

**MONTEREY COUNTY  
RESOURCE MANAGEMENT AGENCY**

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**PUBLIC WORKS – ROADS & BRIDGES**

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**JOB ORDER CONTRACTING  
SPECIFICATIONS MANUAL**

**PROJECT NO.: JOC 2014**

**BID NOS.: ROADS & BRIDGES 2014-01**

**ROADS & BRIDGES 2014-02**



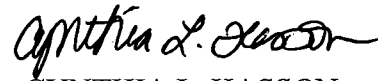
**COVER SHEET**

**JOC MANUAL**

**PROJECT NO.: JOC 2014**

**BID NOS.: ROADS & BRIDGES 2014-01,  
ROADS & BRIDGES 2014-02**

APPROVED AS TO FORM:



CYNTHIA L. HASSON  
Deputy County Counsel

APPROVED AS TO INDEMNITY/  
INSURANCE LANGUAGE:



STEVEN F. MAUCK  
Risk Manager

APPROVED AS TO FISCAL TERMS:



GARY GIBONEY  
Chief Deputy Auditor Controller

# TITLE SHEET

BOARD OF SUPERVISORS  
COUNTY OF MONTEREY  
STATE OF CALIFORNIA

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Paul H. Greenway, P.E., Assistant Director of Public Works

## JOC SPECIFICATIONS MANUAL

**PROJECT NO.: JOC 2014**

**BID NOS.: ROADS & BRIDGES 2014-01  
ROADS & BRIDGES 2014-02**

IN MONTEREY COUNTY

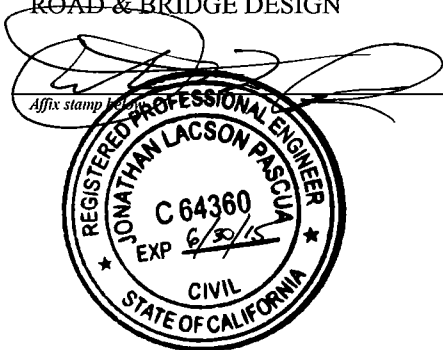
The Construction Task Catalog<sup>®</sup> and Technical Specifications were prepared by The Gordian Group, under the direct supervision of:

Signature

Date

JONATHAN PASCUA, P.E.  
SR. CIVIL ENGINEER  
ROAD & BRIDGE DESIGN

9/3/14



RMA-Public Works  
168 W ALISAL ST FL2  
SALINAS CA 93901-2438  
(831) 755-4800

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# CONTACTS

## DIVISION 00: CONTRACTS AND PURCHASING

**PROJECT NO.:** JOC 2014  
**BID NOS.:** ROADS & BRIDGES 2014-01,  
ROADS & BRIDGES 2014-02

### OWNER

**COUNTY OF MONTEREY**

**RMA-PUBLIC WORKS**

JOC 2014 ROADS & BRIDGES BIDS PROJECT MANAGER

168 W ALISAL ST FL2

SALINAS CA 93901-2438

TELEPHONE: (831)755-4800 FACSIMILE: (831) 755-4958

# **INFORMATION FOR BIDDERS**

Division 00200

## **1. Invitation to Submit Bids**

The County of Monterey (County) invites bids to be submitted at such time and place stated in the Notice to Contractors (NTC). The NTC is advertised in a newspaper of general circulation and posted as a separate document on the RMA-Public Works project page. This "Information to Bidders" is intended to assist bidders with preparation of their bids. If there is any inconsistency between the terms herein and any of the other contract documents, the terms in the other contract documents shall prevail.

## **2. Examination of Bidding and Contract Documents**

The Project Manual, Construction Task Catalog<sup>®</sup> and Technical Specifications may be examined at the main office of RMA-Public Works/168 W ALISAL ST FL2/SALINAS CA 93901/ telephone: (831) 755-4800. Also, Contract Documents may be viewed/downloaded/printed for free directly from County website RMA-Public Works project page: <http://www.co.monterey.ca.us/publicworks/bids.htm>. Interested parties must register to view or download documents. Alternately, they may engage a printing service of their choosing to download and print documents from the County project page. Contract documents may also be available to view at builders' exchanges listed on the same project page. Members of Ebidboard can access materials directly from its website.

Each bidder shall thoroughly examine and become familiar with the Project Specifications Manual, Construction Task Catalog<sup>®</sup>, and Technical Specifications. The failure or omission of any bidder to receive or examine any contract documents, form, instrument, addendum, or other documents shall in no way relieve such bidder from obligations with respect to such bid or to the contract. Submission of a bid shall be taken as prima facie evidence of compliance with this section.

## **3. Mandatory Bidders' Meeting**

A mandatory bidders' meeting is required as specified in the Notice to Contractors (NTC). A qualified representative of the bidder's firm must attend at the stated time and place. Interested Parties are responsible to check the NTC available on the RMA-Public Works project page for the date, time, and place of Mandatory Bidders' Meeting(s) with County Project Manager. Failure to attend will be cause for rejection of the bid. Any bid received from a bidder who did not fully attend the mandatory bidders' meeting(s) at stated time and place will be returned unopened. "Fully attend" means attending entire meeting(s) from start to finish; late arrivals/early departures may be cause for rejection of bid.

## **4. Contractor's License Requirements**

Each bidder must be licensed to perform the project in accordance with the provisions of the Contractors' State Licensing Law, Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code, and in accordance with the Notice to Contractors. The Contractor's license number and expiration date of the license shall appear on the bid. The classification of the Contractor's License required for this project is "A."

## **5. Other Requirements**

Bidders shall meet the following experience requirements:

- A) Contractors submitting a bid to the County shall have a minimum five years continuous experience as prime on projects of comparable quality, size, complexity and type, multi-trade, \$100,000 - \$1,000,000, Public projects.

- B) Contractors submitting a bid to the County shall have completed as the prime three projects of comparable quality, size, complexity and type.
- C) Contractors submitting a bid to the County shall, at the time of bid, have a staffed office located within the Monterey Bay Area (Monterey County, Santa Cruz County, or San Benito County).

Failure to meet any or all of the above criteria may be cause for rejection of the bid.

#### 6. Preparation of Bid Form

All bids must be submitted on the prescribed form. All blanks in the bid form must be appropriately filled in, and all Adjustment Factors must be specified to four (4) decimal places. The Adjustment Factors multiplied by the Tasks in the Construction Task Catalog<sup>®</sup> must include full compensation for providing all labor, materials, services, tools, equipment and whatever else is required to perform all Work in accordance with the requirements of the Contract. Also, the Award Criteria Figure is to include consideration of the one percent (1%) license fee payable to The Gordian Group outlined in Exhibit One herein. All bids must be submitted in **separate** sealed envelopes bearing on the outside the bidder's name and address, the bid date and time, and shall be marked in the lower left corner ("bid for" **JOC ROADS & BRIDGES 2014-01** or **JOC ROADS & BRIDGES 2014-02**). It is the sole responsibility of the bidder to see that the bid is received in proper time. Any bid received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.

#### 7. Erasures

The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid, in the named person's own handwriting.

#### 8. Modifications

Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the contract documents may result in the County's rejection of the bid as not being responsive to the invitation to bid. No oral or telephonic modification of any bid submitted will be considered. A telegraphic or telefax modification may be considered.

#### 9. Signature

The bid must be signed in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the bid. An original signature is required.

#### 10. Interpretation of Contract Documents

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the Project Manual, Construction Task Catalog<sup>®</sup> and Technical Specifications and finds discrepancies in the aforementioned documents, he may submit to the County a written request for an interpretation or correction thereof. The person submitting the request shall be responsible for its prompt delivery. Any interpretation or correction of the contract documents will be made only by official project Q&A (questions/answers) or addendum duly issued, and a copy of such will be posted on the County website, RMA-Public Works' project page [[www.co.monterey.ca.us/publicworks](http://www.co.monterey.ca.us/publicworks)]. No oral interpretation of any provision in the contract documents will be made.

#### 11. Bidding Questions

All questions regarding the project during the bidding process must be made in writing to the attention of the Bid Processing Coordinator listed on the RMA-Public Works Project Page Ebidboard members can also post their questions directly on the project page through Ebidboard.com. Contact information

is listed on the County website, RMA-Public Works' project page. No telephone or verbal questions will be accepted 72 hours before the bids are due. Answers to all questions and any addendum regarding the project will be posted on the County website, RMA-Public Works' project page [[www.co.monterey.ca.us/publicworks/bids.htm](http://www.co.monterey.ca.us/publicworks/bids.htm), select bid openings then project name].

#### 12. Bid Security

Each bid shall be accompanied by bidder's security in the form of cash, a certified or cashier's check payable to the County, or a satisfactory bid bond in the form included in this bid book (Division 00440) in favor of the County executed by the bidder as principal and a satisfactory corporate surety authorized to do business in the State of California as an admitted surety insurer, in the amount of \$25,000. The security shall be given as a guarantee that, if the contract is awarded to the bidder, the bidder will execute the contract, provide any required insurance certificates, and provide any payment and performance bonds required by the contract within ten (10) workdays after the bidder receives the Notice of Intent to Award letter. After ten (10) workdays, if the proper bond and insurance documents are not submitted by the lowest responsive bidder, the County has the right to determine that bid non-responsive and contact the second lowest responsive bidder.

#### 13. Listing Subcontractors

Because this Job Order Contract (JOC) is an indefinite quantity contract pursuant to which Contractor will perform a variety of Job Orders, Contractor must designate Subcontractors, in accordance with California Public Contracts Code Section 4100 to 4113, inclusive, in each Job Order Proposal Package and not with this bid. As part of each Job Order Proposal Package, the awarded JOC Contractor shall provide a list giving the name and location of place of business, license number, subcontract value, and any other information the County deems relevant of each subcontractor who will perform a portion of the Job Order work in an amount in excess of one-half of one percent of the Job Order Proposal. In each instance the nature and extent of the work to be subcontracted shall be described.

Additional WBE/MBE/DBE Subcontractor Participation goals may apply to Projects funded in part or whole by State funds. The Contractor is responsible for compliance with all applicable Subcontractor participation goals applying to the use of such funds for Projects completed under this Contract. The details of the participation requirements will be set forth in the Job Order. All subcontractors on any project are required to comply with the Good-Faith Effort to Employ Residents of Monterey Bay Area of Section 5.08.120 of the Monterey County Code.

#### 14. Prevailing Wage

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and are available at the RMA-Public Works, 168 W. Alisal St. 2<sup>nd</sup> Floor, Salinas CA 93901, and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>.

It shall be mandatory upon the Contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than said specified rates to all workers employed by them in the execution of the contract.

#### 15. Workers' Compensation Certificate.

In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of workers' compensation to their employees. Each bidder shall certify on the form included as part of the contract documents, which shall accompany each bid, as follows:

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

**16. Good-Faith Effort to Employ Residents of Monterey Bay Area:**

In accordance with Section 5.08.120 of the Monterey County Code, for each Job Order Proposal, all contractors and subcontractors providing work, laborers, or material supplier on the project shall make a good-faith effort to employ qualified individuals who are, and have been for at least one (1) year out of the past three (3) years prior to the opening of bids, residents of the Monterey Bay Area in sufficient numbers so that no less than fifty percent (50%) of the contractor's total construction work force, on the project, including any subcontractor work force (with exception of specialty subcontractor items identified in the bid items) measured in labor work hours is comprised of Monterey Bay Area residents. A certification form relating to compliance with Section 5.08.120 is furnished with the bid documents. Bidder must complete the certification form and submit the certification form with the sealed bid. The Monterey County Board of Supervisors may deem your bid non-responsive for failure to abide by the good-faith local employment provisions of Section 5.08.120.

If any contractor submitting a bid for a contract for public works of improvement fails to abide by the good-faith local employment provisions of this Section, the contractor may be declared by the Board to be a non-responsive bidder for purposes of Chapter 5.08. If the Board finds that a contractor to whom a contract for public works of improvement has been awarded has failed to comply with the good-faith employment provisions of this Section during the performance of the contract, the Board may disqualify the contractor from bidding on any County contract for public works of improvement for a period of one (1) year from the date of the Board's disqualification. A subsequent violation of this Section by a contractor may result in disqualification by the Board for a period of three (3) years from the date of the subsequent disqualification.

"Resident of Monterey Bay Area" means a person who resides within the boundaries of Monterey County, Santa Cruz County, or San Benito County.

A "good-faith effort" means the contractor will take the following or similar actions to recruit and maintain Monterey Bay Area residents as part of the construction workforce for each Job Order:

- A) Contact local recruitment sources, including local hiring halls, to identify qualified individuals who are Monterey Bay Area residents;
- B) Advertise for qualified Monterey Bay Area residents in trade papers, electronic "on-line" sources, and newspapers of general circulation in the Monterey Bay Area, unless time limits imposed by the County do not permit such advertising.
- C) If portions of the work are to be performed by subcontractors, identify qualified subcontractors whose work force includes Monterey Bay Area residents; and
- D) If current workforce does not exceed the fifty (50) percent local requirement, develop a written plan to recruit Monterey Bay Area residents as part of the construction workforce.

The Contractor shall keep an accurate record on a standardized form showing the name, place of residence (not post office box), trade classifications, hours worked, proof of journeyman or apprenticeship status, per diem wages and benefits of each person employed by the Contractor, the Contractor's Subcontractors on the project, including full-time, part-time, permanent, and temporary employees, make sure records are available to the County with submission of final certified payroll records prior to final payment.

The Contractor shall keep, and provide to the County, on forms acceptable to the County, an accurate record documenting compliance with this provision. Said records shall include; a listing by name and business address of all local recruitment sources contacted by the Contractor, the date of the local recruitment contact and the identity and business address of the person contacted, the trade and classification and number of hire referrals requested, the number of local hires made as a result of the contract, and the residence address of the person(s) hired pursuant to the contact.

At the conclusion of the project, and at other intervals as may be deemed appropriate by the Project Manager, the Contractor shall provide a summary report of the percentage of actual labor work hours performed by Monterey Bay Area residents on each Job Order.

Contractors and Subcontractors are referred to the provisions of Section 5.08.120 of the Monterey County Code and the rules, regulations, and procedures adopted to implement Section 5.08.120, which are online at <http://library.municode.com/index.aspx?clientId=16111>.

#### 17. Bidders Interested in More Than One Bid

**Bidders may bid separately on any or both of the contracts**, however only one contract may be awarded to any bidder. The apparent lowest responsive and responsible bidder shall be determined sequentially for each contract in the following order: **JOC ROADS & BRIDGES 2014-01**, **JOC ROADS & BRIDGES 2014-02**. The apparent lowest responsive and responsible bidder on each JOC contract will be excluded from consideration for each successive contract.

No Contractor will be permitted to submit more than one (1) bid for each Job Order Contract solicitation. Bids by related Contractors are prohibited. For purposes of this solicitation, one Contractor (“Contractor A”) will be determined to be related to another Contractor (“Contractor B”) if, (i) Contractor A either directly or indirectly owns ten percent (10%) or more of the shares or capital interest in Contractor B; (ii) Contractor A has more than fifty percent (50%) of the voting interest in Contractor B; or (iii) one or more of a Contractor’s owners is also an officer, director, or partner in the other Contractor’s company.

Bids are to be submitted in **separate** sealed envelopes. Envelopes shall be marked in lower left corner “Bid for **JOC ROADS & BRIDGES 2014-01** or **JOC ROADS & BRIDGES 2014-02**”.

#### 18. Withdrawal of Bids

Any bidder may withdraw their bid either personally, by written request, or by telefaxed request at any time prior to the scheduled closing time for receipt of bids. No bidder may withdraw his bid for a period of 60 days after the date set for the bid opening.

#### 19. Evidence of Financial Responsibility

Upon request of the County, a bidder whose bid is under consideration for the award of the contract shall submit promptly to the County satisfactory evidence showing the bidder's financial resources and all appropriate backup information and supporting documents. The County may utilize this information as a basis for determining that a contractor is not responsible and, therefore, award the contract to the next lowest responsible and responsive bidder.

#### 20. Award of Contract

The County reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding. The award of the contract, if made by the County, will be to the lowest responsible and responsive bidder. **The lowest bidder will be determined for the project by the lowest Award Criteria Figure.**

21. Documents required upon receipt of Notice of Intent to Award

Within ten (10) days after the bidder receives notice the Notice of Intent to Award letter, the successful bidder shall, in conformity with the contract documents, submit the following documents, including the number of originals required in the Special Conditions:

- A) Executed Agreement (Division 00500);
- B) A performance bond and a payment bond, each in an amount equal to \$2 Million, issued and executed by an admitted surety insurer, authorized to transact surety insurance in California (Division 00600 and 00610);
- C) Insurance certificates showing that the successful bidder has obtained all required insurance coverage including endorsements;
- D) A letter from bonding company stating their ability to obtain Payment and Performance Bonds for Maximum Contract Value;
- E) Such other documents as may be required by the contract documents; and
- F) Submit JOC System License and Fee Agreement to The Gordian Group (See Exhibit 1)

22. Bid Security Return

The bid security shall be returned to the bidders promptly after a decision is made whether to accept a bid or reject all bids, except that if a contract award is to be made, the bid security of three or more of the lowest bidders (the number being at the discretion of the County) will be held for sixty (60) workdays after notice of award is received by the successful bidder or until the successful bidder returns the executed Agreement and posts the required bonds and certificates of insurance, whichever occurs first. If the successful bidder returns the required documents on time, all the remaining bid security will be returned.

23. Forfeiture for Failure to Execute Contract

If the bidder to whom a Notice of Intent to Award is made fails or refuses to execute the contract and post the required bonds and insurance certificates within ten (10) days from the date of receiving the Notice of Intent to Award letter, the County may declare the bidder's bid security forfeited as liquidated damages caused by the failure of the bidder to enter into the contract, and may award the work to the next lowest responsible and responsive bidder or may call for new bids. If the work is awarded to the next bidder, the County shall retain the remaining bid securities until such time as a new award is completed with the execution of the Agreement and the posting of bonds and certificates. If new bids are called for, all remaining bid securities will be promptly returned.

24. Progress Payments and Substitution of Security

County will make one payment for all Job Orders that have a Job Order completion time of 30 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the County may make progress payments to the Contractor. The progress payment will be made each calendar month on the basis of ninety-five percent (95%) of the value of the work performed. The final payment will be withheld for 35 days after the recordation of the notice of completion. Upon the Contractor's request and agreement to substitute securities for the withheld funds, monies withheld from progress payments by the County to ensure performance under the contract may be released in accordance with Public Contract Code section 22300 and the contract documents.

25. Non-Discrimination

It is the policy of the County that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, mental disability, medical condition (cancer related), sex, sexual orientation, age (over 40), or marital status. The Contractor agrees to



comply with all applicable federal, state, and local laws and/or regulations including, but not limited to, the California Fair Employment and Housing Act, Government Code Sections 12900 et seq., Labor Code Section 1735, and Monterey County Code, Title 2, Chapter 2.80. In addition, the Contractor agrees to require like compliance by any subcontractors employed on the work by the Contractor.

27. Bid Protests

A) Who can file a protest?

Any Bidder or directly affected party who is aggrieved in connection with the solicitation or award of contract (ex. Subcontractor), representatives of the above (ex. Unions) may file a bid protest.

B) Requirements for Filing a Protest

Bidders who wish to lodge a protest as to the award of the bid must do so before 5 p.m. of the fifth business day following the bid opening. Failure to timely file a written protest shall constitute a waiver of right to protest. Untimely protests will not be accepted or considered. Bid protests must be submitted, in writing and may be hand-delivered or sent via facsimile (831)755-4958, certified postal mail to: MONTEREY COUNTY RMA-PUBLIC WORKS/ATTN JOC BIDS PROJECT MANAGER/168 W ALISAL ST FL2/SALINAS CA 93901-2438. Bid protests must include the project name and bid number; a complete statement describing the basis for the bid protest, including a detailed statement of all legal and factual grounds for the protest; any documentation supporting the protestor's grounds for the protest; and the form of relief requested and legal basis for such relief. The party lodging the protest must also include their contact information, including mailing address, telephone number, and E-mail address.

If a valid protest is timely filed, Public Works shall investigate the bid protest. The protested party shall have three (3) business days to respond to any requests to provide additional information from Public Works.

C) County Response to Protests Received

RMA-Public Works shall respond to the protesting party, in writing, stating its findings. The Director of Public Works shall submit a summary of bid protests received and make a recommendation to the Board of Supervisors regarding the bid protest(s).

**BID FORM**  
Division 00300

**MONTEREY COUNTY BOARD OF SUPERVISORS**

**MAILING ADDRESS:** P O BOX 1728/SALINAS CA 93902

**PHYSICAL ADDRESS:** 168 W. ALISAL ST FL1 SALINAS CA 93901

**PROJECT NO. JOC 2014**

- SELECT ONE ("X"):     **BID PACKAGE NO. ROADS & BRIDGES 2014-01**  
                                   **BID PACKAGE NO. ROADS & BRIDGES 2014-02**

NAME OF BIDDER: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

CONTRACTOR LICENSE #: \_\_\_\_\_

PLACE OF RESIDENCE: \_\_\_\_\_

**BID FORM**

**PROJECT NO. JOC 2014**

**BID PACKAGE NO. ROADS & BRIDGES 2014-01**

**BID PACKAGE NO. ROADS & BRIDGES 2014-02**

TO: MONTEREY COUNTY BOARD OF SUPERVISORS

1. Pursuant to and in compliance with your Notice to Bidders and the Contract Documents relating to the JOC ROADS & BRIDGES 2014-01 or JOC ROADS & BRIDGES 2014-02 (checked above), the undersigned Bidder, having become thoroughly familiar with the terms and conditions of the Contract Documents and with local conditions affecting the performance and the costs of the Work, hereby proposes and agrees to fully perform authorized Work within the time(s) stated and in strict accordance with the Contract Documents and each Job Order, including providing any and all labor and materials, and performing all the work required to construct and to complete said Work in accordance with the requirements of the Contract Documents, for the following Adjustment Factors, carried out to four (4) decimal places:

**Adjustment Factors:** (Enter figure carried 4 decimal places sample   1   .   0     8     5     0   )

**Normal Working Hours**

Undersigned shall perform any or all functions called for during normal working hours, in North County or South County, in the quantities specified in individual Job Orders for this contract for the unit price sum specified in the Construction Task Catalog® multiplied by the adjustment factor indicated below:  
(carried out 4 decimal places)

**North County Normal Working Hours:** \_\_\_\_\_ . \_\_\_\_\_

**South County\* Normal Working Hours:** \_\_\_\_\_ . \_\_\_\_\_

**Other than Normal Working Hours\*\***

Undersigned shall perform any or all functions called for during other than normal working hours, in North County or South County, in the quantities specified in individual Job Orders for this contract for the unit price sum specified in the Construction Task Catalog® multiplied by the adjustment factor indicated below:  
(carried out 4 decimal places)

**North County Other than Normal Working Hours\*\*:** \_\_\_\_\_ . \_\_\_\_\_

**South County\* Other than Normal Working Hours\*\*:** \_\_\_\_\_ . \_\_\_\_\_

\* *South County is defined as south of but not including King City and Big Sur*

\*\* *Bids will be rejected as non-responsive if the 'Other than Normal Working Hours' Adjustment Factors are not equal to or greater than the 'Normal Working Hours' Adjustment Factors.*

## Award Criteria Figure Formula

**Award Criteria Figure (ACF) Formula percentages are for Bid purposes only.**

**The County is not obligated to issue Job Orders in the stated percentages.**

		Enter Factor carried out Four (4) decimal places					
		1	.	0	8	5	0
Line 1	Enter <i>North County Normal Working Hours Adjustment Factor</i> from prior page in column to right --▶		.				
Line 2	Multiply Line 1 Adjustment Factor by 70% = (0.70 x Line 1) and enter in column to the right --▶		.				
Line 3	Enter <i>South County Normal Working Hours Adjustment Factor</i> from prior page in column to right --▶		.				
Line 4	Multiply Line 3 by 10% = (0.10 x Line 5) an enter in column to right --▶		.				
Line 5	Enter <i>North County Other Than Normal Working Hours Adjustment Factor</i> from prior page in column to right --▶		.				
Line 6	Multiply Line 5 by 10% = (0.10 x Line 5) and enter in column to right --▶		.				
Line 7	Enter <i>South County Other Than Normal Working Hours Adjustment Factor</i> from prior page in column to right --▶		.				
Line 8	Multiply Line 7 by 10% = (0.10 x Line 7) and enter in column to right --▶		.				
		<b>ACF</b>					
Line 9	<b>Award Criteria Figure (ACF)</b> equals the sum of Lines 2, 4, 6, and 8 (Add together: (Line 2+Line 4+Line 6+Line 8) and enter total (sum) in column to right --▶		.				

2. Determination of lowest bidder will be based upon the lowest Award Criteria Figure. The Award Criteria Figure above includes consideration of the one percent (1%) license fee payable to The Gordian Group.

3. The undersigned has checked all above figures carefully and understands that the County will not be responsible for any errors and omissions on the part of the undersigned in making this bid.

4. It is understood that County reserves the right to reject any and all bids or waive any informalities or irregularities in any bids or in the bidding.

5. This bid shall remain valid and will not be withdrawn by the undersigned bidder for a period of sixty (60) days from the date prescribed for opening of this bid without the written consent of the County.

6. Attached hereto are the following:

- a) Non-Collusion Affidavit;
- b) Workers' Compensation Certificate;
- c) Affidavit Concerning Employment of Undocumented Aliens

- d) Contractor's Certification of Good-Faith Effort to Employ Monterey Bay Area Residents;
- e) Equal Employment Opportunity Certification
- f) Public Contract Code 10285.1 Statement
- g) Public Contract Code 10162 Statement
- h) Public Contract Code 10232 Statement
- i) Debarment and Suspension Certification
- j) Written Plan to Recruit Monterey Bay Area Residents, when applicable;
- k) Required bidder's security in the amount of \$25,000; and
- l) Acknowledgment of Addenda, if any.

7. If this bid is accepted by the County, then the undersigned shall, within ten (10) workdays after receipt of the Notice of Intent to Award letter, execute and deliver to the County (a) a contract in the form set forth in the contract documents on which this bid is based, (b) a payment bond for public works, as required by the contract documents, and (c) a performance bond, as similarly required, and (d) an Insurance Certificate, as similarly required, and e) submit the required JOC System License and Fee Agreement to The Gordian Group (See Specifications Manual Exhibit 1). The undersigned will thereafter commence and complete the work within the time required by the contract documents.

8. Notice of acceptance and any requests for additional information shall be addressed to the undersigned at the following address or faxed to (831)755-7958:

COUNTY OF MONTEREY  
 RMA- PUBLIC WORKS  
 ATTN JOC ROAD & BRIDGES PROJECT MANAGER  
 168 W ALISAL ST FL2  
 SALINAS CA 93901-2438

9. The names of all persons interested in the foregoing proposal as principals are as follows:

Name	Title
Name	Title
Name	Title

**(IMPORTANT NOTICE:** If the bidder or other interested person is a corporation, state the legal name of the corporation, and the names of the president, secretary, treasurer, and manager thereof; if a partnership, state the name of the firm and the names of all the individual partners composing the firm; if the bidder or other interested person is an individual, state the first and last names in full and give all fictitious names under which the individual does business.)

10. By execution of this bid, the undersigned bidder declares that he or she is a contractor licensed in accordance with the Contractors' State License Law, as follows:

Classification: \_\_\_\_\_  
 License number: \_\_\_\_\_  
 Expiration date: \_\_\_\_\_

11. The undersigned certifies that at the time of bid, Contractor has a staffed office located within the Monterey Bay Area (Monterey, Santa Cruz, or San Benito Counties). Address, Telephone, and Facsimile (fax) of office that meets the above requirement:

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

12. The undersigned certifies that Contractor meets the experience requirements outlined in the Information to Bidders Section 5 A-B and within three calendar days of request by County shall submit evidence of compliance with the qualifications and a list of all work performed, both complete and incomplete, within the previous three years including names and phone numbers of the Public Agencies.

13. In the event the bidder to whom Notice of Intent to Award Contract is given fails or refuses to post the required bonds and insurance and return the executed copies of the agreement form within ten (10) working days from the date of receiving the Notice of Intent to Award letter Contract, the County may declare the bidder's security forfeited as damages and contract with the second lowest bidder.

14. Pursuant to section 7103.5(b) of the Public Contract Code, in submitting a bid to the County, the bidder offers and agrees that if the bid is accepted, it will assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

Dated \_\_\_\_\_  
Bidder's Business Name \_\_\_\_\_  
By \_\_\_\_\_  
Principal Signature \_\_\_\_\_  
Principal Name (Print) \_\_\_\_\_  
Principal Title (Print) \_\_\_\_\_  
  
By \_\_\_\_\_  
Principal Signature \_\_\_\_\_  
Principal Name (Print) \_\_\_\_\_  
Principal Title (Print) \_\_\_\_\_  
(Corporate Seal) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: If bidder is a corporation, the full legal name of the corporation shall be set forth above together with the signatures of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the full name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his signature shall be placed above.**

15. Addenda bound with Contract Documents or issued during the time of bidding, are to be acknowledged below

*Addendum No.* \_\_\_\_\_ *Date :* \_\_\_\_\_

*Addendum No.* \_\_\_\_\_ *Date:* \_\_\_\_\_

*Addendum No.* \_\_\_\_\_ *Date:* \_\_\_\_\_

*Addendum No.* \_\_\_\_\_ *Date :* \_\_\_\_\_

*Addendum No.* \_\_\_\_\_ *Date:* \_\_\_\_\_

*Addendum No.* \_\_\_\_\_ *Date:* \_\_\_\_\_

**NON-COLLUSION DECLARATION**  
**TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

(Public Contract Code Section 7106)

Division 00400

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_ the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his Adjustment Factors or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_  
\_\_\_\_\_ [city], \_\_\_\_\_ [state].

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_



**CONTRACTOR'S CERTIFICATE AS TO WORKERS' COMPENSATION**

**TO BE SUBMITTED WITH BID**

(Labor Code section 1861)

Division 00410

Labor Code section 3700 provides, in relevant part:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

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

Dated: \_\_\_\_\_

Bidder's Business Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**AFFIDAVIT CONCERNING EMPLOYMENT OF UNDOCUMENTED ALIENS**

**TO BE SUBMITTED WITH BID**

Division 00420

(Public Contract Code section 6101)

State of California )  
 )§  
County of \_\_\_\_\_ )

Public Contract Code section 6101 provides that,

*No state agency or department, as defined in [Public Contract Code] Section 10335.7, that is subject to this code, shall award a public works or purchase contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works or purchase contract, who has, in the preceding five years, been convicted of violating a state or federal law respecting the employment of undocumented aliens.*

\_\_\_\_\_, being first duly sworn, deposes and says  
(1) that he or she is the \_\_\_\_\_ of \_\_\_\_\_, the party making  
the foregoing bid; and (2) that the party making the foregoing bid has not, within the preceding  
five years, been convicted of violating a state or federal law respecting the employment of  
undocumented aliens.

Dated: \_\_\_\_\_

Bidder's Business Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Notary Public in and for the County of

\_\_\_\_\_  
State of California

My Commission expires on: \_\_\_\_\_ [Notary Stamp]

**CONTRACTOR'S CERTIFICATION OF GOOD-FAITH EFFORT TO**  
**EMPLOY MONTEREY BAY AREA RESIDENTS**  
**(TO BE SUBMITTED WITH BID)**  
(Monterey County Code section 5.08.120)  
Division 00430

I CERTIFY THAT I am aware of the provision of Monterey County Code Section 5.08.120.

Monterey County Code Section 5.08.120 provides, in relevant part:

A. General Provisions. All County contracts for public works of improvement shall contain provisions pursuant to which the contractor shall make a good-faith effort to employ qualified individuals who are, and have been for at least one (1) year out of the past three (3) years prior to the opening of bids, residents of the Monterey Bay Area in sufficient numbers so that no less than fifty percent (50%) of the contractors total construction work force, on that particular contract, including any subcontractor work force (with exception of specialty subcontractor items identified in bid items) measured in labor work hours, is comprised of Monterey Bay Area residents.

B. Non-responsive Bidder Declaration: Enforcement. If any contractor submitting a bid for a contract for public works of improvement fails to abide by the good-faith local employment provisions of this Section, the contractor may be declared by the Board to be a non-responsive bidder for purposes of this Chapter. If the Board finds that a contractor to whom a contract for public works of improvement has been awarded has failed to comply with the good-faith employment provisions of this Section during the performance of the contract, the Board may disqualify the contractor from bidding on any County contract for public works of improvement for a period of one (1) year from the date of the Board's disqualification. A subsequent violation of this Section by a contractor may result in disqualification by the Board for a period of three (3) years from the date of the subsequent disqualification.

C. Binding on Subcontractors. Every contractor entering into a contract for public works of improvement subject to the provisions of this Section shall include in each and every subcontract for work, laborers, or material suppliers relating to the project the requirement that the subcontractor shall make a good-faith effort to employ qualified individuals who are, and have been for at least one (1) year out of the past three (3) years prior to the opening of bids, residents of the Monterey Bay Area. If the Board finds that any subcontractor has failed during the performance of the subcontract to comply with this Section, the Board may disqualify said subcontractor from submitting or being listed in any bid for any County contract for public works of improvement for a period of one (1) year from the date of the Board's disqualification. A subsequent violation by a subcontractor may result in disqualification by the Board for a period of three (3) years from the date of the subsequent disqualification.

I FURTHER CERTIFY AS FOLLOWS (check the box that applies):

I CERTIFY that at least fifty percent (50%) of the total construction work force on the project, including any subcontractor work force, measured in labor work hours, will be comprised of qualified individuals who to the best of my knowledge are, and have been for at least one (1) year out of the past three (3) years prior to the effective date of the opening of bids, residents of the Monterey Bay Area. Evidence that I will comply with this requirement is as follows (please use additional pages to provide supporting evidence and/or documentation, as necessary):

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I CERTIFY that I shall make a good-faith effort to employ qualified individuals who, to the best of my knowledge, are, and have been for at least one (1) year out of the past three (3) years prior to the effective date of the opening of bids, residents of the Monterey Bay Area in sufficient numbers such that no less than fifty percent (50%) of the total construction work force on the project, including any subcontractor work force (with the exception of specialty subcontractor items identified in the bid items) measured in labor work hours, will be comprised of Monterey Bay Area residents. **My written plan to recruit Monterey Bay Area residents as part of the construction workforce is attached.**

I CERTIFY that I do not comply with and am unable to make a good-faith effort to comply with the good-faith local employment provisions set forth in Monterey County Code Section 5.08.120. Explanation to why I am not able to comply is as follows (please use additional pages to provide supporting evidence and/or documentation, as necessary):

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I declare under penalty of perjury under the laws of the State of California that the foregoing certification is true and correct. Executed on (date) \_\_\_\_\_  
at (city/state) \_\_\_\_\_.

Bidder's Business Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The bidder \_\_\_\_\_,  
proposed subcontractor \_\_\_\_\_,  
hereby certifies that he has \_\_\_\_, has not \_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above Certification is part of the Bid. Signing this Bid on the signature portion thereof shall also constitute signature of this Certification. Providing false information may result in criminal prosecution or administrative sanctions.

## PUBLIC CONTRACT CODE

### **PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder  has  has not been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

*Note: Bidder must place a check in one box above, either the "has" or "has not" box.*

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### **PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE**

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes  No

If yes, explain the circumstances in the following space.

---

## **Public Contract Code Section 10232 Statement**

In accordance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Public Contract Code Statements and Questionnaire are part of the Bid. Signing this Bid on the signature portion thereof shall also constitute signature of these Statements and Questionnaire. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

## **DEBARMENT AND SUSPENSION CERTIFICATION**

Title 2, Code of Federal Regulations, Part 180

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- does not have a proposed debarment pending; and,
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Note: The above Certification is part of the Bid. Signing this Bid on the signature portion thereof shall also constitute signature of this Certification. Providing false information may result in criminal prosecution or administrative sanctions.



**BID BOND**  
Division 00440  
(Public Contract Code Section 20129)

WHEREAS the Principal has submitted the accompanying bid dated \_\_\_\_\_, to the County of Monterey, for the following project:

**Check Box below corresponding to the accompanying bid:**

**PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-01**

**PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-02**

; and

WHEREAS, Principal, as bidder, is required to furnish a bond executed by an admitted surety in connection with said bid, to secure the timely execution of the contract and delivery of bonds and insurance certificates, in the event that the contract is awarded to the Principal.

NOW, THEREFORE, we \_\_\_\_\_ as

Principal, and \_\_\_\_\_

\_\_\_\_\_ as  
Surety, are held and firmly bound unto the County of Monterey, a political subdivision of the State of California (hereinafter called "County"), in the penal sum of Twenty five thousand Dollars (\$ 25,000.00), of the Principal submitted to the said County for the above-described project, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal is awarded the contract and, within the time and manner required under the contract documents for the above-described project, after the prescribed forms are presented to him for signature, (1) enters into a written contract in the prescribed form, in accordance with the bid, (2) files such insurance certificates with the County as may be required by said contract documents, and (3) files a performance bond and a payment bond with the County, in conformity with said contract documents, then this obligation shall be null and void; otherwise, it shall remain in full force.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

If the County brings suit upon this bond and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 2014, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

\_\_\_\_\_  
Principal  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

(Attach notary acknowledgement for all signatures and original or certified copy of unresolved appointment, attorney-in-fact certificate, power of attorney, by laws, or other instrument entitling or authorizing person executing bond on behalf of Surety to do so.)

# AGREEMENT

Division 00500

S A M P L E

THIS AGREEMENT is made by and between the COUNTY OF MONTEREY, a political subdivision of the State of California, hereinafter called "COUNTY," and (Name of Contractor), hereinafter called "CONTRACTOR." For reference purposes, the date of this Agreement is \_\_\_\_\_.

THE COUNTY AND THE CONTRACTOR hereby agree as follows:

## ARTICLE 1. SCOPE OF WORK.

This Job Order Contract (JOC) is an indefinite quantity contract pursuant to which the Contractor will perform a variety of Job Orders, consisting of specific construction tasks. The scope of this JOC is for general construction, repair, remodel and other repetitive related work. The County has published a Construction Task Catalog<sup>®</sup> (CTC) containing a series of construction tasks with preset Unit Prices. The CTC was developed using experienced labor and high quality materials. All Unit Prices are based on local labor, material and equipment prices including the current prevailing wages. The Contractor will bid Adjustment Factors to be applied to the Unit Prices. The price of an individual Job Order will be determined by multiplying the preset Unit Prices and the appropriate quantities by the appropriate Adjustment Factor.

The scope of Work for this Contract will be determined by the Detailed Scopes of Work issued in connection with individual Job Orders. The scope of work, for each Job Order will be explained to the Contractor at a Joint Scope Meeting. The County will provide a Request for Job Order Proposal and Detailed Scope of Work to the Contractor. The Contractor will be required to review the Detailed Scope of Work and develop a Price Proposal using appropriate tasks, quantities and the applicable Adjustment Factor. The County will review the Contractor's Proposal in detail and if found to be reasonable and acceptable, a Job Order may be issued. The agreed upon price will be fixed price for the performance of the Detailed Scope of Work.

The CONTRACTOR shall, within the time stipulated, perform the contract **checked below** as herein defined and shall furnish all work, labor, equipment, transportation, material, and services to construct and complete in a good, expeditious, workmanlike, and substantial manner, the project:

- PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-01.**
- PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-02**

## ARTICLE 2. TIME FOR START AND COMPLETION.

Contract Time commences upon the written execution of the Contract by County and shall end either one year from the date signed by county or upon the payment by County to Contractor of the maximum amount payable under this Agreement, whichever occurs earlier. County will not issue any new Job Orders after the expiration of this Agreement. Any Job Order authorized prior to the expiration of the Agreement must be completed within the time specified in the Job Order. In the event the scheduled completion for any Job Order extends beyond the term of this Agreement, Contractor and County agree that the terms of this Agreement shall continue in effect and be applicable for such Job Orders. A separate Job Order Notice to Proceed will be issued for each Job Order. Each Job Order will specify a time limit for completion as stated on the Job Order Notice to Proceed.

ARTICLE 3. ADJUSTMENT FACTORS

County shall pay Contractor the Job Order Sum for completion of Work in accordance with Contract Documents and the Detailed Scope of Work described in each Job Order multiplied by the following Adjustment Factors:

ADJUSTMENT FACTORS

ITEM	DESCRIPTION	ADJUSTMENT FACTORS
1.	Normal Working Hours – North County	
2.	Normal Working Hours – South County	
3.	Other than Normal Working Hours – North County	
4.	Other than Normal Working Hours – South County	

The Minimum Contract Value is \$25,000. Contractor will receive Job Orders totaling at least \$25,000 during the Contract term. The Maximum Contract Value is \$4,550,000 for the **JOC ROADS & BRIDGES**  2014-01 or  2014-02. County does not guarantee Contractor will receive this volume of Work. County may award contracts or issue Job Orders to other contractors for the same or similar Work during the term of this Agreement. In no event will Contractor be issued Job Orders which, in total, exceed the Maximum Contract Value. At no time may the sum of the outstanding Job Orders exceed the amount of the Payment Bond and Performance Bond. A Job Order is outstanding until County has accepted the Work described in the Job Order by recordation of a Notice of Completion. Contractor will not be issued Job Orders which in total exceed the Maximum Contract Value.

ARTICLE 4. LIQUIDATED DAMAGES.

County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss, if all or any part of the Work is not completed within the time specified in the Job Order, plus any extensions thereof. Accordingly, County and Contractor agree that liquidated damages for delay will be established by County for each Job Order. Contractor shall pay County the dollar amount stipulated in the Job Order for each day that expires after the time specified therein for contractor to achieve Completion.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by County resulting from delay in completion of the Work.

Liquidated damages for delay shall only cover project administrative (such as Project management and consultant expenses) and cost damages suffered by County as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from County (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

ARTICLE 5. NOTIFICATION OF THIRD-PARTY CLAIMS.

COUNTY shall notify CONTRACTOR of the receipt of any third-party claim relating to the contract

and is entitled to recover its reasonable costs incurred in providing the notification as provided in Public Contract Code Section 9201.

ARTICLE 6. COMPONENT PARTS OF THIS CONTRACT.

The contract entered into by this Agreement consists of the following documents, all of which are component parts of the contract as if herein set out in full or attached hereto:

- Notice to Contractors
- Information for Bidders
- Bid, as accepted
- Noncollusion Affidavit
- Workers' Compensation Certificate
- Affidavit Concerning Employment of Undocumented Aliens
- Contractor's Certification of Good Faith Effort to Employ Monterey Bay Area Residents
- Equal Employment Opportunity Certification
- Public Contract Code Section 10285.1 Statement
- Public Contract Code Section 10162 Statement
- Public Contract Code Section 10232 Statement
- Debarment and Suspension Certification
- Written Plan to Recruit Monterey Bay Area Residents, when applicable
- Bid Bond or Bidder's Security
- Agreement
- Performance Bond
- Payment Bond
- Insurance Certificate
- Division 00710 General Conditions, Bid No. **ROADS & BRIDGES 2014-01, ROADS & BRIDGES 2014-02**
- Project Manual
- Construction Task Catalog®
- Technical Specifications
- As issued, Addenda No:

All of the above-named contract documents are intended to be complementary. Work required by one of the above-named contract documents and not by others shall be done as if required by all.

IN WITNESS WHEREOF, the parties have duly executed four (4) identical counterparts of this instrument, each of which shall be for all purposes deemed an original thereof, on the dates set forth below.

**COUNTY OF MONTEREY**

**By:** \_\_\_\_\_

**Name:** Robert K. Murdoch, P.E.

**Title:** Director of Public Works

**Date:** Month \_\_\_ 2014

**APPROVED AS TO FORM**

**CONTRACTS/PURCHASING**

**By:** \_\_\_\_\_

**Name:** Mike Derr

**Title:** Contracts/Purchasing Officer

**Date:** Month \_\_\_ 2014

**APPROVED AS TO FORM & LEGALITY**

**COUNTY COUNSEL**

**By:** \_\_\_\_\_

**Name:** Cynthia L. Hasson

**Title:** Deputy County Counsel

**Date:** Month \_\_\_ 2014

**APPROVED AS TO FISCAL TERMS**

**COUNTY AUDITOR-CONTROLLER**

**By:** \_\_\_\_\_

**Name:** Gary Giboney

**Title:** Chief Deputy Auditor-Controller

**Date:** Month \_\_\_ 2014

**APPROVED AS TO INDEMNITY/INSURANCE LANGUAGE**

**RISK MANAGEMENT**

**By:** \_\_\_\_\_

**Name:** Steven F. Mauck

**Title:** Risk Manager

**Date:** Month \_\_\_ 2014

**CONTRACTOR: NAME OF COMPANY**

**By:** \_\_\_\_\_

**Name:** Name of Principal

**Title:** Title of Principal

**Date:** Month \_\_\_ 2014

**By:** \_\_\_\_\_

**Name:** Name of Secondary

**Title:** Title of Secondary

**Date:** Month \_\_\_ 2014

**COMPANY ADDRESS:**

STREET ADDRESS

CITY/STATE/ZIP

**Contractor's License Type:** XXXX

**License Number:** XXXXXX

**License Expiration Date:** XXXX

**NOTE:** CONTRACTORS ARE REQUIRED TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD/P O BOX 26000/ SACRAMENTO CA 95826

**INSTRUCTIONS:** If bidder is a corporation, the full legal name of the corporation shall be set forth above together with the signatures of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the full name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his signature shall be placed above.

**PERFORMANCE BOND**  
(Public Contract Code Section 20129)  
Division 00600

WHEREAS, the County of Monterey has awarded to Principal,

---

as Contractor, for the following project (**Check One Box**):

**PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-01**

OR

**PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-02**

WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the faithful performance of said contract.

NOW, THEREFORE, we \_\_\_\_\_

as Principal, and \_\_\_\_\_

---

as Surety, are held and firmly bound unto the County of Monterey, a political subdivision of the State of California (hereinafter called "County"), in the penal sum of Two Million Dollars (\$2,000,000.00), for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal, as Contractor, or Principal's heirs, executors, administrators, successors, or assigns, (1) shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, and agreements in said contract and any alteration thereof made as therein provided, on Principal's part to be kept and performed, at the time and in the manner therein specified and in all respects according to their true intent and meaning, and (2) shall indemnify, defend, and save harmless the County, the members of its board of supervisors, and its officers, agents, and employees as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and virtue.

Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

Whenever the Principal, as Contractor, is in default, and is declared in default, under the Contract by the County of Monterey, the County of Monterey having performed its obligation under the contract, Surety may promptly remedy the default, or shall promptly:

1. Complete the contract in accordance with its terms or conditions, or
2. Obtain a bid or bids for submission to County of Monterey for completing the Contract in accordance with its terms or conditions, and upon determination by the County of Monterey and Surety of the lowest responsible and responsive bidder, arrange for a contract between such bidder and the County of Monterey, and make available as work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price.

If suit is brought upon this bond by the County and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorneys' fees, court costs, expert witness fees, and investigation expenses.

IN WITNESS WHEREOF, the above-bonded parties have executed this instrument under their several seals this \_\_\_\_ day of \_\_\_\_\_, 2014, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal) \_\_\_\_\_  
Principal

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

Title: \_\_\_\_\_

(Corporate Seal) \_\_\_\_\_  
Surety

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

Title: \_\_\_\_\_

(Attach notary acknowledgement for all signatures and original or certified copy of unresolved appointment, attorney-in-fact certificate, power of attorney, by laws, or other instrument entitling or authorizing person executing bond on behalf of Surety to do so.)



**PAYMENT BOND**  
(Civil Code section 9550)  
Division 00610

WHEREAS, the County of Monterey has awarded to Principal,

\_\_\_\_\_ as Contractor, a contract for the following project (Check One Box):

**PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-01**

OR

**PROJECT NO. JOC, BID NO. ROADS & BRIDGES 2014-02; and**

WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, material providers, and other persons furnishing labor and materials on the project, as provided by law.

NOW, THEREFORE, we \_\_\_\_\_

as Principal, and \_\_\_\_\_

\_\_\_\_\_ as Surety, are held and firmly bound unto the County of Monterey, a political subdivision of the State of California (hereinafter called "County"), and to the persons named in California Civil Code section 9100 in the penal sum of Two Million Dollars (\$2,000,000.00), for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If Principal or any of Principal's heirs, executors, administrators, successors, assigns, or subcontractors (1) fails to pay in full all of the persons named in Civil Code Section 9100 with respect to any labor or materials furnished by said persons on the project described above, or (2) fails to pay in full all amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the contract on the project described above, or (3) fails to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Unemployment Insurance Code section 13020 with respect to such work and labor, then the Surety shall pay for the same.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

If the County brings suit upon this bond and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond inures to the benefit of any of the persons named in Civil Code section 9100, and such persons or their assigns shall have a right of action in any suit brought upon this bond, subject to any limitations set forth in Civil Code sections 9550 et seq. (Civil Code, Division 4, Part 6, Title 3, Chapter 5: Payment Bond for Public Works).

IN WITNESS WHEREOF the above-bounden parties have executed this instrument under their several seals this \_\_\_\_ day of \_\_\_\_\_, 2014, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

*(Corporate Seal)* \_\_\_\_\_  
Principal

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

Title: \_\_\_\_\_

*(Corporate Seal)* \_\_\_\_\_  
Surety

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

Title: \_\_\_\_\_

(Attach notary acknowledgement for all signatures and original or certified copy of unresolved appointment, attorney-in-fact certificate, power of attorney, by laws, or other instrument entitling or authorizing person executing bond on behalf of Surety to do so.)

# GENERAL CONDITIONS

Division 00710

## PART I. INTRODUCTION

### ARTICLE 1. DEFINITIONS.

#### 1.01 Adjustment Factor

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

#### 1.02 Award Criteria Figure

The sum of the weighted Adjustment Factors, used to determine the low bid, as determined on the basis of the Award Criteria Figure Formula provided in the Bid Form.

#### 1.03 Construction Task Catalog<sup>®</sup>

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

#### 1.04 Detailed Scope of Work

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

#### 1.05 Job Order

A document signed by the County that describes Work to be accomplished. The County has sole discretion to determine the number and scope of Job Orders issued. Each Job Order will include a Detailed Scope of Work, a firm fixed price, a time duration for the completion of the Work and any special conditions that might apply to that specific Job Order, such as Liquidated Damages. (Also referred to as 'Job Order Documents').

#### 1.06 Job Order Authorization

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

#### 1.07 Job Order Contract

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

### 1.08 Job Order Notice to Proceed

Written notice issued by the County to Contractor specifying the first day work can commence and the overall duration.

### 1.09 Job Order Plans

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

### 1.10 Job Order Proposal Package

The documents prepared by the Contractor stating a firm fixed price to perform a specific Detailed Scope of Work. The Proposal includes shop drawings and sketches, permits and submittals as necessary, a detailed Price Proposal comprised of line items from the Construction Task Catalog<sup>®</sup>, supporting documentation for any Non-Prepriced items, a construction schedule, a list of subcontractors, and other documentation as may be required by the County prior to the issuance of a Job Order. (Also referred to as Proposal).

### 1.11 Job Order (Task) Specifications

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

### 1.12 Job Order Sum

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

### 1.13 Job Order Time(s)

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

### 1.14 Joint Scope Meeting

Meeting at the project site attended by the County and the Contractor to jointly scope the Work.

### 1.15 Maximum Contract Value

The maximum dollar value of Work that the County may order during the term of the Job Order Contract.

### 1.16 Minimum Contract Value

Minimum dollar value of Work that the County must order during the term of the Job Order Contract.

### 1.17 Non-Prepriced Tasks

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

### 1.18 Normal Working Hours

Hours of Work between 7 a.m. and 5 p.m., Monday through Friday

### 1.19 Other than Normal Working Hours

Hours outside Normal Working Hours including all day Saturday, Sunday and County Holidays.

1.20 Project. "Project" means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all contract and warranty obligations. The work performed under this contract is directed towards completion of all or a part of the project.

### 1.21 Request for Proposal

The County's formal request for the Contractor to provide a Job Order Proposal Package. (Also referred to as 'RFP').

### 1.22 Supplemental Job Order

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

### 1.23 Unit Price

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

### 1.24 Work

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

## ARTICLE 2. CONTRACT INTERPRETATION.

2.01. Counting time. When any provision in the contract documents calls for computation of time in

terms of days, the period so counted shall include all calendar days within the period, including usual workdays as well as weekends and holidays. Business Days and Workdays refer to Monday through Friday, eight-hour duration.

2.02. Gender and number. References to one gender include the other; references to either singular or plural include the other.

2.03. Headings. Article and paragraph headings are for convenience only, and shall not be used to interpret the provisions of this contract.

2.04. Express and implied work requirements. This contract requires the performance of all elements of work expressly mentioned herein, together with all elements of work that are reasonably inferable from the express terms of this contract as being necessary for the proper completion of the work.

2.05. Technical or trade meanings. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

2.06. Conflicts among contract documents - priorities. If there is any conflict between any of the contract documents, the governing ranking of Contract parts in descending order is:

- Job Order Detailed Scope of Work and Proposal/Special Provisions
  - JOC Specifications
  - Job Order Plans
  - Revised Caltrans Standard Specifications
  - Caltrans Standard Specifications
  - Revised Caltrans Standard Plans
  - Caltrans Standard Plans
- 
- Written number and notes on a drawing govern over graphics
  - A detail drawing governs over a general drawing
  - A detail specification governs over a general specification
  - A specification in a section governs over a specification referenced by that section

If a discrepancy is found or confusion arises, submit an RFI (Request for Information)

### ARTICLE 3. CONTRACT DOCUMENTS.

The JOC Specifications Manual is for use in connection with Standard Specifications 2010, the Standard Plans 2010, including issued revised Standard Plans and Revised Standard Specifications through July 18, 2014. The current labor surcharge equipment rental rates of the State of California, Department of Transportation, Business and Transportation Agency; the current General Prevailing Wage determined by the Director of Industrial relations is on file with the Department of Public Works.

3.01. Contract Documents. The contract documents consist of all component parts of the contract as specified in the Agreement, including the Notice to Contractors, Information for Bidders, Bid as accepted, Non-Collusion Affidavit, Contractor's Certificate as to Workers' Compensation, Affidavit Concerning Employment of Undocumented Aliens, Contractor's Certification of Good-Faith Effort to Employ Monterey Bay Area Residents, Bid Bond or Bidder's Security, Agreement, Performance Bond, Payment Bond for Public Works, Insurance Certificate, Project Manual, Construction Task Catalog<sup>®</sup>, Technical Specifications, and all addenda issued prior to execution of the contract, and all

modifications.

3.02. Contract. The contract documents form the contract. The contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The contract may be amended or modified only by a modification as defined in paragraph 3.03.

3.03. Modification. A modification is (1) a written amendment to the contract signed by both parties (2) a supplemental Job Order is a written agreement entered into after the award of the Job Order that alters or amends the Job Order. A modification may be made only after execution of the contract.

3.04. Execution in quadruplicate. Unless otherwise specified in the Agreement, the contract documents shall be signed in not less than quadruplicate by the County and Contractor.

3.05. Contract documents furnished to Contractor. .On each Job Order the County will arrange for the Contractor to have access to one set of the Detailed Scope of Work including any reproducible Drawings and Specifications. The Contractor may at his expense, reproduce the documents as needed.

3.06. Ownership of documents. All Documents, Drawings and Specifications and copies thereof are the property of the County and shall be returned to the County on request at the completion of the work. They are not to be used on other projects or Job Orders.

3.07. Contract documents on-site. Contractor will at all times maintain at least one set of the Detailed Scope of Work including any reproducible Drawings and Specifications, showing approval by the State Fire Marshal, as well as all Supplemental Job Orders on the site, to be available to the County and their representatives.

#### ARTICLE 4. SUBCONTRACTORS.

4.01. In accordance with California Public Contracts Code Section 4100 to 4113, inclusive, as part of each Job Order Proposal Package, the awarded JOC Contractor shall provide a list giving the name and location of place of business, license number, subcontract value, and any other information the County deems relevant of each subcontractor who will perform a portion of the Job Order work in an amount in excess of one-half of one percent of the Job Order Proposal. In each instance the nature and extent of the work to be subcontracted shall be described. The Contractor shall not Contract with any such proposed person or entity to whom the County objects.

4.02. Intentionally left blank

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

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

4.05. No contractual relationship between County and subcontractors. Nothing contained in the contract documents shall create any contractual relation between the County and any subcontractor.

4.06. Work performed by subcontractors; substitutions. Subcontracted work shall be performed only by the subcontractors identified in Contractor's Job Order Proposal Package, as provided by Public

Contract Code sections 4100, et seq. Substitution of subcontractors may be made only in conformity with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

4.07. Contracts with subcontractors. All work performed for the Contractor by a subcontractor shall be pursuant to a written agreement between the Contractor and the subcontractor (and where appropriate, between subcontractors and sub-subcontractors). All such agreements shall require performance by the subcontractors in conformity with the terms of this contract, and shall include all the terms of this contract, which are applicable to subcontractors.

4.08. Payments to subcontractors. The Contractor shall pay each subcontractor, upon receipt of payment from the County, any amount equal to the percentage of completion allowed to the Contractor on account of such subcontractor's work, less the percentage retained from payments to the Contractor. The Contractor shall also require each subcontractor to make similar payments to his subcontractors. County shall have the right, but not the obligation, to issue payment by joint checks payable to the order of Contractor and any of its subcontractors.

If the Project Manager fails to issue a certificate for payment for any cause which is the fault of the Contractor and not the fault of a particular subcontractor, the Contractor shall pay the subcontractor on demand, made at any time after the certificate for payment should otherwise have been issued, for his work to the extent completed, less the retained percentage.

Neither the County nor the Project Manager shall have any obligation to pay or to see to the payment of any monies to any subcontractor except as may otherwise be required by law. All monies paid to Contractor hereunder shall immediately become and constitute a trust fund and shall be applied by Contractor for the benefit of all persons supplying labor, materials, or equipment in connection with the work and shall not be diverted to any other purpose until the claims of such persons have been discharged.

4.09. Information provided to subcontractors. The County's Project Manager may, on request, and at their discretion, furnish to any subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such subcontractors.

4.10. Contractor's responsibility for work of subcontractors. Contractor shall be as fully responsible to County for the acts and omissions of any subcontractor and of persons either directly or indirectly employed by the subcontractors, as he is for acts and omissions of persons directly employed by him.

## **PART II. CONDUCT OF WORK.**

### **ARTICLE 5. ADMINISTRATION OF JOB ORDERS**

5.01. The scope of work required will be determined by the Detailed Scopes of Work stated in each individual Job Order. The County is not obligated to issue any individual Job Order. All costs incurred preparing Job Order Proposal Packages are the sole responsibility of the Contractor.

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



5.03. The Contractor must provide all pricing, management, stamped or unstamped design drawings, shop drawings, documents, labor, materials, parts (to include system components), transportation, plant, supervision, and equipment needed to perform each Job Order. The Contractor must provide quality assurance as specified in strict accordance with the Contract.

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

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

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

5.07. County staff will notify the Contractor in writing of a Joint Scope Meeting to discuss a potential Job Order.

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

- Job Order number and title

- Existing site conditions

- Presence of Hazardous Materials

- Methods and alternatives for accomplishing work

- Definition and refinement of requirements

- Detailed Scope of Work

- Requirements for stamped & unstamped design drawings, sketches, submittals, catalogue cuts, samples, shop drawings, etc.

- Tentative construction schedule (bar chart or critical path method schedule)

- Preliminary quantity estimates

- Staging areas and site access

- Special conditions regarding unique facility operations

- Safety requirements

- Special insurance requirements

- Job Order Proposal due date

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

5.10. Upon completion of the joint scoping process, the County will issue a Request for Job Order Proposal and a Detailed Scope of Work. The Detailed Scope of Work will be the basis on which the Contractor will develop its Job Order Proposal and the County will evaluate the Job Order Proposal.

#### 5.11. Job Order Proposal Development

The Contractor will prepare Proposals in accordance with the following:

**Prepriced Tasks:** The Contractor will identify the task and quantities required from the Construction Task Catalog® (CTC). The Unit Price set forth in the CTC serves as the base price.

The Unit Prices stated in the CTC includes full compensation for furnishing all labor, materials, tools, equipments, and incidentals, and for doing all the work involved in furnishing and constructing complete in place the task as described in the CTC.

**Non-Prepriced Tasks (NPP):** Non-Prepriced Tasks, if any, must be separately identified in the Proposal. Information submitted in support of Non-Prepriced Tasks includes, but is not limited to, the following:

1. Complete specifications and technical data, including task content, support drawings, task cost data, quality control and inspection requirements.
2. Work schedule.
3. Cost data will include a cost analysis report, establishing the basis for selecting the approach proposed for accomplishment of the task. Unless otherwise directed by the County, cost data will be submitted demonstrating that the Contractor sought and received three price quotes. The Contractor will provide an installed Unit Price (or demolition price if appropriate) which will include all costs required to accomplish the Non-Prepriced Task.

4. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor Performed Duties

A= The number of hours for each labor classification and hourly rates

B= Equipment costs (other than small tools)

C= Three independent quotes for all materials

**Total Cost for self-performed work = (A+B+C) x Normal Hours Adjustment Factor or 1.15 (whichever is less)**

**(Only if A & B cannot be priced out of the CTC)**

5. For Work performed by Subcontractors:

If the Work is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the County's approval as to why three quotes cannot be submitted.

D = Subcontractor Costs (supported by three quotes)

**Total Costs of Non-Pre-Priced Task = D x Normal Hours Adjustment Factor or 1.15 (whichever is less)**

6. Following approval by the County of a Non-Prepriced Task, the Non-Prepriced Task Unit Price will be entered into the computer data base and fixed as a permanent prepriced task which will no longer require price justification.

7. The total extended price for the Non-Prepriced Task will be determined by multiplying the task Unit Price by the quantity required. The price offered in the Proposal will be determined by multiplying the total extended price by an Adjustment Factor of 1.00 (one).

8. The County's determination as to whether an item is a prepriced task or a Non-Prepriced Task is final, binding and conclusive as to the Contractor.

The Contractor's Proposal must include support documentation to indicate that adequate engineering and planning for the Job Order has been done, and that the tasks proposed are reasonable for the Work to be performed. Documentation to be submitted with the Proposal must include, but not be limited to:

1. Stamped & unstamped design drawings, calculations, specifications
2. Catalog cuts
3. Subcontractor and material supplier list
4. Construction schedule
5. Special Insurance
6. For special equipment a copy of the warranty document may be required.

Contractor's Proposal must be submitted by the date indicated on the RFP.

#### 5.12. Review of Proposal

The County reserves the right to reject a Proposal for any reason. The County also reserves the right not to issue a Job Order if that is determined to be in the best interests of the County to do so or if the proposed cost exceeds the County's estimate. In these instances, the Contractor has no entitlement to reimbursement for Proposal preparation expenses. The County may pursue the performance of any Work by other means.

By submitting a Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work for the price submitted. It is the Contractor's responsibility to include all necessary tasks and quantities in the Proposal.

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

#### 5.13. Issuance of the Job Order

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

The County may direct the Contractor to undertake and possibly complete urgent work prior to the issuance of a Job Order. The Contractor will be compensated in accordance with the provisions of this Contract.

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

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

5.15 The Gordian Group (TGG) JOC System License and Fee Agreement. Contractor upon award is required to enter into a JOC System License and Fee Agreement with TGG (See Exhibit 1).

## ARTICLE 6. CONTRACT ADMINISTRATION BY PROJECT MANAGER

6.01. No contractual relationship between Project Manager and Contractor. Nothing contained in the contract documents shall create any contractual relationship between the Project Manager and the Contractor or any subcontractor.

6.02. County's representative. The Project Manager will be the County's representative during construction and until final payment as provided in this Agreement. The Project Manager will have authority to act on behalf of the County to the extent provided in the contract documents, unless otherwise modified by written instrument which will be shown to the Contractor. The Project Manager will advise and consult with the County, and all of the County's instructions to the Contractor shall be issued through the Project Manager. As the County's representative, the Project Manager will provide general administration of the contract, including performance of the functions hereinafter described. In addition, the Project Manager will be the County's Representative for management of construction in the field. The Project Manager is responsible for managing the project schedule, budget, and has the authority to act on behalf of the County as relating to the management of these items.

6.03. Instructions issued through Project Manager. The County shall issue instructions to the Contractor through the Project Manager, provided that the County shall have the right, but not the obligation, to itself or through other project representatives issue supplemental job orders, require additional work and/or direct the omission of work previously ordered by written instructions directly to Contractor, provided such project representative and instructions have been prior approved in writing by the County.

6.04. Project Manager's access to work. The Project Manager shall at all times have access to the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Project Manager may perform their functions under the contract.

6.05. Determination of payments to Contractor. Based on observations and the Contractor's applications for payment, the Project Manager will determine the amounts owing to the Contractor and will issue certificates for payment in such amounts, as provided in Articles 18-21.

6.06. Decisions on artistic effect. The Project Manager's decisions in matters relating to artistic effect will be final if consistent with the intent of the contract documents.

6.07. Authority to reject work or to require special inspection or testing. The Project Manager may reject work, which does not conform to the contract documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of this contract, he may require special inspection or testing of the work in accordance with Article 11, whether or not such

work is then fabricated, installed, or completed. However, the Project Manager's authority to act under this paragraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall not give rise to any duty or responsibility of the Project Manager to the Contractor, any subcontractor, any of their agents or employees, or any other person performing any of the work.

6.08. Supplemental Job Orders prepared by Project Manager. The Project Manager will prepare Supplemental Job Orders and may order minor changes in the work in accordance with Article 15.

6.09. Inspections and document review. The Project Manager will: conduct inspections of the work (including a final inspection); receive and review written guarantees and related documents required by the contract and assembled by the Contractor; and issue a final certificate for payment.

## ARTICLE 7. SERVICES PROVIDED BY COUNTY.

7.01. Easements obtained by County. The County shall secure and pay for all easements, rights-of-way, and fee interests in land necessary to enable Contractor to complete the work.

7.02. Surveys provided by County. The County shall furnish all surveys describing the existing physical characteristics, legal limits, and utility locations for the site of the project. Unless specifically provided for in Detailed Scope of Work for the Job Order, the County shall not provide field engineering or construction staking.

7.03. Information and services provided by County. Information or services under the County's control shall be furnished by the County with reasonable promptness to avoid delay in the orderly progress of the work.

## ARTICLE 8. CONTRACTOR'S ADMINISTRATIVE DUTIES.

8.01. Review of contract documents for errors. The Contractor shall carefully study and compare the Detailed Scope of Work and shall, at once, report in writing to the Project Manager, any error, inconsistency, or omission he may discover. The Contractor shall not be liable to the County for any damage resulting from any such errors, inconsistencies, or omissions in the Detailed Scope of Work which were reported, in writing, by Contractor to the Project Manager provided no provisions herein shall relieve the Contractor from liability for errors, inconsistencies, or omissions which were known or reasonably should have been known to Contractor, which were not disclosed in writing to the Project Manager.

8.02. Taxes. Contractor shall pay all sales, consumer, use, and other similar taxes required by law.

8.03. Transportation and utility service. Contractor shall pay for all transportation and utility service not later than the 20th day of the calendar month following that in which such services are rendered.

8.04. Materials and equipment. Contractor shall pay for all materials, tools, and other expendable equipment to the extent of 95 percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the project site and the balance thereof not later than the 30th day following completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used.

8.05. Contractor's Personnel. The Contractor shall assign a full-time person as its representative for

this Contract. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. The Contractor shall also have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, the Contractor shall identify the Superintendent responsible for the Job Order. The Superintendent shall be reachable 24 hours a day, seven days a week. If the named Superintendent is not available because of illness or vacation or the like, the Contractor shall notify the County of a substitute Superintendent. At all times, the Contractor shall provide at least one Superintendent for every four Job Orders (1:4). Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full-time, dedicated Superintendent for a project, submit daily management, inspection, activity, and planning reports, substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$75 per hour for such effort.

Contractor shall at all times while Work is being performed at site, be represented on Site by a competent resident Superintendent authorized and competent to receive and carry out any instructions that County may give, and shall be liable for faithful observance of instructions delivered to Contractor. Said Superintendent shall not be replaced without County's express written consent. The Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor. Communications, instructions, or Drawings given to Contractor's representative shall be deemed to have been given to Contractor.

In the event that the designated Superintendent is unable to be present at the site, Contractor shall designate a substitute Superintendent, subject to County's approval, and shall obtain County's consent as to time and duration of any such substitution.

8.06. Contractor's responsibility for agents and employees. The Contractor shall be responsible to the County for the acts and omissions of all his employees and all subcontractors, their agents, and employees, and all other persons performing any of the work under a contract with the Contractor.

8.07. Communication through Project Manager. The Contractor shall forward all communications to the County through the Superintendent or Foreperson.

## ARTICLE 9. GENERAL PROVISIONS REGARDING CONDUCT OF WORK.

9.01. No work without a Job Order. The Contractor shall do no work without a Detailed Scope of Work as defined in a Job Order, except as otherwise directed by the contract documents.

9.02. Supervision and construction procedures. The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work under the contract.

9.03. Contractor's responsibility for labor, materials, and equipment. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work.

9.04. Conduct and skill of employees. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him. Any person in the employ of the Contractor whom the County may deem incompetent or unfit shall be dismissed from the work and shall not again be employed on it except with the written consent of the County.

9.05. Progress schedule. Contractor shall, with the Job Order Proposal, submit to the County a schedule for the Work. The schedule shall be a series of tasks representing the Contractor's plan for performing the Work including all activities both onsite and offsite, submittal due dates, submittal review periods, material purchasing, lead or fabrication times, a period for punch list and corrections, final inspection and approvals, and other events or activities having an effect on the progress or completion of the Work. For each task, the schedule shall show the duration, the starting and finish dates, predecessors, successors, and the average manpower and equipment planned. The schedule shall be submitted in bar chart and pert chart format and with a separate task list showing all data in spreadsheet format. No single task on the schedule may exceed two weeks in duration.

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

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

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

9.06. Plans and specifications at site. The Contractor shall maintain at the site for the County one copy of all approved Job Orders with the Detailed Scope of Work, including any related plans, Supplemental Job Orders, and other modifications, in good order and marked to record all changes made during construction. These shall be available to the Project Manager. A reproducible set of plans, marked to record all changes made during construction, shall be delivered to the Project Manager for the County upon completion of the work and prior to release of final payment.

9.07. Cutting and patching. The Contractor shall be responsible for any cutting, fitting, and patching that may be required to complete his work, except as otherwise specifically provided in the contract documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating, or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Project Manager.

9.08. Revision of operations. When, in the judgment of the County, it becomes necessary to accelerate the work, the Contractor when so ordered shall concentrate his forces at such points as directed and execute such portions of the work as may be required.

9.09. Damage to work and property on-site. All damage or loss to any property on or near the site caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, at his expense.

## ARTICLE 10. SEPARATE CONTRACTS ON SAME PROJECT.

10.01. County's right to award separate contracts. The County reserves the right to award other contracts in connection with other portions of the project.

10.02. Coordination among contractors. Contractor shall ascertain to his own satisfaction the scope of the project and the nature of any other contracts that have been or may be awarded by County in prosecution of the project, to the end that Contractor may perform this contract in light of such other contracts, if any. Nothing herein shall be interpreted as granting to Contractor exclusive occupancy at the site. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the project. If simultaneous execution of any contract for the project is likely to cause interference with the performance of some other contract or contracts, the County shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. County shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the project, or caused by any decision or omission of County respecting the order of precedence in performance of the contracts. Any delay in the progress of the work as a result of such priorities shall not give rise to any adjustments in the Job Order Sum and Contractor agrees that its sole right and remedy therefore shall be an extension of time.

10.03. Responsibility to other contractors. The Contractor shall afford other contractors on the same project reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his work with theirs.

10.04. Duty to inspect other contractor's work. If any part of the Contractor's work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Project Manager any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's work. Any work exhibiting unacceptable quality as defined by the contract documents will result in Contractor's payment (or a portion thereof) being withheld until the unacceptable work is corrected to meet the required quality standards, per Article 19 herein.

10.05. Damage to other contractor's work. Should the Contractor cause damage to the work or property of any separate contractor on the project, the Contractor shall, upon due notice settle with such other contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the County or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the County shall notify the Contractor who shall defend such proceedings and indemnify and hold harmless County.

10.06. Responsibility for costs caused by one contractor to another. Any costs to one contractor or his subcontractors on the project caused by defective or ill-timed work by another contractor or his subcontractors on the project shall be borne by the party responsible for such defective or ill-timed work.

10.07. County's right to settle disputes over cleanup. If a dispute arises between the separate contractors as to their responsibility for cleaning up under paragraph 13.02, the County may clean up and charge the cost thereof to the several contractors, as the County shall determine to be just.



## ARTICLE 11. TESTS.

11.01. Contractor's responsibility for required tests. If the contract documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any work to be inspected, tested, or approved, the Contractor shall give the Project Manager timely notice of its readiness and of the date arranged so the Project Manager may observe such inspection, testing, or approval. The County shall bear all costs of such inspections, tests, and approval, unless otherwise provided.

11.02. Responsibility for tests not anticipated in contract. If after the commencement of the work, the Project Manager determines that any work requires special inspection, testing, or approval which paragraph 11.01 does not include, he will, upon written authorization from the County, instruct the Contractor to order such special inspection, testing, or approval and the Contractor shall give notice as in paragraph 11.01. If such special inspection or testing reveals a failure of the work to comply (1) with the requirements of the contract documents or (2) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, then the Contractor shall bear all costs thereof, including the Project Manager's additional services made necessary by such failure; otherwise the County shall bear such costs, and an appropriate supplemental job order shall be issued.

11.03. Certificates of inspection. Required certificates of inspection, testing, or approval shall be secured by the Contractor and promptly delivered by him to the Project Manager.

11.04. Observation by Project Manager. If the Project Manager wishes to observe the inspections, tests, or approvals required by this Article 11, he will do so promptly and, where practicable, at the source of supply.

11.05. No waiver of Contractor's responsibility. Neither the observations of the Project Manager in their administration of the construction contract, nor inspections, tests, or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the work in accordance with the contract documents.

## ARTICLE 12. TIME FOR PERFORMANCE AND LIQUIDATED DAMAGES.

12.01. Time is of the essence. All time limits stated in the contract documents are of the essence of the contract.

12.02. Commencement and completion of work. Contract Time commences upon the written execution of the Contract by County and shall end either one year from the date signed by county or upon the payment by County to Contractor of the maximum amount payable under the Agreement, whichever occurs earlier. A separate Job Order Notice to Proceed will be issued for each Job Order. Each Job Order will specify a time limit for completion as stated on the Job Order Notice to Proceed. County will not issue any new Job Orders after the expiration of the Agreement. Any Job Order authorized prior to the expiration of the Agreement must be completed within the time specified in the Job Order. In the event the scheduled completion for any Job Order extends beyond the term of the Agreement, Contractor and County agree that the terms of the Agreement shall continue in effect and be applicable for such Job Orders.

12.03. Prosecution of work. Contractor shall prosecute the work diligently and expeditiously with adequate forces and shall complete it within the time specified in the Job Order.

12.04. Date of final completion. When the Contractor believes that his work is completed, he shall request that the Project Manager inspect the work and certify its completion. The Project Manager will respond promptly to such a request. The date of final completion of the work or any designated portion thereof is the date on which, after the Project Manager certifies that construction has been completed in accordance with the contract documents, the Notice of Completion is recorded.

12.05. Grounds for extension of time. The time for completion of the work shall be extended by Supplemental Job Order for such reasonable time as the Project Manager may determine if an extension of time is reasonably necessary due to a delay caused to the Contractor by any of the following circumstances:

- Sole act or sole negligence of the County, or any separate contractor employed by the County;
- Any Supplemental Job Order, which change is requested by County or which is not due to the act or negligence of Contractor.
- Any labor disputes, fire, unusual delay in transportation, unavoidable casualties, or causes beyond the Contractor's control and which Contractor could not reasonably have foreseen or made reasonable provisions for, and which are not caused by or the continuance of which is not due to, any act or failure to act on behalf of Contractor; or
- Any other cause which the Project Manager determines may justify the delay.

12.06. Extensions of time due to failure to furnish interpretation. No extension of time shall be allowed for delay caused by the Project Manager's failure to promptly provide an interpretation of the contract, except in the following circumstances:

- The Project Manager failed to provide the interpretation for over fifteen days after demand was made for such interpretation, and it would be reasonable to extend time due to such failure; or
- The parties have agreed upon a schedule for the provision of interpretations, the Project Manager failed to comply with that schedule, and it would be reasonable to extend time due to such failure.

12.07. Claims for extension of time. Notwithstanding the provisions of Section 12.05 and 12.06 above, none of the causes of delay described therein shall be deemed a valid excuse for Contractor's failure to start, perform, or complete the work, or any portion thereof, on time unless Contractor has notified the Project Manager, in writing, of the alleged cause of delay within five (5) days after commencement of the cause of the delay. Should the County disagree with Contractor that the alleged delay warrants an extension of time for the performance of any act required hereunder, the Contractor shall notify the County, in writing, as provided in Article 30; provided that the Contractor shall proceed with the work during the period that the Project Manager and Contractor seek to resolve the matter.

12.08. Liquidated damages. County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss, if all or any part of the Work is not completed within the time specified in the Job Order, plus any extensions thereof. , Accordingly, County and Contractor agree that liquidated damages for delay will be established by County for each Job Order. Contractor shall pay County the dollar amount stipulated in the Job Order for each day that expires after the time specified therein for contractor to achieve Completion. ;.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by County resulting from delay in completion of the Work.

Liquidated damages for delay shall only cover project administrative (such as Project management and

consultant expenses) and cost damages suffered by County as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from County (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

12.09. Removal or relocation of main or trunk line utility facilities. The Contractor shall not be assessed for liquidated damages for delay in completion of the Job Order, when such delay was caused by the failure of the County or a utility company to provide for removal or relocation of existing main or trunk line utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been arranged, Contractor shall promptly notify the County and the utility company in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunk line utility facilities, or to provide for their removal or relocation. In accordance with Government Code section 4215, if the Contractor while performing the contract discovers any existing main or trunk line utility facilities not identified by the County in the contract plans or specifications, he shall immediately notify the Project Manager and utility in writing. The utility, where it is the owner of the facilities, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the Job Order necessarily idled during such work. Such compensation shall be in accordance with the Supplemental Job Orders. . Conversely, Contractor shall not be compensated for the costs of locating, repairing damage and removing or relocating such utility facilities which is due to the failure of the Contractor to exercise reasonable care. In such an event, Contractor shall not be credited for nor given an extension of time for equipment on the Job Order necessarily idled during such work necessitated by Contractor's failure to exercise reasonable care.

### ARTICLE 13. USE OF SITE.

13.01. Limit of operations. The Contractor shall confine his apparatus, the storage of materials, and the operations of his workers to limits indicated on the plans, or by law, ordinances, permits, or directions of the Project Manager and shall not unreasonably occupy the premises with his materials. Insofar as possible, the Contractor shall arrange his work and its progress to prevent any interference with the operations of the existing facilities. All utilities must be protected and connections made to utilities so as not to interrupt service.

13.02 Site Cleanup. All construction materials, equipment and debris shall be removed from the staging area at the close of each business day. Equipment and tools are to be properly and securely stored where the work is underway or taken away at the end of each business day. All existing equipment that must remain due to size is to be covered for the evening and the covering removed prior to the opening of the next business day. All debris will be picked up and properly disposed of at the end of each business day. No debris will be stored in the building. All debris containers will be covered to prevent the wind and/or vandals from scattering refuse.

13.03 Site Restoration. All lawn, landscaping, pavement, and trees are to be protected from construction equipment and/or vehicles. Any compaction, gouging, tearing, removal, or dislocation of the existing lawn or trees that occurs during the staging and construction process is to be restored to pre-construction quality. Contractor's lay down area shall be restored back to original condition at completion of work activities.

13.04. Use of Utilities. Unless otherwise noted, all utilities, including, but not limited to, electricity, water, gas, and telephone, used on the work shall be furnished and paid for by Contractor. Contractor shall furnish and install temporary distribution systems, including meters, if necessary, from distribution points to points on-site where utility is necessary to carry on the work. Upon completion of the work, Contractor shall remove all temporary distribution systems. If this contract is for an addition to an existing facility, Contractor may, with the written permission of the County, use County's existing utilities by making prearranged payments to County for utilities used by Contractor for construction.

13.05 Utility Shut Down. Disruption of Service. Contractor shall notify the County's representative, in writing, two (2) workdays in advance of any disruption of service, e.g., fire suppression, electrical, water, and the Contractor shall not proceed with the work without written authorization from the County's representative.

13.06. Metering devices. For the purpose of providing utility service to the Job Order, Contractor may install or cause to be installed metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. If any such metering device or equipment is installed, contractor shall advise County as to the owner of such device or equipment.

13.07 Material Safety Data Sheets (MSDS). MSDS sheets are required on-site for all materials used in the job.

#### ARTICLE 14. MATERIALS.

14.01. Materials provided by Contractor. Except as otherwise expressly stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within the specified time. It should be noted that the County has a "Local Preference Policy" and provisions should be made to comply with policy in the purchase of materials to complete the scope of work as outlined in the job order. See the following link for the details of the policy:  
<http://www.in.co.monterey.ca.us/admin/policies.htm>

14.02. Quality of materials. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.

14.03. Provision and storage of materials. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract. All stored items shall be inventoried, specified by identification numbers (if applicable), released to County by sureties of the Contractor, and, if stored offsite, stored only in a reputable bonded warehouse.

14.04. Substitution of materials. Whenever in the specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by the name of the manufacturer, such specification shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal," and Contractor may, unless otherwise stated, offer any material, process, or article which shall in every respect be

substantially equal to or better than that specified. The burden of proof as to equality of any material, process, or article shall rest with Contractor. Contractor shall submit any request for substitution, together with any substantiating data. These provisions authorizing submission of "or equal" justification data shall not in any way authorize an extension of time for performance of this contract. In the event Contractor-furnished material, processes, or articles that are more expensive than those specified, the difference in cost so furnished shall be borne by Contractor. Requests for substitution of products, materials, or processes other than those specified must be accompanied by evidence whether or not the proposed substitution: (1) is equal in quality and serviceability to the specified item; (2) will entail changes in detail and construction of related work; (3) will be acceptable in consideration of the required design and artistic effect; (4) will not provide a cost disadvantage to County. Contractor shall promptly provide, upon request, any other information that may be required of it to assist the County in determining whether the proposed substitution is acceptable. The final decision shall be that of the County. County's approval shall be in writing, and shall be required for the use of a proposed substitute material. County may condition its approval of the substitution upon delivery to County of an extended warranty or other assurances of adequate performance of the substitution.

## ARTICLE 15. SUPPLEMENTAL JOB ORDERS

15.01 Supplemental Job Orders. The County, without invalidating the Contract and without consent of surety, may accomplish changes in the Work within the general scope of the Job Order and the Contract consisting of additions, deletions or other revisions, the Job Order Sum and the Job Order Time being equitably adjusted accordingly. All such changes in the Work shall be accomplished by Supplemental Job Order, Field Order, or County's Instructions as may be applicable in accordance with the provisions herein. The Job Order Sum and the Job Order Time may be changed only by a Supplemental Job Order. Changes to the Work shall be performed under the applicable provision of the Contract Documents for similar Work. Contractor agrees to promptly proceed with the Work as so changed.

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

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

The issuance of the Supplemental Job Order indicates the final and conclusive acceptance of the stated terms and provisions as full compensation for the change to the Job Order. In the event the County and Contractor do not agree upon the adjustment to the Job Order Sum and Job Order Time the County

may issue a Supplemental Job Order unilaterally. A Supplemental Job Order issued unilaterally is signed by the County and issued to the Contractor authorizing an adjustment in the Job Order Amount and Job Order Time as the County deems equitable per the Contract Documents.

If Contractor is in disagreement with the terms or provisions of a unilaterally issued Supplemental Job Order, the Contractor shall give the County written notice of his disagreement, the basis thereof, and supporting documentation within twenty (20) calendar days of receiving the unilateral Supplemental Job Order. Such notice of disagreement does not excuse performance by the Contractor of all obligations under the Contract Documents and the Contractor shall proceed with the Work including the Work involved with the disagreement. Payments shall be made to the Contractor on the basis of the unilateral Supplemental Job Order. Failure to present such notice of disagreement constitutes a waiver by the Contractor of any entitlement to additional cost or time.

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

Prior to submitting for final estimate, a balancing Supplemental Job Order adjusting quantities to reflect those actually used during construction will be issued.

15.02. Signatures on Supplemental Job Orders. A Supplemental Job Order shall be in writing and shall be signed by the County's Project Manager. Except as otherwise provided herein, the Supplemental Job Order shall also be signed by the Contractor in order to be effective, indicating the Contractor's consent to the changes made.

15.03. Determining credits for Supplemental Job Order. Credit Job Orders and Tasks shall be calculated at the pre-set unit prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Price Proposal.

## ARTICLE 16. UNCOVERING AND CORRECTION OF WORK.

### 16.01. Uncovering of work.

(a) If any work is covered contrary to the request of the Project Manager, it must, at the request of the Project Manager, be uncovered for his observation and replaced at the Contractor's expense.

(b) The Project Manager may ask to see any other work that has been covered prior to its inspection by the Project Manager, and the Contractor shall uncover the work. If such work is found to be in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate supplemental job order, be charged to the County. If such work is found not to be in accordance with the contract documents, the Contractor shall pay such costs unless it is found that a separate contractor caused this condition, and, in that event, the County shall be responsible for the payment of such costs.

### 16.02. Correction of work.

(a) The Contractor shall promptly correct all work rejected by the Project Manager as defective or as failing to conform to the contract documents whether observed before or after substantial completion and whether or not fabricated, installed, or completed. The Contractor shall bear all cost of correcting such rejected work, including the cost of the Project Manager's additional services made necessary thereby.

(b) All such defective or non-conforming work shall be removed from the site if necessary, and the work shall be corrected to comply with the Detailed Scope of Work without cost to the County.

(c) The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

16.03. Contractor's failure to remove defective work. If the Contractor does not remove such defective or non-conforming work within a reasonable time fixed by written notice from the Project Manager, the County may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the County may upon ten (10) additional days' written notice sell such work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for additional architectural services. If such proceeds of sale do not cover all costs, which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate unilateral Supplemental Job Order shall be issued. Such unilateral Supplemental Job Order shall not require the Contractor's consent to be effective. Said amount may be deducted from any payment thereafter due to the Contractor under this or any other contract with County. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

16.04. Contractor's failure to correct defective work. If the Contractor fails to correct such defective or non-conforming work, the County may correct it in accordance with paragraph 31.02.

16.05. Acceptance of defective or non-conforming work. If the County prefers to accept defective or non-conforming work, it may do so instead of requiring its removal and correction, in which case a Supplemental Job Order will be issued to reflect an appropriate reduction in the contract sum, or, if the amount is determined after final payment, it shall be paid by the Contractor. The issuance of the final certificate, final payment, or any provisions in the contract documents shall not relieve Contractor of responsibility for faulty materials, equipment, or workmanship. Contractor shall remedy any defects due to, and pay for any damage to, other work in accordance with the applicable guaranty or warranty provisions of the Contract Documents.

16.06. Emergency corrective action by County. If, in the opinion of the County, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the County or third parties or to prevent interruption of operations of the County or third parties, the County will attempt to give notice to Contractor. If Contractor cannot be contacted promptly or does not comply with the County's request for correction within a reasonable time as determined by the County, the County may, notwithstanding the provisions of this contract, proceed to make such correction or provide such attention, and the costs of such correction or attention shall be charged against the Contractor. Such action by the County shall not relieve Contractor of any warranty obligations provided in this contract.

### **PART III. SAFETY.**

#### **ARTICLE 17. PROTECTION OF PERSONS AND PROPERTY.**

17.01. Contractor's responsibility for safety. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable

protection to prevent damage, injury, or loss to:

- All employees on the work and all other persons who may be affected thereby;
- All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody, or control of the Contractor or any subcontractor; and
- Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

17.02. Compliance with safety requirements. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. He shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities.

17.03. Trench safety. For all trenches to be made in connection with the work, the contractor shall submit a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trenches. If such plan varies from the shoring system standards, a registered civil or structural engineer shall prepare the plan. The plan shall be reviewed, and must receive approval as adequate to protect worker safety, by the County or by a registered civil or structural engineer employed by the County, in advance of excavation. The shoring, sloping, or protective system must be at least as effective as that required by the Construction Safety Orders. See Labor Code section 6705.

17.04. Hazardous substance. The term "hazardous substance" means any substance on the list of hazardous substances established by the Director of Industrial Relations pursuant to the Labor Code section 6382, which includes asbestos, lead, toxic chemicals, contaminants, any substance designated by the Environmental Protection Agency as a hazardous substance, and other pollutants and contaminants.

If Contractor encounters on the property any substance reasonably believed to be a Hazardous Substance that has not been rendered harmless, i.e., not potentially hazardous to human health, Contractor shall immediately stop work in the area affected and report the condition to the County Project Manager in writing.

Neither the Contractor nor any subcontractor shall cause or permit any Hazardous Substance to be brought upon the property or used in the work without the prior written consent of the County. Contractor and each subcontractor shall comply with all laws regarding the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation, or disposal of Hazardous Substances brought onto the property by Contractor, its Subcontractors, and/or their personnel.

Any handling, treatment, removal, decontamination, cleanup, transportation, disposal, or disturbance in any of Hazardous Substances shall only be performed by the Contractor or any subcontractor licensed and certified to perform the work. Any hazardous substance abatement or remediation work will be performed in such a way that is legally consistent with the recommendations of the certified County agent, appropriate governmental agencies, and all applicable laws.

If there is a Hazardous Substance on the property, Contractor shall protect adjoining property and shall



provide barricades, temporary fences, and covered walkways required to protect the health and safety of passersby as required by this Agreement, prudent construction practices, and all applicable laws.

17.05. Contractor's safety monitor. The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the County.

17.06. Unsafe loading. The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

17.07. Emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 15 for changes in the work.

17.08. Accidents. Contractor shall promptly report in writing to the County all accidents whatsoever arising out of, or in connection with the performance of the work, whether on or off the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, Contractor shall report the accident immediately to the Project Manager by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the County giving full details of the accident.

## **PART IV. PAYMENTS.**

### **ARTICLE 18. PROGRESS PAYMENTS.**

The County will make one payment for all Job Orders that have a Job Order completion time of 30 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the County may make progress payments to the Contractor. The progress payment will be made each calendar month on the basis of ninety-five percent (95%) of the value of the work performed. The final payment will be withheld for 35 days after the recordation of the notice of completion. Upon the Contractor's request and agreement to substitute securities for the withheld funds, monies withheld from progress payments by the County to ensure performance under the contract may be released in accordance with Public Contract Code section 22300 and the contract documents.

The Contractor shall submit to the County an application for payment consisting of a Certificate of Payment, a calculation of completed Work based on the approved payment breakdown and, if required by County, receipts, releases, or other evidence showing the Contractor's payments for materials, labor, Subcontractors, and any such information as the County may require. Payment shall not be owed if the application does not conform to these requirements.

Payment for materials stored on site which have not been permanently incorporated into the Work is at the discretion of the County. Payment for materials stored off-site, whether or not specially fabricated for the Job Order, can be made only when payment for such materials has been previously approved by the County and shown on the approved payment breakdown and such payment shall be conditional upon submission by the Contractor of a Bill of Sale in a form acceptable to the County or other such evidence as is required by the County to establish the County's title to such material. All materials stored off-site shall be stored in a bonded warehouse at no additional expense to the County.

The Contractor shall present the application for payment, as required herein, to the Project Manager, if

applicable, for approval. Project Manager will review and adjust the Certificate of payment to such amount as he decides is properly due. In determining to issue a certificate of payment, the Project Manager must make the following findings, based on his observations at the site, the schedule of values, and the data included in the application for payments:

- That the work has progressed to the point indicated;
- That, to the best of his knowledge, information, and belief, the quality of the work is in accordance with the job order; and
- That the Contractor is entitled to payment in the amount certified.

The County will retain 5 percent of the amount of each payment due the Contractor until 35 days after the recordation of the notice of completion.

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

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

#### ARTICLE 19. WITHHOLDING PAYMENTS.

19.01. Grounds for withholding payment. The Project Manager may decline to approve an application for payment and may withhold his certificate as to all or part of the payment amount requested, to the extent reasonably necessary to protect the County. The Project Manager may also decline to approve payment, in whole or in part, and, based on subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any certificate for payment previously issued, to such extent as may be necessary in his opinion to protect the County. Such withholding of the certificate or of any amounts requested by Contractor in connection with the certificate may be based on any of the following grounds:

- Defective work not remedied;
- Third-party claims filed or reasonable evidence indicating probable filing of such claim;
- Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment;
- Reasonable doubt that the work can be completed for the unpaid balance of the contract sum;
- Damage to another contractor;
- Reasonable indication that the work will not be completed within the contract time;
- Unsatisfactory prosecution of the work by the Contractor;
- Stop notices filed for any portion of the work;
- Failure or refusal of the Contractor to fully comply with the contract requirements; or
- Contractor's failure to comply within a reasonable time with Article 17 of these conditions.
- Not submitting records for local employment of Monterey Bay Area residents.

19.02. Application of withheld amounts. County may apply any such withheld amounts to payment of such claims or obligations, in County's sole discretion. In so doing, County shall be deemed the agent of Contractor and any payment so made by County shall be considered as a payment made under contract by County to Contractor. County shall not be liable to Contractor for any such payments made

in good faith. Such payments may be made without prior judicial determination of such claim or obligation. County will render to Contractor a proper accounting of any funds so disbursed on behalf of Contractor.

19.03. Payment when grounds removed. When the above grounds for withholding payment are removed by Contractor or by County, payment of the withheld amounts or the remaining balance thereof shall be made to Contractor.

## ARTICLE 20. COMPLETION AND FINAL PAYMENT.

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

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

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

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

20.02. Bond for outstanding claims or liens. If any person refuses to furnish a release or waiver required by the County, the Contractor may furnish a bond satisfactory to the County to indemnify and defend the County against any claim that might be made against the County or any lien that might be placed against the work on account of such person. If any such claim or lien remains unsatisfied after all payments are made, the Contractor or the surety shall pay to the County all monies that the County may be compelled to pay in discharging such claim or lien, including all costs and reasonable attorneys' fees.

20.03. Inspection and final certificate. Upon receipt of the above documents, the Project Manager will promptly inspect the work. The Project Manager shall issue a certificate for final payment, with copies to both County and Contractor, if he makes the following findings:

- That the work is acceptable under the Job Order;
- That the Detailed Scope of Work has been fully performed;
- That to the best of his knowledge, information, and belief, and on the basis of his observations and inspections, the work has been completed in accordance with the terms and conditions of the Job Order;
- That all potential liens or claims for subcontractors' services and for labor, equipment, and materials on the work have been satisfied or adequately secured;
- That the balance noted in the final certificate is due and payable; and
- That all necessary approvals of applicable federal, state, or local agencies and/or authorities have been issued.

20.04. Determination not to issue certificate for final payment. If the Project Manager determines that the necessary findings cannot be made to issue a final certificate, the Project Manager shall promptly

notify the Contractor, in writing, of the reasons for such determination. Contractor shall promptly thereafter take appropriate steps to remove the grounds for denial of the final certificate.

20.05. Acceptance by Director of Public Works. Promptly after the Project Manager issues the certificate for final payment, the matter will be submitted to the Director of Public Works for final acceptance of the work. Work on the contract shall be deemed complete when Notice of Completion is filed with the County Records Office. .

20.06. Effect of final payment as to County. The making of the final payment by the County to Contractor hereunder shall not constitute a waiver of any claims which County may now or hereafter have against Contractor by reason of this Agreement or any other matter related to the work.

20.07 Effect of final payment as to Contractor. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

## ARTICLE 21. ALTERNATIVE PAYMENT OF WITHHELD FUNDS.

21.01. Alternatives to withholding. This contract requires a five percent (5%) withholding from progress payments. Progress payments shall not be made in excess of 95 percent of the actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the County, and unused. County shall withhold five (5) percent from the progress payments until 35 days after the recordation of notice of completion. At the Contractor's request, the County shall make payment of these funds withheld from progress payments through the use of the escrow procedures provided in this paragraph and either paragraph 21.02 or 21.03. As a prerequisite to compliance with paragraph 21.02 or 21.03, the Contractor shall select an escrow agent, who shall be the County Auditor-Controller or any state or federally chartered bank in California; the parties shall enter into an escrow agreement meeting the requirements of Public Contract Code Section 22300; and the parties shall deposit with the escrow agent the escrow agreement, the withheld portions of the progress payments that have accrued before opening of the escrow, all future withheld portions as they accrue, and all other deposits required below. The Contractor shall pay all expenses incurred in implementing the procedures set forth herein.

21.02. Alternative one: substitution of securities for withheld funds. At the Contractor's request, eligible securities provided by the Contractor, equivalent to the amount withheld, shall be deposited with the escrow agent, who shall then pay the withheld monies to the Contractor. After the initial deposits and disbursements, the County shall deposit all additional amounts to be withheld with the escrow agent as they accrue, and if the Contractor desires their release, the Contractor shall increase the amount of the securities on deposit, if necessary, in order that the value of the securities on deposit shall equal or exceed the total of all amounts currently and previously authorized to be withheld under the contract without the substitution of securities. Upon satisfaction of that condition, the escrow agent shall immediately pay the additional withheld amounts to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

21.03. Alternative two: investment of withheld funds. Alternatively, the Contractor may direct that the withheld funds deposited in the escrow be invested in eligible securities. Upon satisfactory completion of the contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the County. The Contractor shall pay to each subcontractor, not later than 20 days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to ensure the performance of the Contractor.

21.04. Eligible securities: interest. Securities eligible to be used under the above paragraphs shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the County. The parties must agree upon the value of the securities, as a condition of their deposit in the escrow. The Contractor shall be the beneficial owner of any securities deposited pursuant to this Article 21 and shall receive any interest thereon. The Contractor may withdraw interest earned on securities held in escrow at any time, without notice to the County.

21.05. Inapplicability of Article 21 to certain contracts. The provisions of this Article 21 shall not apply to contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.) and where federal regulations or policies, or both, do not allow the substitution of securities.

## **PART V. EMPLOYMENT PRACTICES.**

### **ARTICLE 22. APPRENTICES.**

22.01. Compliance with Labor Code apprenticeship requirements. Contractor and all subcontractors shall comply with the provisions of Labor Code sections 1777.5, 1777.6, and 1777.7, when applicable, pertaining to apprentices, and with all applicable regulations there under (Title 8, Calif. Code of Regulations, sections 200 et seq., especially sections 227 et seq.), including, but not limited to, provisions relating to required or permitted ratios of apprentices to experienced workers. When any question exists concerning these requirements, Contractor and/or any subcontractor concerned should contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices, prior to commencement of work. The prime contractor is responsible for ensuring compliance with this section.

22.02. State policy. It is State policy to encourage the employment and training of apprentices on public works contracts in conformity with standards set by law. The County further encourages the use of apprentices in the Monterey Bay Area as defined by 5.08.120 of the Monterey County Code.

### **ARTICLE 23. NON-DISCRIMINATION PROVISIONS.**

23.01. Non-discrimination in employment practices. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Contractor and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

23.02. "Discrimination" defined. As used in this contract, the term "discrimination" includes, but is not limited to, the illegal denial of equal employment opportunity, harassment (including sexual harassment and violent harassment), disparate treatment, favoritism, subjection to unfair or unequal working conditions, and/or any other prohibited discriminatory practice. The term also includes any act or retaliation.

23.03. Application of Monterey County Code, Chapter 2.80. The provisions of Monterey County Code, Title 2, Chapter 2.80, apply to activities conducted pursuant to this contract. Contractor and its

officers and employees, in their actions under this contract, are agents of the County within the meaning of Chapter 2.80, and are responsible for ensuring that their workplace and the services that they provide are free from discrimination, as required by Chapter 2.80. Complaints of discrimination made by Contractor, subcontractor(s), or any of their employees or agents against the County may be investigated and resolved using the procedures established by Chapter 2.80. Contractor shall establish and follow its own written procedures for the prompt and fair resolution of discrimination complaints made against Contractor by its own employees, agents and third parties, and shall provide a copy of such procedures to County upon demand by County.

23.04. Compliance with laws. During the performance of this agreement, Contractor shall comply with all applicable federal, state, and local laws and regulations, which prohibit discrimination, including, but not limited to, the following:

- California Labor Code section 1735;
- California Fair Employment and Housing Act, Government Code sections 12900 et seq., and the administrative regulations issued thereunder, Title 2 California Code of Regulations, sections 7285.0 et seq. (Division 4 - Fair Employment and Housing Commission);
- California Government Code sections 11135 - 11139.5 (Title 2, Div. 3, Part 1, Chap.1, Art. 9.5) and any applicable administrative regulations issued thereunder;
- Federal Civil Rights Acts of 1964 and 1991 (see especially Title VII, 42 USC sections 2000d et seq.), as amended, and all administrative rules and regulations issued thereunder (see especially 45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;
- The Rehabilitation Act of 1973, sections 503 and 504 (29 USC sections 793 and 794), as amended; all requirements imposed by the applicable HHS regulations (45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;
- Americans With Disabilities Act of 1990 (P.L. 101- 336), as amended, 42 USC sections 12101 et seq., and 47 USC sections 225 and 611, and any federal regulations issued pursuant thereto (see 24 CFR Chapter 1; 28 CFR Parts 35 and 36; 29 CFR Parts 1602, 1627 and 1630; and 36 CFR Part 1191);
- Unruh Civil Rights Act, California Civil Code sections 51 et seq.; and
- Monterey County Code, Title 2, Chapter 2.80, as amended and procedures issued pursuant thereto.

23.05. Written assurances. Upon request by County, Contractor will give any written assurances of compliance with the Civil Rights Acts of 1964 and 1991, as amended, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990, as amended, and/or Executive Order 11246, as may be required by the federal government in connection with this contract, pursuant to 45 CFR Sec. 80.4 or 45 CFR Sec. 84.5 or other applicable state or federal regulations.

23.06. Written non-discrimination policy. Contractor shall maintain a written statement of its non-discrimination policies, which shall be consistent with the terms of this agreement. Such statement shall be available to Contractor's employees, the County, County's officers and employees, and members of the public, upon request.

23.07. Notice to labor unions. Contractor shall give written notice of its obligations under paragraphs 23.01 - 23.09 to labor organizations with which it has a collective bargaining or other agreement.

23.08. Access to records by government agencies. Contractor shall permit access by County and by representatives of the California Department of Fair Employment and Housing and the U.S. Equal Employment Opportunity Commission, and any federal and/or state agency providing funds for this contract upon reasonable notice at any time during normal business hours, but in no case on less than 24-hour notice, to such of its books, records, accounts, facilities, and other sources of information as

the inspecting party may deem appropriate to ascertain compliance with these non-discrimination provisions.

23.09. Binding on subcontractors. The provisions of paragraphs 23.01 - 23.09 shall also apply to all of Contractor's subcontractors. Contractor shall include the non-discrimination and compliance provisions of these paragraphs in all subcontracts to perform work or provide services under this agreement.

#### ARTICLE 24. INTENTIONALLY LEFT BLANK

#### ARTICLE 25. PREVAILING WAGES.

25.01. Prevailing wage rates determined. The Director of the California Department of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which said public work is to be performed for each craft, classification, or type of worker needed to execute the contract in accordance with Labor Code sections 1770-75. Copies of the prevailing rate of per diem wages are on file and shall be made available to any interested party on request in the RMA-Public Works' office/168 W Alisal St FL2/Salinas CA 93901-2438. Current prevailing wage rate schedules can also be found at the California Department of Industrial Relations website located at <http://www.dir.ca.gov/DLSR/PWD/>.

25.02. Payment of prevailing wage rates required. Contractor and all subcontractors performing work under this contract shall pay wages to their workers employed on such work at not less than the general prevailing rate of per diem wages for such work, as required by Labor Code Sec. 1771.

25.03. Penalties. Failure to pay such prevailing wages shall subject the employer to the penalties set forth in Labor Code Sec. 1775.

#### ARTICLE 26. PAYROLL RECORDS.

26.01. Compliance with Labor Code Sec. 1776. Contractor and all subcontractors shall comply with Labor Code Sec. 1776, the requirements of which are set forth in this article. The Contractor shall be responsible for compliance with these provisions by his subcontractors.

26.02. Accurate payroll records required. Contractor and each subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker, or other employee employed by him or her in connection with the public work.

26.03. Certification and inspection of payroll records. The payroll records enumerated under paragraph 26.02 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor or subcontractor on the following basis:

(a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

(b) A certified copy of all payroll records enumerated in paragraph 26.02 shall be made available for inspection, or furnished upon request, to a representative of County, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations.

(c) A certified copy of all payroll records enumerated in paragraph 26.02 shall be made available upon request to the public for inspection or copies thereof made; provided however, that a request by the public shall be made through the County, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of the Contractor.

26.04. Filing of records. The Contractor and each subcontractor shall file a certified copy of the records enumerated in paragraph 26.02 with the entity that requested such records within ten (10) days after receipt of a written request.

26.05. Elimination of personal identification. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or subcontractor awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the Federal Labor Management Cooperation Act of 1978 (29USC 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number.

26.06. Notice to County concerning location of records. The Contractor and each subcontractor shall inform the County as to the location of the records enumerated under paragraph 26.02, including the street address, city, and county, and shall within five (5) workdays, provide a notice of any change of location and address.

26.07. Notice of non-compliance; penalties. In the event of non-compliance with the requirements of this section, the Contractor or subcontractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor or subcontractor must comply with this section. Should non-compliance still be evident after such 10-day period, the Contractor or subcontractor shall, as a penalty to the County, forfeit \$25 for each calendar day, or portion thereof, for each worker, until strict compliance is effected. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

## **PART VI. LEGAL RELATIONS.**

### **ARTICLE 27. COMPLIANCE WITH LAWS.**

27.01. Compliance with laws. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work. If the Contractor observes that any part of the Detailed Scope of Work are at variance therewith in any respect, he shall promptly notify the Project Manager, in writing, and any necessary changes shall be adjusted by appropriate modification. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Project Manager, he shall assume full responsibility therefore, and shall bear all costs attributable thereto. Without limitation of any other provision hereof, if Contractor performs any work which is contrary to such laws, ordinances, codes, rules and regulations, Contractor shall without additional reimbursement or extension of time make all changes and bear all costs as required to comply.



27.02. Rules of governing agencies. All work and materials shall be in full accordance with the Rules and Regulations of the State Fire Marshall, the Safety Orders of the Division of Industrial Safety, and all other applicable codes and regulations.

27.03. Compliance with uniform codes. All work and materials shall comply with the current editions of the California Building Code, the National Electric Code, the Uniform Plumbing Code, the Uniform Mechanical Code, and the Uniform Administrative Code, as adopted and amended by the local jurisdiction in which the Job Order takes place.

27.04. Statutory regulation of public works. This contract is subject to all statutes of the State of California regulating the performance of work by a public agency or political subdivision of such state, and particularly the following:

- Public Contract Code sections 4100-4114 (Subletting and Subcontracting Fair Practices Act).
- Labor Code sections 1720-1743 (Public Works, Scope and Operation).
- Labor Code sections 1770-1781 (Public Works, Wages).
- Labor Code sections 1810-1815 (Public Works, Working Hours).

All work performed under this contract, whether by Contractor or by any subcontractor, shall comply with all such statutes.

27.05. Compliance with Clean Air and Clean Water Acts. Contractor and all subcontractors shall comply with the federal Clean Air Act (42 USC sections 1857 et seq. and sections 7401 et seq.) and with the federal Clean Water Act (33 USC sections 1251 et seq.) and all other applicable federal air and water pollution control rules and regulations.

27.06. Federally funded contracts. If the Job Order for which the work under this contract is to be performed is funded in whole or in part by grants or loans from the federal government, the Contractor and all subcontractors shall comply with regulations adopted by the U.S. Secretary of Labor pursuant to 40 USC section 276c and with all other statutes, rules, and regulations that are applicable because of such federal funding.

27.07. Kickbacks and illegal withholdings of pay. Contractor and all subcontractors shall comply with the provisions of Labor Code sections 221 and 222, which prohibit kickbacks and withholdings from employee wages.

27.08. Illegal fees. Contractor and all subcontractors shall comply with the provisions of Labor Code sections 1778, 1779, and 1780, which prohibit the taking of any portion of the wages of workers employed on public works projects and the collection of certain fees from workers employed on public works projects and from applicants for such employment.

27.09. Provisions required by law deemed inserted. Each and every provision required by law to be inserted in this contract shall be deemed to be inserted herein, and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not set forth word for word in the contract documents, or is not correctly set forth, then upon the application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

27.10. Good-faith effort to employ Monterey Bay Area residents. For all provisions of the Good- faith

effort to employ Monterey Bay area residents, see Information for Bidders, Division 00200, number 15, and Contractor's Certification of Good-Faith Effort to Employ Monterey Bay Area Residents.

#### ARTICLE 28. PERFORMANCE AND PAYMENT BONDS.

28.01. Required bonds and amounts. The Contractor shall furnish an initial payment bond and a performance bond each in the amount of \$2,000,000. If the aggregate of Job Orders issued under the contract exceeds \$2 Million, an increase in the Payment and Performance bonds will be required in an amount of not less than 100 percent (100%) of the Maximum Contract Value (\$4,550,000), which bond shall remain in force for the duration and until completion of any outstanding Job Order. At no time may the sum of the issued Job Orders exceed the amount of the Payment and Performance bonds. The Contractor shall provide a letter from the bonding company stating their ability to obtain Payment and Performance Bonds for the Maximum Contract Value. Both the Performance Bond and the Payment Bond must be executed by an admitted surety insurer. The form of these bonds shall be as set forth in these contract documents.

#### ARTICLE 29. INDEMNIFICATION AND INSURANCE.

29.01. Indemnification. Contractor shall indemnify, defend, and hold harmless the 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 the Contractor's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "Contractor's performance" includes Contractor's action or inaction and the action or inaction of Contractor's officers, employees, agents, and subcontractors.

29.02. 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 a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the County Contracts/Purchasing division, with a copy provided to the RMA-Public Works, unless otherwise directed. The Contractor shall not receive Job Orders under this Agreement until it has obtained all insurance required and such; insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

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

#### 29.04. General Insurance Requirements.

Attention is directed to Section 7-1.06 "Insurance," of the California Department of Transportation (Caltrans) Standard Specifications and these General Conditions.

In addition to all the requirements in Section 7-1.06D(2) of the Standard Specifications incorporated herein by this reference, the following additional requirements shall be met. An Additional Insured Endorsement to the Contractor's Liability insurance policy naming the County of Monterey, their officers, agents, and employees as additional insureds in the form approved by the County of Monterey shall also be furnished. A copy of the approved endorsement form may be obtained from the County of Monterey at the address to obtain bid packages as shown in the Notice to Contractors. The insurance afforded to the additional insureds is primary insurance and if the additional insureds have other insurance that might be applicable to any loss, the amount of this insurance shall not be reduced or prorated due to the existence of such other insurance.

The contractor's insurer agrees to waive subrogation claims against the County of Monterey, their officers, agents, and employees.

Evidence of insurance (Contractual Liability insurance and Additional Insured Endorsement) in compliance with the requirements herein shall be furnished to the County of Monterey by the Contractor with the Certificate of Insurance in the form as approved by the County of Monterey. A copy of the approved certificate form may be obtained from the County of Monterey at the address to obtain bid packages as shown in the Notice to Contractors.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the State of California or County of Monterey from taking such other actions as is available to them under any other provision of this contract (except retainage of money due to the Contractor) or otherwise in law.

Nothing in the contract is intended to create the public or any member thereof a third-party beneficiary hereunder, nor is any term and condition or other provision of the contract intended to establish a standard of care owed to the public or any member thereof.

**29.05. Other insurance requirements.** All insurance required by this Agreement shall be with a company acceptable to the County 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 (3) years following the date Contractor completes its performance of services under this Agreement.

Each liability policy shall provide that the County 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 and additional insureds 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 form 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 form for Automobile Additional***

Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, Contractor shall file certificates of insurance with the County Contracts/Purchasing Division and RMA-Public Works, 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. Additionally, Contractor shall provide certificates for subcontractors of any tier in compliance with these provisions. 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 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 County, annual certificates to County Contracts/Purchasing Division and RMA-Public Works. If the certificate is not received by the expiration date, County 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 County, at its sole discretion, to terminate this Agreement immediately.

29.06. Acknowledgment of workers' compensation requirements. As required by Labor Code section 1861, the Contractor and each subcontractor shall, before commencing work on the Job Order, sign and file with the County, the following certificate:

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

29.07. Compliance. In the event of the failure of Contractor to furnish and maintain any insurance required by this Section, County shall have the right to take out and maintain such insurance for and in the name of the Contractor. Contractor shall pay the cost thereof and shall furnish all information necessary to obtain and maintain such insurance for the account of Contractor. County shall also have the right to set off the costs of obtaining and maintaining such insurance against any amounts due Contractor under the Contract Documents. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same contained in this Article 29 shall not relieve Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify each of the Indemnities.

29.08. Application of Insurance Proceeds.

(a) In the event of any damage to or destruction of the work from any cause insured against by the insurance required under this Article 29, or any other insurance obtained by Contractor or any other source, County may, in its sole discretion, either (i) require Contractor to repair any such damage or destruction and reconstruct the work in accordance with the contract documents, or (ii) terminate the Contract and Contractor shall have no claim arising out of such termination. In the event the work is repaired or reconstructed, appropriate adjustments, if any, in the amount of the contract price or for the time of completion of the work shall be made by supplemental job order. County shall be given credit against any amount due Contractor under the contract documents for the amount of any insurance proceeds collected by Contractor to the extent such proceeds cover costs otherwise payable by County

under the contract documents. In the event that County decides not to restore or reconstruct the work and terminates the contract, Contractor shall receive from the insurance proceeds all amounts due Contractor under the Contract for that portion of the work completed as of the date of the event of damage or destruction.

(b) In the event of any damage to or destruction of the work (i) not due to or arising out of the fault or neglect of Contractor or any subcontractor and (ii) from a cause not insured against by the insurance required under this Article 29, County may, at its sole discretion, either (i) require Contractor to repair any such damage or destruction and reconstruct the work in accordance with the Contract Documents, or (ii) terminate the Contract. In the event County decides not to restore or reconstruct the work in accordance with the Contract Documents and cause termination of the Contract, Contractor shall have no claim arising out of such termination. In the event that work is repaired or reconstructed, appropriate adjustments, if any, in the amount of the contract price and for the time of completion of the work shall be made by supplemental job order. County shall be given credit against any amount due Contractor under the contract documents to the extent insurance proceeds payable to Contractor cover costs otherwise payable by County under the contract documents. In the event that County decides not to restore or reconstruct the work and causes termination of the contract, County shall pay Contractor, as its sole compensation, all amounts due under the Contract Documents for the portion of the work completed as of the date of the event of damage or destruction. Contractor shall be solely responsible for and shall, without cost or expense to County, promptly and with all due diligence, restore and reconstruct any uninsured loss or damage to the work which occurs as a result of any fault or neglect of the Contractor or any subcontractor. This obligation is in addition to County's remedies under the Contract Documents or by law.

#### ARTICLE 30. CLAIMS AND DISPUTE RESOLUTION.

30.01. Prompt resolution of differences required. It is the intention of this Article that differences between the parties arising under and by virtue of the contract be brought to the attention of the Project Manager at the earliest possible time in order that such matters may be promptly settled, if possible, or other appropriate action may be taken promptly.

#### 30.02. Contract interpretations, performance judging, and decisions by PM.

(a) All claims may be presented informally first to the Project Manager. To the extent that resolution of the claim does not involve an extension of time or additional payments, the Project Manager may resolve, in writing, or otherwise, claims that have been presented informally.

(b) The Project Manager will be, in the first instance, the interpreter of the requirements of the contract documents and the judge of the performance thereunder by both the County and Contractor. The Project Manager will, within a reasonable time, render such interpretations, as he may deem necessary for the proper execution or progress of the work. Claims, disputes and other matters in question between the Contractor and the County relating to the execution or progress of the work or the interpretation of the Detailed Scope of Work shall be referred initially to the Project Manager for decision which he will render, in writing, within a reasonable time. In his capacity as interpreter and judge, he will exercise his best efforts to ensure faithful performance by both the County and the Contractor and will not show partiality to either. All interpretations and decisions of the Project Manager shall be consistent with the intent of the Detailed Scope of Work.

30.03. Written notice to Project Manager. Any claim for additional compensation or for an extension of time shall be resolved as hereinafter provided. The Contractor shall not be entitled to

the payment of any additional compensation for any occurrence or matter relating to this contract and will not be granted any extension of time for performance under this contract, unless the Contractor first gives written notice of such claim to the Project Manager.

30.04. Contents of notice of claim. The written notice of claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, the reasons for any extension of time, and, insofar as possible, the amount of the claim and the amount of any time extension requested.

30.05. Time for giving notice. The notice of claim must be given to the Project Manager as follows:

(a) If the claim is for an increase in the contract sum, he shall give the Project Manager written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim; in addition, this notice shall be given by the Contractor before proceeding to execute the portion of the work to which the claim relates, except in an emergency endangering life or property, and except where the Contractor could not reasonably have discovered the facts giving rise to the claim prior to commencement of that portion of the work.

(b) All claims for extension of time shall be made, in writing, to the Project Manager no more than five (5) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one claim is necessary.

(c) In all other cases, notice shall be given within ten (10) days after the happening of the event, thing, or occurrence giving rise to the claim.

30.06. Response by County - claims for under \$50,000 and for extensions of time. For claims of less than \$50,000 and for claims for extension of time, County shall respond, in writing, to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims the County may have against the claimant. If further information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2(b)(2). The County's response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

30.07. Response by County - claims of \$50,000 or more and less than or equal to \$375,000. For claims of \$50,000 or more and less than or equal to \$375,000, and for all claims not covered by paragraph 30.04, County shall respond, in writing, to any written claim within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims the County may have against the claimant. If further information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2(c)(2). The County's response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

30.08. Prompt response when needed. Whenever it appears that a prompt response is essential, County will respond to claims sooner than the limits prescribed above.

30.09. County's response disputed or not made. If the claimant disputes the County's written response, or if the County fails to respond within the time prescribed, the claimant may so notify the County, in writing, either within 15 days of receipt of the County's response or within 15 days of the County's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the County shall schedule a meet-and-confer conference within 30 days for settlement of the dispute.

30.10. Filing of Government Code claims. If the claimant still remains unsatisfied and desires to preserve his right to pursue the matter further, he must then file a claim with the County, pursuant to Government Code sections 900 et seq. or sections 910 et seq.

30.11. Civil action. If the Government Code claim is denied, the claimant may file an action in court. Such action shall be subject to Public Contract Code section 20104.4. This paragraph applies only to claims subject to Public Contract Code section 20104. If a claim is not subject to Public Contract Code section 20104, the claimant's right to file a civil action shall be as otherwise provided by law.

30.12. Claims for damages. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents, or others for whose acts he is legally liable, claim shall be made, in writing, to such other party within a reasonable time after the first observance of such injury or damage, provided that in no case may such a claim be filed after expiration of any applicable statute of limitations for filing such a claim. Claims against County that are subject to this paragraph shall comply with all procedures set forth in the California Government Code concerning claims against public entities.

30.13. Consistency with Public Contract Code sections 20104 et seq. If any claim arising under this contract is subject to the provisions of Public Contract Code sections 20104 et seq. (Div. 2, Part 3, Chapter 1, Article 1.5), and if the provisions of that Article require a procedure or procedural element different from that established in this contract, then the provisions of that Article shall apply in place of the conflicting procedure or procedural element established herein.

## ARTICLE 31. DEFAULT AND TERMINATION OF THE CONTRACT.

31.01. County's right to stop work on Individual Job Orders. If the Contractor fails to correct defective work or fails to supply materials or equipment in accordance with the Detailed Scope of Work, the County may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated.

31.02. County's rights on Contractor's default on Individual Job Orders. If the Contractor fails to prosecute the Job Order diligently or fails to perform any provision of the Detailed Scope of Work, the County may, after seven (7) days' written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies. In such case, any appropriate unilateral Supplemental Job Order shall be issued deducting from the payments then or thereafter due the Contractor, the cost of correcting such deficiencies, and other County Contractors' additional services made necessary by such default. Such unilateral Supplemental Job Order shall not require the consent of the Contractor to be effective. The Project Manager must approve both such action and the amount charged to the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

31.03. County's Right to Terminate Contract for Cause.

(a) The County may terminate the performance of the Contractor under this contract, without prejudice to any other right or remedy the County may have, in the manner hereinafter provided, upon certification by the Project Manager that the following circumstances have arisen:

1. The Contractor is adjudged bankrupt, or makes a general assignment for the benefit of his creditors, or a receiver is appointed on account of his insolvency (except as provided in (e) below);
2. The Contractor refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workers or proper materials;
3. The Contractor fails to make prompt payment to subcontractors, to suppliers of materials or equipment, or to employees;
4. The Contractor disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
5. The Contractor otherwise is guilty of a substantial violation of the contract.

(b) To terminate the performance of the Contractor, County shall first give ten days' written notice to Contractor and his surety, if any, stating County's intent to terminate the performance of the Contractor unless within ten days the grounds for such termination have been removed, and giving his reasons therefor.

(c) If within ten days the grounds for termination are not removed, County may immediately terminate the performance of the Contractor and shall promptly serve notice of termination on the Contractor and the surety. The surety shall have the right to take over and perform the contract, provided that, within fifteen days after service upon it of said notice of termination, the surety must first give written notice to County that it intends to take over and perform the contract, and within thirty days after service upon it of said notice of termination, the surety must commence performance of the contract. If surety fails to take either of these steps in a timely manner, County may immediately take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the Contractor and may finish the work by whatever method it may deem expedient.

(d) If within ten (10) days of County's notice of intent to terminate, the grounds for termination are not removed, the Contractor shall not be entitled to receive any further payment until the work is finished. If, upon completion of the work by County, the unpaid balance of the contract sum exceeds the costs of finishing the work (including compensation for additional architectural, managerial, and administrative services), such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor or his surety shall pay the difference to the County. The costs incurred by the County as herein provided shall be certified by the Project Manager.

(e) Notwithstanding the foregoing, performance of the Contractor under this contract may not be terminated, and the contract may not be modified, where a trustee in bankruptcy has assumed the contract pursuant to 11 U.S.C. Sec. 365.

#### 31.04. Contractor's Right to Terminate Contract.

(a) The Contractor may, upon seven days' written notice to the County and the Project Manager, terminate the contract if the work is stopped for a period of forty-five days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the



Contractor or a subcontractor or their agents or employees or any other person performing any of the work under a contract with the Contractor.

(b) To terminate the contract, the Contractor must give written notice to County of such termination, stating the reasons therefor.

(c) The Contractor may then recover from the County payment for all work executed.

#### 31.05. County's Right to Terminate Contract for Convenience.

(a) The County reserves the right to terminate this Contract or any Job Order at any time, whenever the County shall determine that termination is in the best interest of the County. Contractor shall be compensated on the basis of the reasonable value of the portion of work completed as prorated against the Job Order sum or shown as a separate price and the cost incurred for portions of the work performed but not completed. The total payments to contractor shall not exceed the Job Order sum amount(s). Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the County, Contractor shall:

1. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. assign to County all the right, title, and interests of Contractor under the orders and subcontracts so terminated, in which case Contractor shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontractors if so directed by County;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, subject to the approval of the County;
6. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
7. take such action as may be necessary, or as County may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which County has, or may acquire, an interest.

(c) After receipt of a Notice of Termination, the Contractor shall submit to County a verified termination claim. Such claim shall be submitted promptly, but in no event later than 30 days from effective date of termination, unless one or more extensions, in writing, are granted by the County upon request of Contractor made, in writing, within such period or authorized extension of the period.

#### ARTICLE 32. WARRANTIES.

32.01. Warranty as to all work. The Contractor shall guarantee all work performed under this

contract against defective materials or workmanship for a period of one year from the date of recordation of the notice of completion, or for such longer time period as may be prescribed by law or by the terms of any applicable special guarantee required by the Job Order. The Contractor shall remedy any defects appearing within that time period and pay for any damage resulting therefrom.

32.02. Repair of defective work. Contractor shall, within a reasonable time but in no case longer than fifteen (15) days after receipt of written notice thereof, repair and/or replace any defects in materials or workmanship which may develop during said one-year period and any damage resulting from the repairing or replacing of such defects at his own expense and without cost to County. In the event Contractor fails to remedy any such defect within such reasonable time, County may proceed to have such defects remedied at Contractor's expense, and Contractor shall pay the costs and charges incurred thereby and any other damages of County. Nothing contained in this paragraph shall operate to relieve Contractor from responsibility after one year from the date of final acceptance of the completed work by County as regards damages resulting from defects, both latent and patent, departures from the requirements of the contract, fraud, or such other gross mistakes as amount to fraud, and Contractor shall indemnify, defend, and save County harmless from and against liability, loss, or damage arising by reason of any and all such matters. Contractor shall transfer to County all guarantees and warranties on equipment included within the Job Order which Contractor receives from material suppliers and subcontractors. Neither acceptance nor payment nor any provision in these documents shall be deemed a waiver by County nor relieve Contractor of any responsibility under the contract. Notwithstanding the above, failure by the Contractor to take corrective action within 24 hours after personal or telephonic notice by County on items affecting use of facility, safety, or the preservation of property, will result in the County taking whatever correction action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's performance bond.

32.03. Title free of liens at time of each progress payment. The Contractor warrants and guarantees that title to all work, materials, and equipment covered by an application for payment, whether incorporated into the Job Order or not, will pass to the County upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests, or encumbrances.

32.04. Warranty as to liens. No materials, supplies, or equipment for work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all materials, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by him, to County free from claims, liens, or charges. Contractor further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any work covered by this contract shall have any right to any lien upon the premises or any improvement or appurtenance thereon. Nothing contained in this article, however, shall defeat or impair the right of persons furnishing material or labor under any bond given the Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in the hands of the County, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

32.05. Other Warranties. In addition to the warranties in the Contract Documents, Contractor shall assign to all assignable warranties it obtains from manufacturers or suppliers with respect to any materials, equipment, or fixtures incorporated into the work, but the assignment shall not relieve Contractor of any of its guaranties or obligations. Contractor's guaranties and the Contract

Documents shall not act as a bar to Contractor's liability for any third-party claim against Contractor, and are in addition to, not exclusive of, Contractor's other obligations under the Contract Documents, including, without limitation, Contractor's obligation to indemnify and defend County

32.06. No Limitations. Nothing in this Article 32 shall be construed to establish a period of limitation with respect to any latent or patent defects in the work or claims or liabilities arising therefrom. The establishment of time periods relates only to the specific obligation of Contractor to correct or cause correction of the work, and has no relationship to the time within which its obligation to comply with the contract documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations under the contract documents or in connection with the work.

## **PART VII. MISCELLANEOUS.**

### **ARTICLE 33. MISCELLANEOUS PROVISIONS.**

33.01. State audits. If this contract involves the expenditure of public funds in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor of the State of California for a period of three (3) years after final payment under the contract, as required by Government Code Sec. 8546.7. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

33.02. Governing law. The contract shall be governed by the law of the State of California.

33.03. No assignment. Neither party to the contract shall assign the contract without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the County. Should any money due or to become due under this contract be assigned, it shall be subject to a prior lien for services rendered or material supplied for performance of work under this contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code.

33.04. Binding on successors and assigns. The County and Contractor each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the contract documents.

33.05. Notices. All notices required or permitted to be given under this contract shall be in writing and shall be deemed to have been duly served (a) when delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or (b) 48 hours after the notice is placed in the U.S. mail, properly addressed to the party to whom the notice is to be delivered, for mailing by registered or certified mail, with postage thereon fully prepaid. The proper address shall be that previously specified in writing by the proposed recipient as the address for mailing notice, or, if none, then the last business address for the recipient known to the person giving the notice.

33.06. Contractual rights and remedies not exclusive. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies, otherwise imposed or available by law,

except as otherwise specified herein.

33.07. Assignment of anti-trust causes of action. The Contractor and all subcontractors are bound by Public Contract Code section 7103.5, which provides as follows: "In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC section 15) or under the Cartwright Act (Chapter 2, commencing with section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties."

33.08. Royalties and patents. The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the County harmless from loss on account thereof, except that the County shall be responsible for all such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process, or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the County.

33.09. Prohibited interests. No official of County who is authorized in such capacity and on behalf of County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the project, shall become directly or indirectly interested financially in this contract or in any part thereof. No officer, employee, architect, attorney, engineer, consultant, or inspector of or for County who is authorized in such capacity and on behalf of County to exercise any executive supervisory or other similar functions in connection with construction of the project shall become directly or indirectly interested financially in this contract or in any part thereof.

33.10. No continuing waiver. A waiver of rights by County or Contractor in one instance hereunder does not constitute a waiver of rights in any similar instance thereafter.

33.11. Taxable possessory interest. The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.



## JOC System License and Fee Agreement

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_ and between **[Insert Contractor's Full Legal Name]**, whose address is **[Insert Contractor's Legal Address]** ("Contractor"), and The Gordian Group, Inc., whose address is 140 Bridges Road, Suite E, Mauldin, South Carolina 29662 ("Gordian").

WHEREAS, **[Insert Owner's Full Legal Name]** ("Owner") has awarded Contract No. **[Insert Number]** ("Contract") to the Contractor.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and Owner ("Owner Contract"), Gordian has agreed to provide Contractor with a license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, the parties agree to the terms and conditions of the following JOC System License and Contractor License Fee ("Agreement"):

Gordian hereby grants to Contractor, and Contractor hereby accepts from Gordian for the term of the Contract, or the term of the Owner Contract, whichever is shorter, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Contractor's responsibilities under the Contract ("Limited Purpose"). Contractor hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog®, training materials, and any other proprietary materials provided to Contractor by Gordian. In the event the Contract expires or terminates, or the Owner Contract expires or terminates, this JOC System License shall terminate and Contractor shall return all Proprietary Information in its possession to Gordian.

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

In accordance with the terms of the Contract, Contractor hereby agrees to pay Gordian a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document issued to Contractor by Owner pursuant to the Contract. Contractor further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Contractor's receipt of each Job Order, Purchase Order or other similar purchasing document from the Owner. Contractor shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month. In the event a modification to an issued Job Order results in a reduction of the value of the Job Order, Gordian shall issue a



credit to Contractor only when the applicable license fee credit is greater than or equal to \$25.00.

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

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

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

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Contract, the Owner Contract, or any Job Order, Purchase Order or similar purchasing document issued to Contractor by Owner, this Agreement shall take precedence.

**[Insert Contractor's Full Legal Name]**

**The Gordian Group, Inc.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Ammon T. Leshner

Title: \_\_\_\_\_

Title: Vice President of Legal Affairs

**ACKNOWLEDGMENT OF [Contractor]**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ and the document was executed by the above named \_\_\_\_\_ of his/her own free will.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above