

**AGREEMENT BETWEEN  
THE COUNTY OF SAN MATEO AND  
THE GORDIAN GROUP**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ ,  
20\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County,  
and The Gordian Group, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of assisting the county in implementation and continuing support for a job order contracting system.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment I – Gordian Group Proposal for Job Order Contracting Services, June 2008.

Attachment II – JOC System License

**2. Services to be performed by Contractor**

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

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B."

The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed five hundred thousand, (\$500,000) dollars.

**4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from August 12, 2008 through August 11, 2011 or upon expenditure of the not to exceed amount in paragraph 3. above..

This Agreement may be terminated by Contractor, the Director of Public Works or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement. The terms of this paragraph shall not apply to 'Proprietary Information' as defined in JOC System License in Attachment II.

**5. Availability of Funds**

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

**6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

**7. Hold Harmless**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not

limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

#### **8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

#### **9. Insurance**

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may

arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

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

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

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

**10. Compliance with laws; payment of Permits/Licenses**

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

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

## **11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
  - i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

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

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits

- between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

**12. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

**13. Retention of Records, Right to Monitor and Audit**

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

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

**14. Merger Clause**

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

**15. Controlling Law**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

**16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

**In the case of County, to:**

Doug Koenig, Deputy Director  
San Mateo County Department of Public Works  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063

**In the case of Contractor, to:**

The Gordian Group, Attn: David L. Mahler  
140 Bridges Road, Suite E  
Mauldin, SC 29662

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
Adrienne Tissier, President  
Board of Supervisors, San Mateo County

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

ATTEST:

By: \_\_\_\_\_  
John L. Maltbie, Clerk of Said Board/County Manager

The Gordian Group

By: \_\_\_\_\_  
David L. Mahler, Vice President of Finance

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

## Exhibit A - Services

The intent of this contract is that the Consultant shall perform all work necessary to develop detailed and comprehensive Job Order Contract bid documents customized for the County's needs, and then provide ongoing support for the county's administration of the Job Order Contract and JOC process to include software support and maintenance, and training of contractor and county personnel as necessary.. The Consultant shall provide key services and tasks anticipated as necessary to accomplish the identified scope of services including, but not necessarily limited to, the following:

- Provide experienced on site staff that will be fully responsible for the complete JOC implementation program. The staff will report to the County and shall assist the County with any JOC related issues.
- Customize all pricing, specifications, forms, software, formats, etc. to meet the specific needs of the County of San Mateo. If requested, provide hard copy of all JOC documentation, including unit price book/s and technical specifications.
- Attend meetings with County staff and management as appropriate. Provide progress reports and updates as requested.
- Prepare a Unit Price Book containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction. Unit price list will be edited to include the many unique construction components utilized within San Mateo County's facilities and to reflect the County's "Building Standards". Unit prices will be adjusted to reflect current market conditions as they relate to San Mateo County projects. Update crew composition and local productivity factor for each of the construction tasks in the unit price books on a regular basis and maintain a comprehensive database containing each of the individual construction tasks and their corresponding unit prices.
- Prepare and publish a comprehensive set of technical specifications describing the materials, performance and installation requirements for each of the construction tasks listed in the Unit Price Book.
- Provide automated Job Order Contracting system software capable of generating all of the Job Order Contract documents including contractor cost proposals, cost estimates, work orders and all other applicable reports and forms.
- Provide designated county users unlimited concurrent access to your web based software system as requested to log on, update



the system and use the data. Reports shall have export capability and shall be in formats meeting industry standards and be capable of being downloaded to County data base systems. All data input by the county and any data attached to the respective work order by the system shall be owned by the County of San Mateo and shall not be restricted to its usage on County projects. For emergency and prevention of data loss, the system software will provide backup and restore capability. All application software and data must be able to be backed up. All procedures must be documented and approved by the County Information Systems Department.

- Fully document all JOC execution procedures and policies and develop a detailed and comprehensive JOC training program for County staff. Training program shall include a comprehensive training manual with sample work orders, flow charts, forms and all other documents as needed to fully describe the JOC program. Training shall be tailored to include actual County projects and shall incorporate all applicable County policies and procedures. Provide all training aids and associated materials.
- Assist the County in establishing appropriate safeguards into the JOC program to insure the prevention of fraud, waste and abuse.
- Conduct outreach efforts to maximize contractor participation in bidding on the JOC program construction contract. As a minimum, it is expected that this work will involve contacting qualified contractors and meeting with local contracting organizations to explain the JOC program in detail, and conducting pre-bid meetings.
- Assist the County during the bidding of the JOC construction contract. Work will include, but not be limited to, attendance and participation in pre-bid conferences, assistance in answering bidders' questions and or/providing clarifications, preparation of addenda, evaluating the qualifications of potential bidders, and review and evaluation of submitted bids.
- Train the JOC contractor on all aspects of the JOC program including the automated software program.
- Provide a minimum of 90 days on-site support once the JOC contractor is under contract and a Notice to Proceed has been issued. On-site services will include, but not be limited to: providing assistance and oversight relative to preparation and issuance of all JOC contract documents; site visits and monitoring; assistance in preparation, development, and negotiating of job orders; overall program monitoring and status reporting. After the 90-day initiation period, provide experienced,

on-site project manager/s to periodically work with County staff in the development and execution of work orders and in overall JOC program management and integration efforts. This post-initiation effort will equate to an average of five workdays per month.

- Provide the County with continuous documents maintenance support. Support would include updating of construction tasks, unit prices, technical specifications, execution procedures, training materials and all other applicable documents. New updated document sets would be provided to County upon request and as required.
- Provide continuous telephonic support to the County, including debugging and other systems-related support.
- Conduct periodic training sessions for new employees as required.
- Assist the County in conducting periodic reviews of the JOC program's performance and effectiveness. Develop documentation, statistics, and the methodology to compare the JOC program to previous methods of project delivery utilized by the County (i.e. compare JOC constructed projects with those constructed under design-bid-build procedures). Assist the County in documenting and presenting these findings, the results of which will become the basis of the "Job Order Contract Pilot Project Evaluation Report" to be presented to County Management at the end of the first JOC contract.
- Meet the implementation schedule contained in Section 9 of Attachment 1. County understands that, in order for contractor to meet the stated implementation schedule, county shall do the following:
  - a. The County shall review all documentation and respond to requests for information submitted by The Gordian Group in a timely manner.
  - b. The County shall provide full information regarding requirements for the JOC Program, including but not limited to, facilities lists, current County procedures, programs, technical specifications and bidding information.
  - c. The County shall designate, in writing, a representative who shall render or obtain decisions pertaining to the JOC program in a timely manner.

- d. The County shall provide work space and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by Consultant's JOC development team.
- e. The County shall provide reproduction services for the "Construction Task Catalog®", Technical Specifications, Contract and General Conditions, Instructions to Bidders and Proposal Forms.

The Gordian Group will function as a consultant to the County and be responsible for performing all work necessary to develop the Job Order Contract bid documents that will be customized for the County's needs, and provide ongoing support for the County's administration of the Job Order Contract program, including software support and maintenance, and training of contractor and County personnel as necessary. The awarding of the construction work will be done by the County utilizing the County's standard contracting forms. These contract forms include the provision that the contractors comply with all prevailing wage requirements. The construction contracts will be executed by the Board or the Director of Public Works, depending on the amount of the contract.

### **Exhibit B – Payments and Rates**

In consideration for implementing the JOC program and providing on-going technical support to the program, the County agrees to pay The Gordian Group a license fee according to the following schedule:

- Five percent (5%) of the value of work ordered through the JOC program up to and including six million dollars (\$6,000,000).
- One and ninety-five hundredths percent (1.95%) of the value of work ordered through the JOC program in excess of six million dollars (\$6,000,000).

The above license fees shall be billable to the County when each Job Order is issued. An individual invoice shall be submitted for each Job Order

## **Attachment II – JOC System License**

The Gordian Group hereby grants to the County and the County hereby accepts from The Gordian Group for the term of this Agreement, a non-exclusive right, privilege, subscription and license to use The Gordian Group's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") for the sole purpose of operating a Job Order Contracting program for San Mateo County. The parties hereby agree that Proprietary Information shall include, but is not limited to, The Gordian Group's PROGEN<sup>®</sup> software and support documentation, Construction Task Catalog<sup>®</sup> (also commonly referred to as CTC, Unit Price Book and UPB), training materials and other proprietary materials developed by The Gordian Group. Upon the expiration or termination of this Agreement as provided herein, the County shall return to The Gordian Group all Proprietary Information in the County's possession.

The County acknowledges that disclosure of Proprietary Information will result in irreparable harm to The Gordian Group 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 The Gordian Group. The County further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of The Gordian Group in the Proprietary Information during and after the term of this Agreement and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the County, subject to federal and state laws related to public records disclosure.

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

In the event of a conflict in terms and conditions between this Job Order Contracting System License and any other terms and conditions of this Agreement, this Job Order Contracting System License shall take precedence.