICLE III.**

#### **INSURANCE AND INDEMNITY**

**3.1 Evidence of Coverage.** Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to Hospital's Medical Staff Office, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and Hospital has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

**3.2 Qualifying Insurers.** All coverages except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Hospital's Contracts/Purchasing Director.

**3.3 Insurance Coverage Requirements.** Without limiting Contractor's or Group Provider's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement, at Contractor's sole cost and expense, a policy or policies of insurance with the following minimum limits of liability:

(a) **Professional liability insurance**, covering Contractor and each Group Provider with coverage of not less than One-Million Dollars (\$1,000,000) per Group Provider per occurrence and Three-Million Dollars (\$3,000,000) per Group Provider in the aggregate; or such other amount(s) of professional liability insurance as may be required by Article 2.2-1 of Hospital's Medical Staff Bylaws from time to time, to cover liability for malpractice and/or errors or omissions made in the course of rendering services under this Agreement. If any professional liability insurance covering Contractor and Group Provider is procured on a "Claims Made" rather than "Occurrence" basis, then Contractor and Group Provider shall either continue such coverage or obtain extended reporting coverage ("**Tail Coverage**"), as appropriate, upon the occurrence of any of the following: (i) termination or expiration of this Agreement; (ii) change of coverage if such change shall result in a gap in coverage; or (iii) amendment, reduction or other material change in the then existing professional liability coverage of Contractor if such amendment, reduction or other material change will result in a gap in coverage. Any Tail Coverage shall have liability limits in the amount set forth above and shall in all events continue in existence until the greater of: (a) three (3) years or (b) the longest statute of limitations for professional and general liability for acts committed has expired. All insurance required by this Agreement shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact insurance business in the State.

(b) **Commercial general liability insurance**, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than One Million Dollars (\$1,000,000) per occurrence.

☐ Exemption/Modification (Justification attached; subject to approval).

(c) **Business automobile liability insurance**, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than One Million Dollars (\$1,000,000) per occurrence.

☐ Exemption/Modification (Justification attached; subject to approval).

(d) **Workers' Compensation Insurance**, if Contractor employs others in the performance of this Agreement, in accordance with California Labor Code Section 3700 and with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each person, One Million Dollars (\$1,000,000) each accident and One Million Dollars (\$1,000,000) each disease.

☐ Exemption/Modification (Justification attached; subject to approval).

**3.4 Other Insurance Requirements.** All insurance required by this Agreement shall be with a company acceptable to Hospital and issued and executed by an admitted insurer authorized to transact insurance business in the State. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date Contractor and Group Providers complete their performance of services under this Agreement.

Each liability policy shall provide that Hospital shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor, Group Providers, and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by Hospital, Contractor shall file certificates of insurance with Hospital's Medical Staff Office, showing that the Contractor has in effect the insurance required by this Agreement. The Contractor shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Contractor and each Group Provider shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Hospital, annual certificates to Hospital's Medical Staff Office. If the certificate is not received by the expiration date, Hospital shall notify Contractor and Contractor shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Contractor to maintain such insurance is a default of this Agreement, which entitles Hospital, at its sole discretion, to terminate the Agreement immediately.

### **3.5 Right to Offset Insurance Costs.**

(a) In the event that Contractor does not purchase or otherwise have the liability insurance set forth in this Section at any time during the term of this Agreement, and without limiting any rights or remedies of County, County may at its option and within its sole discretion provide the liability insurance required by this Section and continue to pay the premiums therefor. If Contractor does not promptly reimburse all such amounts, then County shall have the right to withhold and offset the compensation due to Contractor under this Agreement, in addition to such other rights or privileges as County may have at law or in equity.

(b) The County's option to provide such insurance and to offset the compensation otherwise due to the Contractor shall also apply to the "Tail Coverage" referenced in Section 3.3, including for general liability if during the term of the Agreement such coverage has been written on a claims made basis, which is required to remain effective after the expiration or termination of this Agreement for any reason.

### **3.6 Indemnification.**

(a) **Indemnification by Contractor.** Contractor and each Group Provider shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with Contractor's or Group Providers' performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "Contractor's performance" includes Contractor's and Group Providers' acts or omissions and the acts or omissions of Contractor's officers, employees, agents and subcontractors.

(b) **Indemnification by County.** County agrees to defend, indemnify, and hold harmless Contractor and Group Providers, to the extent permitted by applicable law, from and against any and all claims and losses whatsoever accruing or resulting to any person, firm or corporation for damages, injury or death arising out of or connected with any negligent act or omission or willful misconduct of County or any of its agents or employees.

**3.7 Indemnification for Timely Payment of Tax Contributions.** It is expressly agreed by the Parties hereto that no work, act, commission or omission of Contractor or any Group Provider shall be construed to make or render Contractor or any Group Provider the agent, employee or servant of County. Contractor and each Group Provider agrees to indemnify, defend and hold harmless County and Hospital from and against any and all liability, loss, costs or obligations (including, without limitation, interest, penalties and attorney's fees in defending against the same) against County or Hospital based upon any claim that Contractor has failed to make proper and timely payment of any required tax contributions for itself, its employees, or its purported agents or independent contractors.

**3.8 Hospital Services.** Hospital shall retain professional and administrative responsibility for the operation of the Hospital, as and to the extent required by Title 22, California Code of Regulations, Section 70713. Hospital's retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations of Contractor under this Agreement, including, without limitation, the obligations under the insurance and indemnification provisions set forth in this Article III.

**3.9 Survival of Obligations.** The Parties' obligations under this Article III shall survive the expiration or termination of this Agreement for any reason.

#### **ARTICLE IV.** **RELATIONSHIP BETWEEN THE PARTIES**

**4.1 Independent Contractor.**

(a) Contractor and each Group Provider is and shall at all times be an independent contractor with respect to Hospital in the performance of Contractor's and Group Provider's obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, partnership, lease or landlord/tenant relationship between Hospital and Contractor or Hospital and any Group Provider. No Group Provider shall hold himself or herself out as an officer, agent or employee of Hospital, and shall not incur any contractual or financial obligation on behalf of Hospital without Hospital's prior written consent.

(b) If the Internal Revenue Service ("IRS") or any other governmental agency should inquire about, question or challenge the independent contractor status of Contractor or any Group Provider with respect to County, the Parties hereto mutually agree that: (i) each shall inform the other Party hereto of such inquiry or challenge; and (ii) County and Contractor shall each have the right to participate in any discussion or negotiation occurring with the taxing agency, regardless of who initiated such discussions or negotiations. In the event the taxing agency concludes that an independent contractor relationship does not exist, County may terminate this Agreement effective immediately upon written notice. In the event of such termination, the Parties remain free to negotiate an employer/employee contract with any Group Provider.

**4.2 Limitation on Control.** Hospital shall neither have nor exercise any control or direction over Contractor's or any Group Provider's professional medical judgment or the methods by which Contractor or any Group Provider performs professional medical services; provided, however, that Contractor and Group Providers shall be subject to and shall at all times comply with the Protocols and the bylaws, guidelines, policies and rules applicable to other members of the Medical Staff.

**4.3 Practice of Medicine.** Contractor and Hospital acknowledge that Hospital is neither authorized nor qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. To the extent that any act or service required of, or reserved to, Hospital in this Agreement is construed or deemed to constitute the practice of medicine, the performance of such act or service by Hospital shall be deemed waived or unenforceable, unless this Agreement can be amended to comply with the law, in which case the Parties shall make such amendment.

**4.4 No Benefit Contributions.** Hospital shall have no obligation under this Agreement to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Contractor or any other person employed or retained by Contractor. Notwithstanding the foregoing, if Hospital determines or is advised that it is required by law to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Contractor or any other person employed or retained by Contractor, Contractor shall reimburse Hospital for any such expenditure within thirty (30) calendar days after being notified of such expenditure.

**4.5 Referrals.** Contractor and the Group Providers shall be entitled to refer patients to any hospital or other health care facility or provider deemed by Contractor or the Group Providers best qualified to deliver medical services to any particular patient; provided; however, that neither Contractor nor any Group Provider shall refer any Hospital patient to any provider or health care services which either Contractor or any Group Provider knows or should have known is excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program or state equivalent. Nothing in this Agreement or in any other written or oral agreement between Hospital and Contractor or Hospital and the Group Providers, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to Hospital or any Affiliate. In the event that any governmental agency, any court or any other judicial body of competent jurisdiction, as applicable, issues an opinion, ruling or decision that any payment, fee or consideration provided for hereunder is made or given in return for patient referrals, either Party may at its option terminate this Agreement with three (3) days' notice to the other Party. Contractor's rights under this Agreement shall not be dependent in any way on the referral of patients or business to Hospital or any Affiliate by Contractor, Group Provider or any person employed or retained by Contractor.

**4.6 Form 1099 or W-2.** If required to do so under applicable law, Hospital shall issue an Internal Revenue Service Form 1099 or Form W-2 to Contractor.

**4.7 Contractor Compensation Arrangements.** Contractor represents and warrants to Hospital that the compensation paid or to be paid by Contractor to any physician is and will at all times be fair market value for services and items actually provided by such physician, not taking into account the value or volume of referrals or other business generated by such physician for Hospital or any Affiliate. Contractor further represents and warrants to Hospital that Contractor has and will at all times maintain a written agreement with each physician receiving compensation from Contractor.



#### **4.8     Cooperation.**

(a)     The Parties recognize that, during the term of this Agreement and for an undetermined time period thereafter, certain risk management issues, legal issues, claims or actions may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other in good faith when such issues, claims or actions arise, to the extent such cooperation does not violate any applicable laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or actions. As such, the Parties hereby agree to cooperate in good faith, using their best efforts, to address such risk management and legal issues, claims, or actions.

(b)     The Parties further agree that if a controversy, dispute, claim, action or lawsuit (each, an “**Action**”) arises with a third party wherein both the Parties are included as defendants, each Party shall promptly disclose to the other Party in writing the existence and continuing status of the Action and any negotiations relating thereto. Each Party shall make every reasonable attempt to include the other Party in any settlement offer or negotiations. In the event the other Party is not included in the settlement, the settling Party shall immediately disclose to the other Party in writing the acceptance of any settlement and terms relating thereto, if allowed by the settlement agreement.

(c)     Contractor shall cooperate with the individual designated by Hospital to have principal responsibility for the administration and operation of the Hospital. Such cooperation shall include supervision, selection, assignment, and evaluation of personnel; management and direction of equipment maintenance; development of budgets; and oversight of the acquisition of materials, supplies, and equipment.

(d)     Contractor shall assist Hospital, as reasonably requested by Hospital, in Hospital’s compliance with applicable laws and the standards, requirements, guidelines and recommendations of any governing or advisory body having authority to set standards relating to the operation of Hospital, or any nationally recognized accrediting organization that Hospital designates from time to time.

**4.9     Contractor’s Performance.** County or Hospital, at its option and within its sole discretion, may seek evaluation of contractual performance by requesting input from Hospital’s Medical Director/Chief Medical Officer and from other professionals within Hospital.

**4.10     Right of Inspection.** Upon reasonable prior written notice, Hospital and County officials and their designees may inspect the books and records of Contractor which are necessary to determine that work performed by Contractor or any Group Provider to patients hereunder is in accord with the requirements of this Agreement. Such inspection shall be made in a manner so as not to disrupt the operations of Hospital or Contractor.

**4.11 Access to and Audit of Records.** Hospital shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Contractor and its subcontractors related to services provided under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), the Parties may be subject, at the request of Hospital or as part of any audit of Hospital, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three (3) years after final payment under the Agreement.

## **ARTICLE V.**

### **TERM AND TERMINATION**

**5.1 Term.** This Agreement shall become effective on October 1, 2021 (the “Effective Date”), and shall continue until September 30, 2023 (the “Expiration Date”), subject to the termination provisions of this Agreement.

**5.2 Termination by Hospital.** Hospital shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events:

(a) breach of this Agreement by Contractor or any Group Provider where the breach is not cured within thirty (30) calendar days after Hospital gives written notice of the breach to Contractor;

(b) neglect of professional duty by Contractor or any Group Provider in a manner that poses an imminent danger to the health or safety of any individual, or violates Hospital’s policies, rules or regulations;

(c) there is a “substantial change” in Contractor which has not received prior written approval or subsequent ratification by Hospital. The retirement, withdrawal, termination, or suspension of one (1) or more Group Providers of Contractor at any time during the term of this Agreement shall be considered to be a “substantial change” in Contractor only if there is a reduction in hours equivalent to in excess of one full-time Group Provider. Notwithstanding anything in the foregoing to the contrary, the retirement, withdrawal, termination, or suspension of any single Group Provider of Contractor shall not constitute a “substantial change” in Contractor as that term is used herein;

(d) breach by Contractor or any Group Provider of any HIPAA Obligation (as defined in **Exhibit 6.3**);

(e) Contractor makes an assignment for the benefit of creditors, admits in writing the inability to pay its debts as they mature, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution liquidation or other similar law of any jurisdiction;

(f) the insurance required to be maintained by Contractor under this Agreement is terminated, reduced below the minimum coverage requirements set forth in this Agreement, not renewed or cancelled (whether by action of the insurance company or Contractor) for any reason, and Contractor has not obtained replacement coverage as required by this Agreement prior to the effective date of such termination, reduction, non-renewal or cancellation;

(g) Contractor is rendered unable to comply with the terms of this Agreement for any reason; or

(h) upon a sale of all or substantially all assets comprising Hospital's acute care hospital facility, any change of control in Hospital's organization, or any change in control of its day to day operations, whether through a membership change or by management contract. Hospital shall notify Contractor in writing of such sale or change of control at least thirty (30) days prior to the closing date of any such sale or the effective date of any such change of control.

**5.3 Termination by Contractor.** Contractor shall have the right to terminate this Agreement upon breach of this Agreement by Hospital where the breach is not cured within thirty (30) calendar days after Contractor gives written notice of the breach to Hospital.

**5.4 Termination or Modification in the Event of Government Action.**

(a) If the Parties receive notice of any Government Action, the Parties shall attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, acting in good faith, are unable to make the amendments necessary to comply with the Government Action, or, alternatively, if either Party determines in good faith that compliance with the Government Action is impossible or infeasible, this Agreement shall terminate ten (10) calendar days after one Party notifies the other of such fact.

(c) For the purposes of this Section, "**Government Action**" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to Hospital, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would:

(i) revoke or jeopardize the status of any health facility license granted to Hospital or any Affiliate of Hospital;

- (ii) revoke or jeopardize the federal, state or local tax-exempt status of Hospital or any Affiliate of Hospital, or their respective tax-exempt financial obligations;
- (iii) prevent Contractor or any Group Provider from being able to access and use the facilities of Hospital or any Affiliate of Hospital;
- (iv) constitute a violation of 42 U.S.C. Section 1395nn (commonly referred to as the Stark law) if Contractor or any Group Physician referred patients to Hospital or any Affiliate of Hospital;
- (v) prohibit Hospital or any Affiliate of Hospital from billing for services provided to patients referred to by Contractor or any Group Provider;
- (vi) subject Hospital or Contractor, any Group Provider, or any Affiliate of Hospital, or any of their respective employees or agents, to civil or criminal prosecution (including any excise tax penalty under Internal Revenue Code Section 4958), on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement; or
- (vii) jeopardize Hospital's full accreditation with any accrediting organization as Hospital designates from time to time.

(d) For the purposes of this Agreement, "**Affiliate**" shall mean any entity which, directly or indirectly, controls, is controlled by, or is under common control with Hospital.

**5.5 Termination without Cause.** Either Party may terminate this Agreement without cause, expense or penalty, effective sixty (60) calendar days after written notice of termination is given to the other Party.

**5.6 Effect of Termination or Expiration.** Upon any termination or expiration of this Agreement:

(a) all rights and obligations of the Parties shall cease except (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement, and (ii) those rights and obligations which expressly survive termination or expiration of this Agreement;

(b) upon Hospital's request, Contractor and any Group Provider shall immediately vacate the premises, removing any and all of Contractor's and Group Providers' personal property, and Hospital may remove and store, at Contractor's expense, any personal property that either Contractor or any Group Provider has not so removed;

(c) Contractor and Group Providers shall immediately return to Hospital all of Hospital's property, including Hospital's equipment, supplies, furniture, furnishings and patient records, in Contractor's or Group Providers' possession or under Contractor's or Group Providers' control;

(d) Contractor and Group Providers shall not do anything or cause any other person to do anything that interferes with Hospital's efforts to engage any other person or entity for the provision of the Services, or interferes in any way with any relationship between Hospital and any other person or entity who may be engaged to provide the Services to Hospital;

(e) The expiration or termination of this Agreement shall not entitle Contractor or Group Providers to the right to a "fair hearing" or any other similar rights or procedures more particularly set forth in the Medical Staff bylaws or otherwise; and

(f) This Section 5.6 shall survive the expiration or termination for any reason of this Agreement.

**5.7 Immediate Removal of Group Providers.** Contractor shall immediately remove any Group Provider from furnishing Services under this Agreement who:

(a) has his or her Medical Staff membership or clinical privileges at Hospital terminated, suspended, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(b) has his or her license to practice medicine in the State, DEA registration, or certification, as applicable, denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) is convicted of a felony, a misdemeanor involving fraud, dishonesty, or moral turpitude, or any crime relevant to Services or the practice of medicine or provision of CNIM;

(d) is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program or state equivalent;

(e) fails to satisfy any of the standards and qualifications set forth in Sections 1.4, 1.5, 1.7 and 1.9 of this Agreement; or

(f) fails to be covered by the professional liability insurance required to be maintained under this Agreement.

**5.8 Removal of Group Providers upon Hospital Request.** Upon written request by Hospital, Contractor shall immediately remove any Group Provider from furnishing Services under this Agreement who:

(a) engages in conduct that, in Hospital's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Hospital;

(b) fails to comply with any other material terms or conditions of this Agreement after being given written notice of that failure and a reasonable opportunity to comply;

(c) is unable to perform services as required under this Agreement for more than thirty (30) days in the aggregate over any three (3) month period; or

(d) within a twelve (12) month period, has two (2) or more medical malpractice judgments filed against him or her, or he or she becomes the subject of two (2) or more proceedings by the Medical Staff regarding the performance of professional medical services.

**5.9 Effect of Removal.** Upon the removal of a Group Provider pursuant to Section 5.7 or Section 5.8 of this Agreement, Contractor shall employ, contract with, or otherwise engage, at its cost and expense, a qualified substitute for the removed Group Provider, or shall demonstrate to Hospital's satisfaction Contractor's ability to continuously perform the Services without such a substitute. Failure to take such action shall constitute a material breach of this Agreement, subject to Section 5.2. Nothing herein shall be construed to limit Hospital's rights under Section 5.2 or any other provision of this Agreement.

**5.10 Return of Property.** Upon any termination or expiration of this Agreement, Contractor shall immediately return to Hospital all of Hospital's property, including Hospital's equipment, supplies, furniture, furnishings and patient records, which is in Contractor's or any Group Provider's possession or under Contractor's or any Group Provider's control.

**5.11 Termination or Amendment in Response to Reduction of Government Funding.** Notwithstanding any other provision of this Agreement, if Federal, State or local government terminates or reduces its funding to the County for services that are to be provided under this Agreement, County, in its sole and absolute discretion after consultation with the Contractor, may elect to terminate this Agreement by giving written notice of termination to Contractor effective immediately or on such other date as County specifies in the notice. Alternatively, County and Contractor may mutually agree to amend the Agreement in response to a reduction in Federal, State or local funding.

## **ARTICLE VI. GENERAL PROVISIONS**

**6.1 Amendment.** This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated and signed by the Parties and attached to this Agreement.

**6.2 Assignment.** This Agreement is entered into by Hospital in reliance on the professional and administrative skills of Contractor. Contractor shall be solely responsible for providing the Services and otherwise fulfilling the terms of this Agreement, except as specifically set forth in this Agreement. Except for assignment by Hospital to an entity owned, controlled by, or under common control with Hospital, neither Party may assign any interest or obligation under this Agreement without the other Party's prior written consent. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

**6.3 Compliance with HIPAA.** Contractor and Group Providers shall comply with the obligations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and all rules and regulations promulgated thereunder (collectively, "HIPAA," the obligations collectively referred to herein as "HIPAA Obligations"), as set forth in Exhibit 6.3. The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason.

**6.4 Compliance with Laws and Accreditation.** Contractor and Group Providers shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments (collectively, "Laws") applicable to Contractor and Group Providers, the provision of the Services, or the obligations of Contractor and Group Providers under this Agreement, including without limitation laws that require Contractor or any Group Provider to disclose any economic interest or relationship with Hospital. Contractor and Group Providers shall take actions necessary to ensure that the Hospital is operated in accordance with: all requirements of a nationally recognized accrediting organization that Hospital designates from time to time, all applicable licensing requirements, and all other relevant requirements promulgated by any federal, state or local agency.

**6.5 Compliance with Medicare Rules.** To the extent required by law or regulation, Contractor shall make available, upon written request from Hospital, the Secretary of Health and Human Services, the Comptroller General of the United States, or any duly authorized agent or representative, a copy of this Agreement and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of ten (10) years after the end of the term of this Agreement, or the length of time required by state or federal law. If Contractor is requested to disclose books, documents or records pursuant to this Section for any purpose, Contractor shall notify Hospital of the nature and scope of such request, and Contractor shall make available, upon written request of Hospital, all such books, documents or records. Contractor shall indemnify and hold harmless Hospital if any amount of reimbursement is denied or disallowed because of Contractor's failure to comply with the obligations set forth in this Section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. This Section shall survive the expiration or termination for any reason of this Agreement.

If Contractor carries out any of the duties of the contract through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of ten (10) years after the furnishing of such Services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

#### **6.6 Confidential Information.**

(a) During the term of this Agreement, Contractor and Group Providers may have access to and become acquainted with Trade Secrets and Confidential Information of Hospital. **"Trade Secrets"** includes information and data relating to payor contracts and accounts, clients, patients, patient groups, patient lists, billing practices and procedures, business techniques and methods, strategic plans, operations and related data. **"Confidential Information"** includes Trade Secrets and any information related to the past, current or proposed operations, business or strategic plans, financial statements or reports, technology or services of Hospital or any Affiliate that Hospital discloses or otherwise makes available in any manner to Contractor or Group Providers, or to which Contractor or Group providers may gain access in the performance of the Services under this Agreement, or which Contractor or any Group Provider knows or has reason to know is confidential information of Hospital or any Affiliate; whether such information is disclosed orally, visually or in writing, and whether or not bearing any legend or marking indicating that such information or data is confidential. By way of example, but not limitation, Confidential Information includes any and all know-how, processes, manuals, confidential reports, procedures and methods of Hospital, any Hospital patient's individually identifiable health information (as defined under HIPAA), and any information, records and proceedings of Hospital and/or Medical Staff committees, peer review bodies, quality committees and other committees or bodies charged with the evaluation and improvement of the quality of care. Confidential Information also includes proprietary or confidential information of any third party that may be in Hospital's or any Affiliate's possession.

(b) Confidential Information shall be and remain the sole property of Hospital, and shall, as applicable, be proprietary information protected under the Uniform Trade Secrets Act. Neither Contractor nor any Group Provider shall use any Confidential Information for any purpose not expressly permitted by this Agreement, or disclose any Confidential Information to any person or entity, without the prior written consent of Hospital. Contractor and Group Providers shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor and any Group Provider protects his, her, or its own confidential or proprietary information of a similar nature and with no less than reasonable care. All documents that Contractor and Group Providers prepare, or Confidential Information that might be given to Contractor in the course of providing Services under this Agreement, are the exclusive property of Hospital, and, without the prior written consent of Hospital, shall not be removed from Hospital's premises.



(c) Contractor and Group Providers shall return to Hospital all Confidential Information and all copies thereof in Contractor's and Group Providers' possession or control, and permanently erase all electronic copies of such Confidential Information, promptly upon the written request of Hospital, or the termination or expiration of this Agreement. Neither Contractor nor any Group Provider shall copy, duplicate or reproduce any Confidential Information without the prior written consent of Hospital.

(d) This Section shall survive the expiration or termination of this Agreement.

**6.7 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**6.8 Disclosure of Interests.** Contractor or any Group Provider shall provide to Hospital, as requested by Hospital from time to time, information sufficient to disclose any ownership, investment or compensation interest or arrangement of Contractor, or any of Contractor's or any Group Provider's immediate family members, in any entity providing "designated health services" (as such term is defined in the Stark Law (42 U.S.C. Section 1395nn) and its regulations) or any other health care services. This Section shall not impose on Hospital any disclosure or reporting requirements or obligations imposed on Contractor or any Group Provider under any governmental program or create an assumption of such disclosure obligations by Hospital. Contractor and Group Providers shall have the sole responsibility to fulfill any such federal and/or state reporting requirements or obligations.

**6.9 Dispute Resolution.** In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or the acts or omissions of the Parties with respect to this Agreement (each, a "**Dispute**"), the Parties shall resolve such Dispute as follows:

(a) **Meet and Confer.** The Parties shall, as soon as reasonably practicable, but in no case more than ten (10) days after one Party gives written notice of a Dispute to the other Party (the "**Dispute Notice**"), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the "**Meet and Confer**"). The obligation to conduct a Meet and Confer pursuant to this Section does not obligate either Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable Laws protecting statements, disclosures or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such Laws.

(b) **Arbitration.** If any Dispute is not resolved to the mutual satisfaction of the Parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall submit such Dispute to arbitration conducted by Judicial Arbitration and Mediation Services, Inc. (“JAMS”), or other arbitration and/or mediation services company as agreed to by the Parties, in accordance with the following rules and procedures:

- (i) Each Party may commence arbitration by giving written notice to the other Party demanding arbitration (the “**Arbitration Notice**”). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of actions alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.
- (ii) The arbitration shall be conducted in the County in which the Hospital is located and in accordance with the commercial arbitration rules and procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) to the extent such rules and procedures are not inconsistent with the provisions set forth in this Section. In the event of a conflict between any rules and/or procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) and the rules and/or procedures set forth in this Section, the rules and/or procedures set forth in this Section shall govern.
- (iii) The arbitration shall be conducted before a single impartial retired member of the JAMS panel of arbitrators (or panel of arbitrators from such other arbitration company as mutually agreed to by the Parties) covering the County in which the Hospital is located (the “**Panel**”). The Parties shall use their good faith efforts to agree upon a mutually acceptable arbitrator within thirty (30) days after delivery of the Arbitration Notice. If the Parties are unable to agree upon a mutually acceptable arbitrator within such time period, then each Party shall select one arbitrator from the Panel, and those arbitrators shall select a single impartial arbitrator from the Panel to serve as arbitrator of the Dispute.
- (iv) The Parties expressly waive any right to any and all discovery in connection with the arbitration; provided, however, that each Party shall have the right to conduct no more than two (2) depositions and submit one set of interrogatories with a maximum of forty (40) questions, including subparts of such questions.

- (v) The arbitration hearing shall commence within thirty (30) days after appointment of the arbitrator. The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute, and the Evidence Code of the State shall apply to all testimony and documents submitted to the arbitrator. The arbitrator shall have no authority to amend or modify the limitation on the discovery rights of the Parties or any of the other rules and/or procedures set forth in this Section. As soon as reasonably practicable, but not later than thirty (30) days after the arbitration hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the Parties and their respective legal counsel.
- (vi) Any Party may apply to a court of competent jurisdiction for entry and enforcement of judgment based on the arbitration award. The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by the Arbitration Act of the State.
- (vii) The fees and costs of JAMS (or other arbitration company as mutually agreed to by the Parties) and the arbitrator, including any costs and expenses incurred by the arbitrator in connection with the arbitration, shall be borne equally by the Parties, unless otherwise agreed to by the Parties.
- (viii) Except as set forth in Section 6.9(b)(vii), each Party shall be responsible for the costs and expenses incurred by such Party in connection with the arbitration, including its own attorneys' fees and costs; provided, however, that the arbitrator shall require one Party to pay the costs and expenses of the prevailing Party, including attorneys' fees and costs and the fees and costs of experts and consultants, incurred in connection with the arbitration if the arbitrator determines that the claims and/or position of a Party were frivolous and without reasonable foundation.

(c) **Waiver of Injunctive or Similar Relief.** The Parties hereby waive the right to seek specific performance or any other form of injunctive or equitable relief or remedy arising out of any Dispute, except that such remedies may be utilized for purposes of enforcing this Section and sections governing Confidential Information, Compliance with HIPAA, Compliance with Laws and Accreditation and Compliance with Medicare Rules of this Agreement. Except as expressly provided herein, upon any determination by a court or by an arbitrator that a Party has breached this Agreement or improperly terminated this Agreement, the other Party shall accept monetary damages, if any, as full and complete relief and remedy, to the exclusion of specific performance or any other form of injunctive or equitable relief or remedy.

(d) **Injunctive or Similar Relief.** Notwithstanding anything to the contrary in this Section, the Parties reserve the right to seek specific performance or any other form of injunctive relief or remedy in any state or federal court located within the County in which the Hospital is located for purposes of enforcing this Section and sections governing Confidential Information, Compliance with HIPAA, Compliance with Laws and Accreditation and Compliance with Medicare Rules of this Agreement. Contractor hereby consents to the jurisdiction of any such court and to venue therein, waives any and all rights under the Laws of any other state to object to jurisdiction within the State, and consents to the service of process in any such action or proceeding, in addition to any other manner permitted by applicable Law, by compliance with the notices provision of this Agreement. The non-prevailing Party in any such action or proceeding shall pay to the prevailing Party reasonable fees and costs incurred in such action or proceeding, including attorneys' fees and costs and the fees and costs of experts and consultants. The prevailing Party shall be the Party who is entitled to recover its costs of suit (as determined by the court of competent jurisdiction), whether or not the action or proceeding proceeds to final judgment or award.

(e) **Survival.** This Section shall survive the expiration or termination of this Agreement.

**6.10 Entire Agreement.** This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**6.11 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated by reference into this Agreement, wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

**6.12 Force Majeure.** Neither Party shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each Party shall use its good faith efforts to perform its duties and obligations under this Agreement.

**6.13 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State.

**6.14 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

**6.15 Litigation Consultation.** Contractor shall ensure that no Group Provider accepts consulting assignments or otherwise contract, agree, or enter into any arrangement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim against Hospital or any Affiliate named, or expected to be named as a defendant. Contractor shall ensure that no Group Provider accepts similar consulting assignments if (a) the defendants or anticipated defendants include a member of the medical staff of Hospital or any Affiliate, and (b) the matter relates to events that occurred at Hospital or any Affiliate; provided, however, the provisions of this Section shall not apply to situations in which a Group Provider served as a treating physician.

**6.16 Master List.** The Parties acknowledge and agree that this Agreement, together with any other contracts between Hospital and Contractor, will be included on the master list of physician contracts maintained by Hospital.

**6.17 Meaning of Certain Words.** Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Unless otherwise specified: (i) "days" shall be considered "calendar days;" (ii) "months" shall be considered "calendar months;" and (iii) "including" means "including, without limitation" in this Agreement and its exhibits and attachments.

**6.18 New Group Providers.** Each new Group Provider shall agree in writing to be bound by the terms of and conditions of this Agreement.

**6.19 No Conflicting Obligations.** Contractor represents and warrants that the execution and delivery of this Agreement and the performance of its obligations hereunder do not and will not: (a) present a conflict of interest or materially interfere with the performance of Contractor's duties under any other agreement or arrangement; or (b) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice and/or lapse of time, would constitute a default) under, terminate, accelerate the performance required by, or result in a right of termination or acceleration under any of the terms, conditions or provisions of any other agreement, indebtedness, note, bond, indenture, security or pledge agreement, license, franchise, permit, or other instrument or obligation to which Contractor is a party or by which Contractor is bound. Contractor shall immediately inform Hospital of any other agreements to which Contractor is a party that may present a conflict of interest or materially interfere with performance of Contractor's or Group Providers' duties under this Agreement.

**6.20 No Third Party Beneficiary Rights.** The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

**6.21 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice shall be deemed given when sent, if sent as

specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

If to Hospital, addressed to:

NATIVIDAD MEDICAL CENTER  
1441 Constitution Blvd., Bldg. 300  
Salinas, California 93906  
Attention: Gary Gray, D.O., Chief Medical Officer

If to Contractor, addressed to:

VIGILANT NEUROMONITORING, LLC  
20331 Irvine Avenue E2  
Newport Beach, CA 92660  
Attention: Brian Tatomir

**6.22 Participation in Federal Health Care Programs.** Contractor hereby represents that neither it nor any Group Provider is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program.

**6.23 Representations.** Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by any other Party or by any Parties' agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter.

**6.24 Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement.

**6.25 Statutes and Regulations.** Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to any successor statute, regulation, ruling, or administrative order or decree.

**6.26 Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

*[signature page follows]*

The Parties have executed this Agreement on the date first above written, and signify their agreement with duly authorized signatures.

**CONTRACTOR**

VIGILANT NEUROMONITORING, LLC, a  
Delaware limited liability company

By: Brian Tatomir  
Its PARTNER

Date: August 30, 2021

By: \_\_\_\_\_  
Its \_\_\_\_\_

**NATIVIDAD MEDICAL CENTER**

[Signature]  
Deputy Purchasing Agent

Date: 9/30, 2021

**APPROVED AS TO LEGAL PROVISIONS:**

Stacy Lee Saetta  
Stacy Saetta, Deputy County Counsel

Date: 9/20/2021, 20  

**APPROVED AS TO FISCAL PROVISIONS:**

Gary Giboney  
Deputy Auditor/Controller

Date: 9-20-2021, 20

## **Exhibit 1.1**

### **SERVICES**

Contractor shall, through its Group Providers:

1. provide intraoperative neuromonitoring of Patients identified by Hospital. Technologists shall apply surface and subdermal needle electrodes carefully and accurately on Patients to achieve the appropriate signals. Once signals are achieved, Technologists shall monitor the Patient's nervous system via a computer monitor with real-time remote supervision by a Group Physician in accordance with Hospital Rules.
2. immediately alert the Patient's surgeon of any changes to the Patient's status during the procedure; and
3. provide neurodiagnostic services on an as-needed basis, including routine and ambulatory electroencephalograms, with or without long-term monitoring, with or without video.



**Exhibit 1.8**



**MEDICAL STAFF POLICY**

<b>Title:</b> Practitioner Code of Conduct	<b>Effective:</b> 05/09 <b>Reviewed/Revised:</b> 08/11
<b>Standard:</b> MSP004-2	<b>Approved:</b> MEC 08/11 BOT 09/11

As a member of the Medical Staff or an Allied Health Professional (AHP) of Natividad Medical Center (NMC) (collectively Practitioners), I acknowledge that the ability of Practitioners and NMC employees to jointly deliver high quality health care depends significantly upon their ability to communicate well, collaborate effectively, and work as a team. I recognize that patients, family members, visitors, colleagues and NMC staff members must be treated in a dignified and respectful manner at all times.

**POLICY**

In keeping with the accepted standards of the health care profession as evidenced by the Hippocratic Oath, the Code of Ethics of the American Medical Association (AMA) and other professional societies, and the values of NMC, Practitioners are leaders in maintaining professional standards of behavior. In keeping with this responsibility to maintain professional standards of behavior at NMC, Practitioners:

1. Facilitate effective patient care by consistent, active, and cooperative participation as members of the NMC health care team.
2. Recognize the individual and independent responsibilities of all other members of the NMC health care team and their right to independently advocate on behalf of the patient.
3. Maintain respect for the dignity and sensitivities of patients and families, as well as colleagues, NMC employees, and all other health care professionals.
4. Participate in the Medical Staff quality assessment and peer review activities, and in organizational performance improvement activities.
5. Contribute to the overall educational mission of NMC.
6. Reflect positively upon the reputation of the health care profession, the Medical Staff, and NMC in their language, action, attitude, and behavior.

Behaviors of Practitioners which do not meet the professional behavior standards established in this Code of Conduct (Code) shall be referred to as Disruptive or Unprofessional Behavior. Disruptive or Unprofessional Behavior by Practitioners exhibited on the premises of NMC, whether or not the Practitioner is on duty or functioning in his/her professional capacity, are subject to this Code.

#### **EXAMPLES OF PROFESSIONAL BEHAVIOR**

Practitioners are expected to exhibit professional behavior at NMC, consistent with this Code, as follows:

1. Be consistently available with cooperative and timely responsiveness to appropriate requests from physicians, nurses, and all other members of the NMC health care team in patient care and other professional responsibilities.
2. Provide for and communicate alternate coverage arrangements to assure the continuity and quality of care.
3. Demonstrate language, action, attitude and behavior which consistently convey to patients, families, colleagues, and all other members of the NMC health care team a sense of compassion and respect for human dignity.
4. Understand and accept individual cultural differences.
5. Maintain appropriate, timely, and legible medical record entries which enable all NMC professionals to understand and effectively participate in a cohesive plan of management to assure continuity, quality, and efficiency of care and effective post-discharge planning and follow-up.
6. Respect the right of patients, families or other designated surrogates to participate in an informed manner in decisions pertaining to patient care.
7. Treat patients and all persons functioning in any capacity within NMC with courtesy, respect, and human dignity.
8. Conduct one's practice at NMC in a manner that will facilitate timely commencement of medical/surgical procedures at NMC, including but not limited to, timely arrival at the hospital, pre-ordering all needed special equipment and/or supplies, and timely notification of required staff.

#### **EXAMPLES OF DISRUPTIVE OR UNPROFESSIONAL BEHAVIOR**

Disruptive or Unprofessional Behavior, as characterized in this Code, includes but is not limited to:

1. Misappropriation or unauthorized removal or possession of NMC owned property.
2. Falsification of medical records, including timekeeping records and other NMC documents.

3. Working under the influence of alcohol or illegal drugs.
4. Working under the influence of prescription or over-the-counter medications when use of such medications significantly affects the practitioner's level of cognitive functioning.
5. Possession, distribution, purchase, sale, transfer, transport or use of illegal drugs in the workplace.
6. Possession of dangerous or unauthorized materials such as explosives, firearms, or other weapons in the workplace.
7. Writing derogatory and/or accusatory notes in the medical record which are not necessary for the provision of quality patient care services. Concerns regarding the performance of other Practitioners or NMC employees should be reported on a NMC Quality Review Report form and submitted pursuant to NMC policy and should not be entered into the patient's medical record.
8. Harassment
  - a. Harassment is verbal or physical contact that denigrates or shows hostility or aversion toward an individual based on race, religion, color, national origin, ancestry, age, disability, marital status, gender, sexual orientation, or any other basis protected by federal, state, or local law or ordinance, and that:
    1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment, or;
    2. Has the purpose or effect of unreasonably interfering with an individual's work performance, or;
    3. Otherwise adversely affects an individual's employment opportunity.
  - b. Harassing conduct includes, but is not limited to:
    1. Epithets, slurs, negative stereotyping, threatening, intimidating, or hostile acts that relate to race, religion, color, national origin, ancestry, age, disability, marital status, gender, or sexual orientation.
    2. Written material or illustrations that denigrate or show hostility or aversion toward an individual or group because of race, religion, color, national origin, ancestry, age, disability, marital status, gender, or sexual orientation, and is placed on walls; bulletin boards, or elsewhere on NMC's premises or circulated in the workplace.
9. Physical behavior that is harassing, intimidating, or threatening, from the viewpoint of the recipient, including touching, obscene or intimidating gestures, or throwing of objects;

10. Passive behaviors, such as refusing to perform assigned tasks or to answer questions, return phone calls, or pages;
11. Language that is a reasonable adult would consider to be foul, abusive, degrading, demeaning, or threatening, such as crude comments, degrading jokes or comments, yelling or shouting at a person, or threatening violence or retribution;
12. Single incident of egregious behavior, such as an assault or other criminal act.
13. Criticism of NMC staff in front of patients, families, or other staff.

#### **PROCEDURE**

1. Any person who functions in any capacity at NMC who observes Practitioner language, action, attitude, or behavior which may be unprofessional, harassing, or disruptive to the provision of quality patient care services should document the incident on a NMC Quality Review Report form.
2. Identified incidents involving Practitioners shall be reviewed pursuant to the current Road Map for Handling Reports of Disruptive or Unprofessional Behavior or the County Sexual Harassment Policy, as determined by the nature of the behavior and the person who exhibits it.

I acknowledge that I have received and read this Practitioner Code of Conduct. I acknowledge that hospitals are required to define and address disruptive and inappropriate conduct to comply with The Joint Commission standards for accreditation. I agree to adhere to the guidelines in this Code and conduct myself in a professional manner. I further understand that failure to behave in a professional fashion may result in disciplinary actions set forth in the RoadMap for Handling Reports of Disruptive or Unprofessional Behavior or as determined by the Medical Executive Committee pursuant to the Medical Staff Bylaws.

**Exhibit 1.14**

**EXCEPTIONS TO EXCLUSIVITY**

**Exhibit 1.18(a)**

**GROUP PROVIDERS**

[List Approved Group Providers Below]

<b>Group Provider</b>	<b>NPI Number</b>
Marc Nuwer	1578589727
Inna Keselman	1003075037
Lara Schrader	1962420240
Ranmal Samarasinghe	1588906606
Anna Koblik	1972967982

Exhibit 1.18(f)

LETTER OF ACKNOWLEDGEMENT

NATIVIDAD MEDICAL CENTER  
1441 Constitution Blvd., Bldg. 300  
Salinas, California 93906

Ladies and Gentlemen:

I acknowledge that NATIVIDAD MEDICAL CENTER ("**Hospital**") and VIGILANT NEUROMONITORING, LLC ("**Contractor**") have entered into a Professional Services Agreement ("**Agreement**") under which Contractor shall perform specified Services (as defined in the Agreement), and that I have been engaged by Contractor to provide Professional Services as a "**Group Provider**" (as defined in the Agreement). In consideration of Hospital's approval of me as a Group Provider eligible to furnish the Services, I expressly:

1. Acknowledge that I have read those portions of the Agreement referenced in this Letter of Acknowledgement, and agree to abide by and comply with all of the requirements of the Agreement applicable to Group Providers;
2. Acknowledge that I have read the Code, and agree to abide by and comply with the Code as they relate to my business relationship with Hospital or any Affiliates, subsidiaries, employees, agents, servants, officers, directors, contractors and suppliers of every kind;
3. Acknowledge that I have no employment, independent contractor or other contractual relationship with Hospital, that my right to practice at Hospital as a Group Provider is derived solely through my employment or contractual relationship with Contractor;
4. Acknowledge that upon the expiration or termination of the Agreement for any reason, or the termination of my employment or other affiliation with Contractor for any reason my clinical privileges to provide Services and my Medical Staff membership if such clinical privileges are the only privileges I hold, will each immediately be relinquished, without any action on the part of Hospital and/or the Medical Staff;
5. Acknowledge that, with regard to all of the foregoing, I will not be entitled to any "fair hearing" or any other hearing or appellate review under any provision of the Medical Staff Bylaws, unless Hospital determines that my removal, or the termination of my right to provide Professional Services, as applicable, is reportable to any state's medical board or other agency responsible for professional licensing, standards or behavior, and hereby waive any right to demand or otherwise initiate any such hearing or appellate review under any provision of the Medical Staff Bylaws.

Sincerely,

Brian Tatomir  
\_\_\_\_\_  
[Name of Group Provider]

Exhibit 1.18(f)-1

**Exhibit 2.1**

**COMPENSATION**

1. **Compensation.** Hospital shall pay to Contractor in accordance with the fee schedule set forth below:

Cases per Month	1-6	7-13	14+
Price per case	\$1,650.00	\$1,550.00	\$1,400.00

- Cancellation Charge \$400.00 per case
- Weekend/Holiday additional Charge \$400.00 per case
- After hours start, 5 pm or later, will be billed an additional \$31.25/15 minute increments for each additional hour after 4 hours.
- Compensation is inclusive of travel expenses, Contractor shall not receive additional reimbursement for travel expenses

2. **Timing.** Hospital shall pay the compensation due for Services performed by Contractor after Contractor's submission of the monthly invoice of preceding month's activity in accordance with this Agreement; provided, however, that if Contractor does not submit an invoice within sixty (60) days of the end of the month during which Services were performed, Hospital shall not be obligated to pay Contractor for Services performed during that month. The County of Monterey Standard Payment Terms for contracts/PSAs and paying invoices is "30 days after receipt of the certified invoice in the Auditor-Controller's Office".



### **Exhibit 6.3**

#### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”), effective October 1, 2021 (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and VIGILANT NEUROMONITORING, LLC (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

#### **1. DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

## **2. PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

## **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

- (h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;
- (i) if all or any portion of the PHI is maintained in a Designated Record Set:
  - (i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and
  - (ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;
- (j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;
- (k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;
- (l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

- (a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;
- (b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R.

§ 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

#### 4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

## 5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Vigilant Neuromonitoring, LLC  
20331 Irvine Avenue, Suite E-2  
Newport Beach, CA 92660  
Attn: Brian Tatomir  
Phone: 949-212-6679

Fax: 877-987-7729

If to Covered Entity, to:

Natividad Medical Center  
1441 Constitution Boulevard  
Salinas, CA 93906  
Attn: Compliance Officer  
Phone: 831.755.4111  
Fax: 831.757.2592

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.



IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**VIGILANT NEUROMONITORING, LLC**

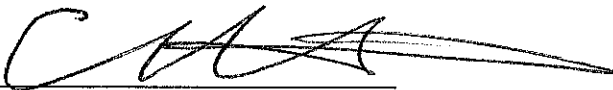
By: Brian Tatomir

Print Name: Brian Tatomir

Print Title: PARTNER

Date: August 30, 2021

**COUNTY OF MONTEREY, ON BEHALF OF  
NATIVIDAD MEDICAL CENTER**

By: 

Print Name: Charles R. Harris, M.D

Print Title: Interim CEO

Date: 9/30/21



## Monterey County Board of Supervisors

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

[www.co.monterey.ca.us](http://www.co.monterey.ca.us)

A motion was made by Supervisor Mary L. Adams, seconded by Supervisor Chris Lopez to:

**Agreement No.: A-15831 ; Amendment No.: 2**

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute amendment No. 2 to the Addendum with The Gordian Group to the Sourcewell Contract 050421 for administrative services of the Job Order Contracting (JOC) program, with no change to the agreement term of September 16, 2021 through June 7, 2025 and adding \$250,000 for a revised total spending limit not to exceed \$600,000.

PASSED AND ADOPTED on this 24<sup>th</sup> day of October 2023, by roll call vote:

AYES: Supervisors Alejo, Church, Lopez, Askew, and Adams  
NOES: None  
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting October 24, 2023.

Dated: November 1, 2023  
File ID: A 23-492  
Agenda Item No.: 51

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

Vicente Ramirez, Deputy

**AMENDMENT NO. 2  
TO SERVICES AGREEMENT  
BETWEEN THE GORDIAN GROUP, INC. AND  
THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD MEDICAL CENTER  
FOR  
JOB ORDER CONTRACTING (JOC) ADMINISTRATIVE SERVICES  
RENDERED UNDER THE SOURCEWELL CONTRACT #050421-GCI**

This Amendment No. 2 to the Services Agreement (“Agreement”) which was effective on August 26, 2021 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (“NMC”), and The Gordian Group, Inc. (“CONTRACTOR”); **From this point forward, the party referenced previously as “NMC” shall be referenced as “COUNTY” and collectively, COUNTY and CONTRACTOR are referred to as the “Parties” to this Agreement, with respect to the following:**

**RECITALS**

**WHEREAS**, Sourcewell (formerly the National Joint Powers Alliance, aka “NJPA”) is a public agency operating under the enabling authority outlined in Minnesota Statute 123A.21, which allows participating nationwide government and education agencies (“Members”) to reduce the cost of purchasing by leveraging their combined national purchasing power through cooperative efforts.

**WHEREAS**, NJPA released RFP #050421 for Indefinite Quantity Construction Contracting Systems and Related Services on May 4, 2021; and

**WHEREAS**, Gordian was awarded Contract #050421-GGI (“Sourcewell Contract”), effective June 7, 2021 as a responsive Proposer to RFP #050421; and

**WHEREAS**, COUNTY and CONTRACTOR amended the Agreement on June 21, 2022 with a \$250,000 increase in order for services to continue for a total Agreement amount of \$350,000 with no change to the Agreement term of September 16, 2021 through June 7, 2025 and no change to the scope; and

**WHEREAS**, COUNTY and CONTRACTOR currently wish to amend the Agreement with a \$250,000 increase in order for services to continue for a total Agreement amount of \$600,000 with no change to the Agreement term of September 16, 2021 through June 7, 2025 and no change to the scope.

**AGREEMENT**

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

The Addendum is hereby amended on the terms and conditions as set forth in the Addendum except as specifically set forth below.

1. Paragraph 6 shall be amended to the following:

**“The total amount for services described herein shall not exceed \$600,000.”**

2. Except as provided herein, all remaining terms, conditions and provisions of the Addendum are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect as set forth in the Addendum.
3. A copy of this Amendment No. 2 shall be attached to the Addendum.

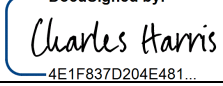
4. This Amendment No. 2 shall be effective when signed by both Parties.

*The remainder of this page was intentionally left blank.*

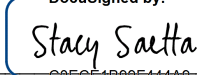
*~ Signature page to follow ~*

**IN WITNESS WHEREOF**, the Parties hereto are in agreement with this Amendment No. 2 on the basis set forth in this document and have executed this Amendment No. 2 on the day and year set forth herein.


**COUNTY OF MONTEREY on behalf of**  
**NATIVIDAD MEDICAL CENTER**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Charles R. Harris, CEO  
 11/7/2023 | 6:59 AM PST  
 Date: \_\_\_\_\_

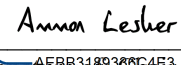
**APPROVED AS TO LEGAL PROVISIONS**

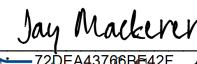
DocuSigned by:  
  
 By: \_\_\_\_\_  
 Monterey County Deputy County Counsel  
 10/10/2023 | 10:51 AM PDT  
 Date: \_\_\_\_\_

**APPROVED AS TO FISCAL PROVISIONS**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Monterey County Deputy Auditor/Controller  
 10/10/2023 | 11:38 AM PDT  
 Date: \_\_\_\_\_

**CONTRACTOR**

The Gordian Group, Inc.  
**CONTRACTOR's Business Name**  
 \*\*\*See instructions below\*\*\*  
 DocuSigned by:  
  
 By: \_\_\_\_\_  
 (Signature of: Chair, President, or Vice-President)  
 Ammon Leshner Vice President  
 Name and Title  
 10/04/2023 | 8:17 AM EDT  
 Date: \_\_\_\_\_

DocuSigned by:  
  
 By: \_\_\_\_\_  
 (Signature of: Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)  
 Jay Mackerer CFO  
 Name and Title  
 10/04/2023 | 3:29 PM EDT  
 Date: \_\_\_\_\_

**\*\*\*Instructions\*\*\***

**If CONTRACTOR** is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

**If CONTRACTOR** is a partnership; the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).

**If CONTRACTOR** is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).