

AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR

This AGREEMENT is made this ____ day of _____, in the County of Monterey, State of California, by and between: the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and The Gordian Group, Inc., 140 Bridges Road, Suite E, Mauldin, South Carolina 29662, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, the COUNTY wishes to enter into this AGREEMENT for the CONTRACTOR to provide Job Order Contracting Services; and

WHEREAS, COUNTY is authorized to enter into all contracts which relate to matters under its jurisdiction; and

WHEREAS, CONTRACTOR represents and warrants that it has the expertise and capabilities necessary to provide the services requested by COUNTY as set forth under this AGREEMENT; and

NOW THEREFORE, COUNTY and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

1.1 After consideration and evaluation of the CONTRACTOR's proposal, the COUNTY hereby engages CONTRACTOR to provide the services set forth in this AGREEMENT on the terms and conditions contained herein. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

CONTRACTOR's Proposal dated February 28, 2013,
AGREEMENT
Certificate of Insurance
Additional Insured Endorsements

1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT, CONTRACTOR's Proposal, Certificate of Insurance, and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the COUNTY, or immediate family of an employee of the COUNTY.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use COUNTY premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

CONTRACTOR agrees to perform the services provided for in Appendix-A, "Services to be Provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein.

CONTRACTOR agrees to provide the COUNTY with the CONTRACTOR's JOC Complete Solution[®]. CONTRACTOR's JOC Complete Solution[®] is a turnkey procurement approach which tailors Job Order Contracting components to form a unique, comprehensive and high-performing "complete" JOC program. The CONTRACTOR's proposed JOC Complete Solution[®] shall include all of the products and services provided for by the CONTRACTOR's standard JOC Solution and, **in addition, CONTRACTOR shall provide the COUNTY with project managers to assist with developing Job Orders from project identification to issuing the Job Order.**

3.0 TERM OF AGREEMENT

- 3.1 The term of the AGREEMENT shall commence with the signing of the AGREEMENT through and including April 1, 2016.
- 3.2 If COUNTY exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions in writing.

- 3.3 COUNTY reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.
- 3.4 In the event the funding amount specified in Section 4.4 below is expended prior to the expiration of this Agreement and additional funding is not provided, then this Agreement shall terminate.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR agrees to implement a JOC program for the COUNTY and provide a license to the CONTRACTOR's proprietary JOC system without any up-front cost to the COUNTY.
- 4.2 The agreed to license fee, as set forth in Appendix B, Calculation of Charges, shall be paid to the CONTRACTOR when a Job Order is issued to the JOC contractor by the COUNTY and an approved invoice is submitted by the CONTRACTOR to the COUNTY.
- 4.3 Payments shall be made in monthly payments on or before the last day of each month for the percentage of the value of work ordered through the JOC program, as set forth in Appendix B of this AGREEMENT, that the COUNTY contract manager, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month.
- 4.4 In no event shall the amount of this entire AGREEMENT over the five (5) year term exceed Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000), with a maximum amount of Four Hundred Fifty Thousand Dollars (\$450,000) per fiscal year. The breakdown of costs associated with this AGREEMENT appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.
- 4.5 No charges shall be incurred under this AGREEMENT nor shall any payments become due to CONTRACTOR until reports, services, or both, required under this AGREEMENT are received from CONTRACTOR and approved by the appropriate COUNTY agent, in accordance with the terms of this AGREEMENT.
- 4.6 COUNTY may withhold payment to CONTRACTOR in any instance in which CONTRACTOR has failed or refused to satisfy any material obligation provided for under this AGREEMENT. In no event shall COUNTY be liable for interest or late charges for any late payments.
- 4.7 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.

- 4.8 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.9 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from COUNTY in writing.
- 4.10 Tax:
- 4.10.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.10.2 COUNTY is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The COUNTY is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the requesting COUNTY department at the address provided at the execution of services. CONTRACTOR and COUNTY both agree that there may be a number of multiple billing addresses associated with this AGREEMENT; and that it is the responsibility of the CONTRACTOR to ensure that they have been provided the proper billing information from the appropriate COUNTY department at the time of the service request.
- 5.2 CONTRACTOR shall reference the JOC AGREEMENT number on all invoices submitted to COUNTY. CONTRACTOR shall submit such invoices at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. COUNTY shall certify the invoice, either in the requested amount or in such other amount as COUNTY approves in conformity with this AGREEMENT, and shall promptly submit such invoice to COUNTY Auditor-Controller for payment. COUNTY Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by COUNTY. Surcharges and additional fees not included in this AGREEMENT must be approved by COUNTY in writing via an Amendment.

6.0 GUARANTEED MAXIMUM COSTS

The COUNTY's obligation hereunder shall not at any time exceed the amount approved by the COUNTY for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the COUNTY are not authorized to request, and the COUNTY is not required to reimburse the CONTRACTOR for, services beyond the agreed upon AGREEMENT scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the COUNTY are not authorized to offer or promise, nor is the COUNTY required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the AGREEMENT is certified without certification of the additional amount by the COUNTY. The COUNTY is not authorized to make payments on any AGREEMENT for which funds have not been certified as available in the adopted budget or by supplemental appropriations.

6.0 STANDARD INDEMNIFICATION

6.1 CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, 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 CONTRACTOR upon request shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the COUNTY's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" for the work under this AGREEMENT

until it has obtained all insurance required and such insurance has been approved by COUNTY. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

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

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

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

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

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

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

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to COUNTY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 7.4.2 Each liability policy shall provide that COUNTY shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for 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.
- 7.4.3 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.
- 7.4.4 Prior to the execution of this AGREEMENT by COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY's contract administrator and COUNTY's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 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's Contract Administrator and COUNTY's Contracts/Purchasing Division. If the certificate is not received by the expiration date, COUNTY shall notify CONTRACTOR and

CONTRACTOR shall have five 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.

8.0 LOCAL PREFERENCE POLICY

- 8.1 CONTRACTOR shall comply with the COUNTY's Local Preference Policy (*recently revised by COUNTY's Board of Supervisors in 2012*) which is online at: www.co.monterey.ca.us/admin/policies.htm

9.0 RECORDS AND CONFIDENTIALITY

- 9.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the COUNTY or prepared in connection with the performance of this AGREEMENT, unless COUNTY specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to COUNTY any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 9.2 COUNTY Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to COUNTY any COUNTY records which CONTRACTOR used or received from COUNTY to perform services under this AGREEMENT.
- 9.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and COUNTY rules and regulations related to services performed under this AGREEMENT.
- 9.4 Access to and Audit of Records: COUNTY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of COUNTY or as part of any audit of COUNTY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

10.0 NON-DISCRIMINATION

- 10.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 10.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 10.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

11.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 11.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of COUNTY. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 11.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.
- 11.3 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of COUNTY.
- 11.4 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in this AGREEMENT.

12.0 CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR's services under this AGREEMENT.

13.0 COMPLIANCE WITH APPLICABLE LAWS

- 13.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the project or the performance of the services or those engaged to perform services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the services.
- 13.2 CONTRACTOR shall report immediately to COUNTY's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the project of the performance of the services.
- 13.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

14.0 FORCE MAJEURE

"Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

15.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

In the case of default by CONTRACTOR, COUNTY may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR.

16.0 NON-APPROPRIATIONS CLAUSE

Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for COUNTY for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, COUNTY will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for COUNTY or are otherwise available for payments. To the extent permitted by law, this provision will not be construed so as to permit COUNTY to terminate this AGREEMENT in order to acquire or lease any other equipment or to allocate funds directly or indirectly to perform the same application and in the same manner for which the equipment is intended.

17.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to COUNTY's contract administrator or to CONTRACTOR's responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
Email: derrm@co.monterey.ca.us

TO CONTRACTOR:

David L. Mahler
The Gordian Group
140 Bridges Road, Suite E
Mauldin, South Carolina 29662
Tel. No.; (800) 874-2291
FAX No.: (864) 233-9100
Email: d.mahler@thegordiangroup.com

18.0 LEGAL DISPUTES

CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.

CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, the COUNTY and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

Contracts/Purchasing Officer

By: David L. Mahler

Signature of Chair, President, or Vice-President

Dated: _____

David L. Mahler, V.P., Contracting

Printed Name and Title

Approved as to Fiscal Provisions:

Dated: 3/12/13

Deputy Auditor/Controller

By: Roy E Kemper

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Dated: _____

~~RISK MANAGEMENT~~
~~Approved as to Liability Provisions:~~

~~COUNTY OF MONTEREY~~ By: _____

~~APPROVED AS TO INDEMNITY/~~

~~INSURANCE MANAGEMENT~~ _____

~~APPROVED AS TO INDEMNITY/~~

~~By:~~ _____

~~Date:~~ _____

Approved as to Form:

Cynthia J. Olson

Deputy County Counsel

Dated: 3-15-13

Roy E Kemper, Secretary

Printed Name and Title

Dated: 3/12/13

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

APPENDIX-A SERVICES TO BE PROVIDED BY CONTRACTOR

A.1 DESCRIPTION OF SERVICES:

A.1.1 This is an Appendix attached, and incorporated by reference in the AGREEMENT made on _____, 2013 County of Monterey, State of California, by and between: the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and The Gordian Group, 140 Bridges Road, Suite E, Mauldin, South Carolina 29662, hereinafter referred to as "CONTRACTOR." to provide Job Order Contract (hereinafter referred to as "JOC") Implementation Services within the COUNTY.

A.1.2 **CONTRACTOR shall provide all labor, material, equipment, services, software and supplies necessary to provide JOC implementation services as detailed below:**

A.1.2.1 Program Development, Implementation and Support: CONTRACTOR shall be responsible for the development, implementation and on-going support of the COUNTY's customized JOC program. CONTRACTOR is required to prepare for, and participate in informational meetings with representatives from the County of Monterey, County of Santa Cruz, and San Benito County Building Trades Councils, local unions and the construction community during the development of the bid book proposal documents; and

A.1.2.2 Contract Documents: CONTRACTOR shall be responsible for preparing the JOC documents that will be used by the COUNTY to procure the JOC construction contractors including:

A.1.2.2.1 Unit Price Book(s): CONTRACTOR shall prepare one or more customized Unit Price Books containing prices covering material, equipment and labor costs for various units of construction, and adjusting these costs to current market conditions. COUNTY will have access to the CONTRACTOR's pre-existing Construction Cost Database consisting of 260,000 items in order to select the construction tasks that will be included in the COUNTY's Unit Price Book. Only local prevailing wages and local material and equipment costs (obtained directly from local subcontractors and suppliers) to price the Unit Price Books shall be used.

The use of generic factors to localize prices is not acceptable. Unit prices for demolition shall be provided for each construction task. Therefore, every cost to install an item or unit shall be accompanied by a corresponding cost to remove the same item or unit. Tasks may also have several modifiers which adjust the price for variations in materials or for quantity discounts; and

A.1.2.2.2 Technical Specifications: CONTRACTOR shall prepare and publish Technical Specifications describing the materials, performance and installation requirements for each of the construction tasks listed in the unit price book. Where available, the COUNTY standard specifications shall be incorporated into the Technical Specifications; and

A.1.2.2.3 Contractual Terms and Conditions and Bid Forms: CONTRACTOR shall prepare, in conjunction with COUNTY staff, contractual terms and conditions and bid forms which incorporate JOC language and forms with all appropriate COUNTY contract language and forms.

A.1.2.3 Information Management System: CONTRACTOR shall be responsible for providing the COUNTY with a comprehensive web-based JOC Information Management System (hereinafter referred to as "IMS") for an unlimited number of COUNTY and JOC contractor users. The JOC IMS must be used currently by a minimum of three (3) similar clients and must be capable of providing full project tracking, developing cost proposals, preparing independent COUNTY estimates, generating all project documentation, providing project scheduling, budgeting and cost control, tracking LBE participation, and generating customized reports. CONTRACTOR must incorporate current COUNTY forms and documentation into the IMS; and

A.1.2.4 Procurement Support: CONTRACTOR shall be responsible for providing COUNTY with procurement support to market the COUNTY JOC Program to potential JOC contractors. CONTRACTOR shall be required to organize and conduct pre-bid meetings with the interested bidders as well as make presentations on behalf of the COUNTY with various business and contracting organizations. CONTRACTOR's staff assigned to perform procurement support must have extensive JOC procurement experience; and

- A.1.2.5 Training Programs: CONTRACTOR shall be responsible for developing and conducting all training programs for the COUNTY and JOC contractor staff to ensure that the JOC program functions properly. The training programs must include specialized training courses that will involve all parties utilizing and administering the JOC program. The training programs must include extensive training on the use of the JOC IMS. All training must be “hands on” with functional use and individual performance as the objective. Actual COUNTY projects that the County plans to perform through JOC must be included in the training programs; and
- A.1.2.6 Job Order Development: CONTRACTOR shall be responsible for providing the following Job Order Development services:
- A.1.2.6.1 Project Identification: When a project is identified, CONTRACTOR will contact COUNTY and assist with determining whether the project is appropriate for JOC.
 - A.1.2.6.2 Contractor Identification: In the event COUNTY has multiple JOC contractors, CONTRACTOR will assist the COUNTY in identifying the appropriate contractor for the project based on the type of work involved and the location of the project. CONTRACTOR will monitor the performance of each JOC contractor within the JOC program.
 - A.1.2.6.3 Joint Scope Meeting: Then CONTRACTOR’s project manager will quickly schedule a Joint Scope Meeting at the project site to help COUNTY and the JOC contractor agree on the details of the work that the JOC contractor will perform. The scoping process allows the JOC contractor to inspect the site and ask questions before submitting a Price Proposal. This upfront open communication eliminates the misunderstandings and mistakes that lead to most change orders and often results in more cost-effective collaborative solutions.
 - A.1.2.6.4 Develop Detailed Scope of Work: Next CONTRACTOR will assist in preparing a Detailed Scope of Work that describes the work the JOC contractor will perform. CONTRACTOR will also assist with resolving issues when project plans and actual conditions vary.
 - A.1.2.6.5 Request for Price Proposal: After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, CONTRACTOR’s project manager will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.

- A.1.2.6.6 Request Price Proposal: Next, the JOC contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Construction Task Catalog. CONTRACTOR's JOC software will automatically multiply the unit price of the task by the required quantities by the JOC contractor's competitively bid Adjustment Factor. The JOC contractor will also prepare additional COUNTY required information (e.g., construction schedule, list of proposed local subcontractors, etc.).
 - A.1.2.6.7 Price Proposal Review: Then, CONTRACTOR'S project manager will review the Price Proposal to make sure the JOC contractor has selected the appropriate tasks and quantities and will ask the JOC contractor to make any required changes. CONTRACTOR will also obtain and review any COUNTY required information submitted by the JOC contractor such as a construction schedule and list of proposed subcontractors. Then CONTRACTOR's project manager will submit the Price Proposal and related documents to COUNTY.
 - A.1.2.6.8 Issue Job Order: Once COUNTY is 100% satisfied with the Price Proposal and related documents, and decides to move forward with the project, COUNTY is then responsible for the issuance of a purchase order to the selected JOC contractor.
 - A.1.2.6.9 Construction Management: During construction, COUNTY will follow its standard internal policies and procedures for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or COUNTY desires to change the Detailed Scope of Work, a supplemental Job Order is developed in the same manner as the original Job Order.
- A.1.2.7 On-Going 24/7 Technical Support: CONTRACTOR shall be responsible for providing extensive on-going 24/7 technical support to the COUNTY. Expectations include, but not limited to assisting the COUNTY with program execution, analysis of task order proposals, troubleshooting and continuous system monitoring. On-going technical support shall include, but is not limited to providing updated contract documents, assisting with the procurement of additional JOC contractors, providing COUNTY with access to all updates and revisions to the IMS, and providing training for new COUNTY staff and JOC contractors during the term of the AGREEMENT. Providing on-going technical support is considered a vital component to ensuring a successful COUNTY JOC program.

A.2 REPORTS:

CONTRACTOR shall submit written reports as requested by the COUNTY. Format for the content of such reports shall be determined by the COUNTY. The timely submission of all reports is a necessary and material term and condition of this AGREEMENT. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

A.3 COUNTY LIAISON:

In performing the services provided for in this AGREEMENT, CONTRACTOR's liaison with the COUNTY will be:

**County of Monterey
Michael R. Derr- Contracts/Purchasing Officer
168 West Alisal Street, 3rd Floor
Salinas, CA 93901**

APPENDIX-B CALCULATION OF CHARGES

This is an Appendix attached to, and incorporated by reference within the AGREEMENT made on _____, 2013 County of Monterey, State of California, by and between: the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and The Gordian Group, 140 Bridges Road, Suite E, Mauldin, South Carolina 29662, hereinafter referred to as "CONTRACTOR for providing Job Order Contract Implementation Services for the COUNTY. CONTRACTOR agrees to implement a JOC program for COUNTY and provide a license to the CONTRACTOR's proprietary JOC system without any up-front cost. The below agreed to license fees shall be paid to the CONTRACTOR when a JOC contract is awarded by the COUNTY and an approved invoice is submitted by the CONTRACTOR to the COUNTY and approved by the COUNTY.

B.1 GENERAL:

B.1.1 For the complete and satisfactory performance of the services detailed in Appendix-A of this AGREEMENT, the COUNTY agrees to pay the following JOC Complete Solution[®] License Fee:

B.1.1.1 5.00% of the value of work ordered

B.1.1.2 The JOC Complete Solution[®] License Fee is payable when a Job Order is issued to the JOC contractor and is inclusive of all associated costs.

B.1.2 In the event the COUNTY elects to convert to the Gordian JOC Solution[™], the COUNTY agrees to pay the following License Fee:

B.1.2.1 5.00% of the first Eight Million Dollars (\$8,000,000) of work ordered, subject to a reduced License Fee of 1.95% for work ordered in excess of Eight Million Dollars (\$8,000,000) for each calendar month that work ordered during the preceding twelve (12) calendar months is at least Three Million Dollars (\$3,000,000). Credit for work ordered through the JOC Complete Solution[®] shall be applied to the Eight Million Dollar (\$8,000,000) tier.

B.1.2.2 The Gordian JOC Solution License Fee is payable when a Job Order is issued to the JOC contractor and is inclusive of all associated costs.

B.1.2.3 The Gordian JOC Solution[™] License Fee shall apply separately to the initial department, division, agency, etc. ("Department") and each additional Department that elects to implement an independent JOC program ("Independent JOC Program"). An Independent JOC Program is defined as a program that requires preparing Department specific JOC contract documents (i.e., Contract, General Conditions, Bid Documents, Construction Task Catalog[®] and Technical Specifications), preparing

Department specific Execution Procedures, procuring Department specific JOC contractors, providing access to eGordian® for Department specific staff and JOC contractors, or training Department specific staff and JOC contractors.

B.1.2.4 Each time an additional Department elects to implement an Independent JOC Program, each Department shall receive a One Million Dollar (\$1,000,000) discount to the Eight Million Dollar (\$8,000,000) tier, provided however, in no event shall the Eight Million Dollar (\$8,000,000) tier be reduced for any Department to less than the greater of Four Million Dollars (\$4,000,000) or the value of work ordered by the Department as of the date the additional Department issues the CONSULTANT a notice-to-proceed, purchase order or other similar purchasing document.

B.1.3 No charges shall be incurred under this AGREEMENT nor shall any payments become due to the CONTRACTOR until reports, services, or both required under this AGREEMENT are received from the CONTRACTOR and approved by the COUNTY as being in accordance with this AGREEMENT. In no event shall the COUNTY be liable for interest or late charges for any late payments.

B.1.4 Compensation for work performed under this AGREEMENT shall be on a “**Value of Work Ordered through the JOC Program as stated above**”.

B.2 METHOD OF PAYMENT:

B.2.1 Unless approved otherwise by the COUNTY, and as stated above, the CONTRACTOR’s services shall be invoiced on a monthly basis and payment shall be made within thirty (30) days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the COUNTY. As used herein, the term “invoice” shall include the CONTRACTOR’s bill or written request for payment under this AGREEMENT for services performed. All invoices shall be made in writing.

B.2.2 Unless approved otherwise by the COUNTY, the CONTRACTOR shall, within three (3) days after receipt of payment by the COUNTY specified in this AGREEMENT pay to all of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and any amounts due and payable to the CONTRACTOR by those subcontractors.

B.2.3 CONTRACTOR shall invoice for the Work performed in conformance with procedures approved by the COUNTY and the then current rate agreement:

B.2.3.1 Such invoices shall segregate current costs from previously invoiced costs; and

- B.2.3.2 Costs for individual labor shall be segregated by task and subtasks, if any; and
- B.2.3.3 Notwithstanding the above, in no case shall the CONTRACTOR invoice include costs which COUNTY has disallowed or otherwise indicated that it will not recognize.
- B.2.4 Such invoices shall be at a minimum, (i) mechanically accurate, (ii) substantially and properly supported with supporting documents and (iii) in compliance with CONTRACTOR's and subcontractors' generally accepted accounting principles.
- B.2.5 COUNTY reserves the right to withhold payment(s) otherwise due the CONTRACTOR in the event of the CONTRACTOR's material non-compliance with any of the provisions of this AGREEMENT, including, but not limited to, the requirements imposed upon the CONTRACTOR in Section 6, Indemnification, and Section 7, Insurance. The COUNTY shall provide notice of withholding, and may continue the withholding until the CONTRACTOR has provided evidence of compliance which is acceptable to the COUNTY.

APPENDIX-C JOC SYSTEM LICENSE

C.1 JOC SYSTEM LICENSE

CONTRACTOR hereby grants to the COUNTY, and the COUNTY hereby accepts from CONTRACTOR for the term of this AGREEMENT, a non-exclusive right, privilege and license to CONTRACTOR's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of operating the COUNTY's Job Order Contracting program.

- C.1.1 The parties hereby agree that Proprietary Information shall include, but is not limited to, CONTRACTOR's eGordian[®] software and support documentation, Construction Task Catalog[®] (also commonly referred to as a unit price book), training materials and other proprietary materials provided by CONTRACTOR. In the event this AGREEMENT expires or terminates as provided herein, this JOC System License shall terminate and the COUNTY shall return to CONTRACTOR all Proprietary Information in the COUNTY's possession.
- C.1.2 COUNTY acknowledges that disclosure of Proprietary Information will result in irreparable harm to CONTRACTOR for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of CONTRACTOR. The COUNTY further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of CONTRACTOR in the Proprietary Information during and after the term of this AGREEMENT and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the COUNTY, subject to federal and state laws related to public records disclosure and in connection to this AGREEMENT.
- C.1.3 Upon expiration or termination of this AGREEMENT as provided herein, CONTRACTOR shall provide all data generated by the COUNTY in a form accessible by a standard database program, such as Microsoft[®] Access[®].
- C.1.4 CONTRACTOR agrees to grant a license to each contractor that is awarded a JOC contract by the COUNTY, provided the JOC contractor pays CONTRACTOR's contractor license fee in effect when the COUNTY awards the contract and provided the COUNTY includes licensing language in the JOC contract similar in form to this JOC System License.
- C.1.5 In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this AGREEMENT or any purchase order or similar purchasing document issued by the COUNTY, this JOC System License shall take precedence.



February 28, 2013

Michael R. Derr
Contracts/Purchasing Officer
Monterey County
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

Re: Proposal to Provide the JOC Complete Solution[®]

Dear Mr. Derr:

The Gordian Group ("Gordian") is excited about the opportunity to implement our JOC Complete Solution for Monterey County ("County"). Our proposal to the County is as follows:

Scope of Services

Gordian will provide the staff necessary to properly develop, implement and support a JOC program for the County. In summary, Gordian's products and services for the County's JOC program will include a license to our proprietary JOC System, provision of a customized Construction Task Catalog[®] and Technical Specifications, development of the Execution Procedures that will be used to operate the County's JOC program, preparation of the contract documents that will be used to procure the County's JOC contractors (i.e., Contract, General Conditions and Bid Documents), assistance with procuring the JOC contractors, unlimited access to the eGordian[®] JOC information management application, assistance with developing Job Orders, and on-going technical support during the entire term of the contract.

A significant component of the JOC Complete Solution is the Job Order Development service we provide. For this service, Gordian project managers will perform the tasks necessary to take a project from the identification phase to Job Order issuance. Developing the Job Order is the most critical step in the JOC process for controlling costs because this is the step where it is determined that the owner is paying the correct competitively bid price for each project. It is very important that qualified project managers develop each and every Job Order. Many of our clients have determined that they need help with developing Job Orders and have elected to utilize the JOC Complete Solution. Some have chosen it because they lack staff capacity and others because they recognize the significant value of using Gordian's experienced, qualified, third-party project managers to develop Job Orders. Whatever the reason, we are confident that the JOC Complete Solution will enhance the County's JOC program internal control procedures, ensure the highest level of accountability and transparency, and bring the most economic benefit to the County with long term cost savings.

License Fees

Gordian's standard license fees ("License Fees") for our JOC solutions are comprised of two parts; a client paid License Fee and a contractor paid License Fee. The License Fees for our JOC solutions are as follows:

JOC Complete Solution – We propose the following License Fees to implement the JOC Complete Solution for the County:

County License Fee: 5.00% of the value of work ordered

Contractor License Fee: 1.00% of the value of work ordered

JOC Complete Solution License Fees are payable when a Job Order is issued to the JOC contractor and are inclusive of all associated costs.

Gordian JOC Solution™ – The County shall have the option to convert to a Gordian JOC Solution at any time. In the event the County elects this option, Gordian will train the County's project managers to develop Job Orders and the County will accept responsibility for developing Job Orders. The License Fees for the Gordian JOC Solution are as follows:

County License Fee: 5.00% of the first \$8,000,000 of work ordered, subject to a reduced License Fee of 1.95% for work ordered in excess of \$8,000,000 for each calendar month that work ordered during the preceding 12 calendar months is at least \$3,000,000. Credit for work ordered through the JOC Complete Solution will be applied to the \$8,000,000 tier.

Contractor License Fee: 1.00% of the value of work ordered

Gordian JOC Solution License Fees are payable when a Job Order is issued to the JOC contractor and are inclusive of all associated costs.

The Gordian JOC Solution License Fees shall apply separately to the initial department, division, agency, etc. ("Department") and each additional Department that elects to implement an independent JOC program ("Independent JOC Program"). An Independent JOC Program is defined as a program that requires preparing Department specific JOC contract documents (i.e., Contract, General Conditions, Bid Documents, Construction Task Catalog and Technical Specifications), preparing Department specific Execution Procedures, procuring Department specific JOC contractors, providing access to eGordian for Department specific staff and JOC contractors, or training Department specific staff and JOC contractors.

Each time an additional Department elects to implement an Independent JOC Program, each Department will receive a \$1,000,000 discount to the \$8,000,000 tier. However, in no event shall the \$8,000,000 tier be reduced for any Department to less than the greater of \$4,000,000 or the value of work previously ordered by the Department as of the date the additional Department issues Gordian a notice-to-proceed, purchase order or other similar purchasing document.

JOC System License

Gordian's JOC solutions are subject to our standard JOC System License. The following JOC System License shall apply to a contract between the County and Gordian:

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

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

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

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

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

The Gordian Group appreciates the opportunity to provide our JOC solutions to Monterey County. Please contact me at (800) 874-2291 or d.mahler@thegordiangroup.com if you have any questions about this proposal or if you would like to discuss it in more detail.

Sincerely,



David L. Mahler
Vice President, Contracts

Attachments

cc: Garrett Siri
Louis Patin
Randy Horn