



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Department of Public Works



DATE: July 15, 2011
BOARD MEETING DATE: July 26, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors
FROM: James C. Porter, Director of Public Works
SUBJECT: Agreement with The Gordian Group for the Job Order General Construction System

RECOMMENDATION:

Adopt a Resolution:

1. Waiving the Request for Proposal process and authorizing the President of the Board of Supervisors to execute an Agreement with The Gordian Group (which provides that in no event shall the County's total fiscal obligation under the Agreement exceed \$500,000 (Five Hundred Thousand Dollars)) for the maintenance and support of the Job Order General Construction system, effective August 12, 2011 through August 11, 2014 or upon expenditure of the not to exceed amount; and
2. Authorizing the Director of Public Works, or his designee, to issue and execute on behalf of the County of San Mateo, individual and/or separate Job Orders fees under this agreement which fees, in aggregate, shall not exceed \$500,000.

BACKGROUND:

On August 5, 2008, your Board adopted Resolution No. 069618 which authorized the execution of an agreement with The Gordian Group to develop, implement and support a Job Order Contracting (JOC) system for the Department of Public Works, for the period of August 12, 2008 through August 11, 2011.

JOC is an indefinite quantity contract pursuant to which a contractor will perform a variety of projects, consisting of specific construction tasks, at different locations. The scope of services includes general construction, repair, remodel and other repetitive related work to be performed for the County. The County has published a Construction Task Catalog (CTC) containing a compilation 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. A contractor bids Adjustment Factors

to be applied to the unit prices. The price of an individual project is determined by multiplying the preset unit price and the appropriate quantities by the appropriate Adjustment Factor. JOC has been a project delivery tool available for over twenty years and has been utilized extensively at the Federal, State and Local government levels throughout the country. The County's Department of Public Works has made increasing and substantial use of this system since its adoption. Nearly \$10 Million in projects have been completed under the program in the past two years.

Initially, the cost of the JOC management system provided by Gordian was based on a fee of 5% payable to The Gordian Group over the cost of each individual Job Order issued to Contractors, under their respective Job Order Contracts, until a total of \$6 Million in aggregate Job Orders was reached. The cost of this system, under this new agreement, is based on a fixed, constant fee of 1.95% over the cost of each individual Job Order, not to exceed \$500,000 in aggregate over the course of the agreement. This agreement supports, over the next three-year period, the system already developed and implemented by The Gordian Group.

DISCUSSION:

During the course of the contract The Gordian Group will provide ongoing support for the administration of the Job Order Contract process, including software support, maintenance, and training of JOC contractors and County of San Mateo Department of Public Works personnel.

The RFP process for contracts \$100,001 and above may be waived only by the Board of Supervisors by resolution when it is determined to be in the best interest of the County. Based on our research, we believe awarding a sole source contract to The Gordian Group is justified because no other firm exists that has the qualifications and experience to provide the products and services necessary to implement and support a successful JOC program for San Mateo County. Attached to this memorandum is a detailed discussion prepared by staff regarding the sole source justification and a listing of agencies which have recently conducted similar RFPs.

Staff has determined that the Equal Employment program submitted by The Gordian Group is in accordance with the current Equal Employment guidelines, and that the Contractor complies with the Equal Benefits and Jury Duty Pay provisions of the County Ordinance Code.

County Counsel has reviewed and approved the Resolution and Agreement as to form.

Approval of this action contributes to the Shared Vision 2025 outcome of Collaborative Community by reducing the cost and time required to execute major maintenance and renovation projects throughout all County facilities.

Performance Measure(s):

| Measure | FY 2009-10 Actual | FY 2010-11 Projected |
|--|------------------------------|---------------------------------|
| Number of Capital and FCIS projects completed under JOC | 12 | 28 |

FISCAL IMPACT:

The fees payable under the terms of this agreement are funded through allocations made by work authorizations established for each job order. The various individual job orders are funded through grants, bonds, departmental sources, and general funds. The fees payable to The Gordian Group are included in each project's budget.

Therefore, there is no specific budget associated with the Job Order General Construction System. The agreement shall not exceed \$500,000 in aggregate fees.

Attachment: Gordian Sole Source Justification.

Sole Source Justification for The Gordian Group

The Gordian Group is the only firm in the nation that provides the full range of products and services necessary to develop, implement and support JOC programs for public facility and infrastructure owners like San Mateo County.

The Gordian Group's JOC System is highly specialized and proprietary in nature. Gordian's system consists of the following:

- PROGEN Information Management Software, configured to meet the needs of each client
- Construction Task Catalog customized to include the construction tasks required by each client, with task prices based on the client's local cost of labor, materials and equipment
- Services and support materials to train client and construction contractor staff to utilize the system, and on-going technical support services during the term of the contract

All of Gordian's products have been developed with in-house staff and their services are performed with full-time Gordian employees. Gordian does not rely on third party vendors and other service providers. As a result, Gordian is always extremely responsive to the needs of their clients.

Although other firms may provide JOC services, they do so by piecing together products and services from third party vendors. The Gordian Group has achieved a "sole source" provider status because JOC consulting is their only business. Their efforts are 100% dedicated to the JOC process.

Gordian's PROGEN Software – A significant benefit of The Gordian Group's JOC System is their proprietary, Internet hosted, PROGEN software. PROGEN is the only JOC software available with the functionality to completely manage the JOC process, from preparing the proposals, to validating contractor proposals, to issuing the notices to proceed, to tracking MWBE participation. PROGEN was developed solely for JOC. Unlike the off-the-shelf estimating software provided by other firms, PROGEN does not require any modifications in order to manage JOC.

PROGEN is very flexible. It can be configured to meet the management needs of each client. For example, clients can select which modules they would like to use, set security levels applicable to their organization, rename fields to correspond to their standard terminology, and request reports and forms that match their standards, etc.

Gordian's Construction Task Catalog – More important than the software is the Construction Task Catalog that The Gordian Group provides to their clients. The Construction Task Catalog is the only unit price book available that was developed and is maintained specifically for JOC users. The Construction Task Catalog is customized for each client from Gordian's Construction Task Database of more than 260,000 construction and maintenance related tasks. In addition to the Construction Task Catalog, Gordian also prepares Technical Specifications for each client, which describes the work the JOC contractor is obligated to perform and the quality of workmanship and materials required for each construction task. Gordian prices each Construction Task Catalog by obtaining the labor, material and equipment costs applicable to each client's "local" area. This ensures that the most accurate prices are included in the Construction Task Catalog, which results in the client receiving the most competitive bids possible from the construction contractors.

Other firms use pre-published estimating guides as the unit price book. Estimating guides are excellent for generating "estimates" but are inferior to Gordian's client specific Construction Task Catalog in several ways. Estimating guides typically have limited tasks, have few if any demolition costs that are common with renovation work, express "maximum" and "average" prices for a range of products instead of specific products with exact prices, and lack quantity discounts. Estimating guides are too generalized and can be manipulated by the contractors. Such errors are most common in quoting "General Conditions" items for things like bonding, site fencing, project site clean-up, etc. Further risk exists when using an estimating guide because contractors often quote "maximum" quality materials but supply "average" quality materials.

Loose, general or incomplete task descriptions, inaccurate pricing, and missing tasks, typically found in estimating guides, all put a strain on the relationship with the contractor as the parties basically negotiate

Sole Source Justification for The Gordian Group

through tough pricing issues. The Gordian Group's clear, comprehensive and very specific Construction Task Catalog, however, allows the parties to establish firm, fixed prices for Job Orders. With Gordian, the **focus shifts to getting the work done** instead of having to negotiate the line items for each and every Job Order. That is how JOC is supposed to work. Several of Gordian's clients that previously used an RS Means estimating guide for their JOC program have stated that they have saved 20-50% with Gordian's Construction Task Catalog.

Gordian Selected as the Sole Responsive Responsible Respondent – Typically, public facility and infrastructure owners procure JOC products and services through a competitive process. In most instances, The Gordian Group is the only respondent to a JOC Request for Proposal. On the rare occasion when another firm submitted a proposal, The Gordian Group was selected as the successful respondent 100% of the time, further validating that they are the only firm providing the full range of JOC services.

For example, in May 2002, The United States Postal Service (USPS) awarded a "sole source" contract to The Gordian Group to provide services to develop and implement a JOC program. In their "sole source" justification document, the USPS stated that The Gordian Group was identified as the only company with nationwide capabilities and a pricing schedule specifically designed to support repair and alteration for IQC Contracts (USPS uses the acronym IQC instead of JOC). In March 2004, the USPS issued a Request for Information seeking firms that could provide IQC (JOC) services. Three responses were received, including one from Gordian. The recommendation by the USPS, based on the responses received, was: "The Gordian Group is the only firm that provides any experience or understanding of an IQC (JOC) program and who could support totally all of the requirements of the USPS IQC program." As a result of this recommendation, the USPS awarded Gordian a nationwide contract to provide JOC products and services. A copy of the USPS Request for Approval of a Noncompetitive Purchase is attached for your review.

In another example, the San Francisco Municipal Transportation Agency (MTA) approved a sole source contract with The Gordian Group in November 2008. MTA justified the sole source because The Gordian Group was the only respondent to a previous Request for Proposal (RFP) issued by the San Francisco Department of Public Works for identical services and other agencies verified that The Gordian Group was the only responsive and responsible respondent to their RFP's. Also, during the time period that MTA was awarding their sole source contract to Gordian, the San Francisco Public Utility Commission and the San Francisco Recreation and Parks Department issued RFP's for JOC services. Gordian was the only responsive and responsible respondent to these RFP's and was awarded a contract by both agencies.

The Gordian Group has been awarded numerous contracts on a sole source basis or as the only responsive and responsible respondent in a competitive procurement. A list of contracts awarded to Gordian during the past few years on a sole source basis or as the sole responsive responsible respondent is presented on the next page.

Based on our research, we believe awarding a sole source contract to The Gordian Group is justified because no other firm exists that has the qualifications and experience to provide the products and services necessary to implement and support a successful JOC program for San Mateo County.

Sole Source Justification for The Gordian Group

| <u>Agency Name</u> | <u>RFP Date</u> | <u>Contract Date</u> |
|--|-----------------|----------------------|
| United States Postal Service (Nationwide) | Sole Source | 02-24-05 |
| Miami-Dade County Public Schools | 06-13-05 | 10-19-05 |
| University of Illinois at Chicago | Sole Source | 05-20-06 |
| University of California (Statewide System) | 06-28-07 | 10-01-07 |
| Sacramento County | Sole Source | 01-15-08 |
| Sonoma County | 06-22-07 | 02-05-08 |
| San Francisco Public Utility Commission | 06-16-08 | 07-22-08 |
| San Mateo County | 06-16-08 | 08-12-08 |
| Chicago Transit Authority | Sole Source | 08-18-08 |
| San Francisco Recreation & Park Department | 08-19-08 | 09-30-08 |
| Lake County | 06-13-08 | 10-17-08 |
| City Colleges of Chicago | 08-28-08 | 11-07-08 |
| San Francisco Municipal Transportation Agency | Sole Source | 12-01-08 |
| City of Bellevue, WA | 03-2010 | 02-02-09 |
| California State University (Statewide System) | 11-19-08 | 02-23-09 |
| Los Angeles Unified School District | 04-20-09 | 10-01-09 |
| Chicago Public Schools | Sole Source | 10-16-09 |
| City of Fresno | 01-07-09 | 12-17-09 |
| Cornell University | Sole Source | 05-25-10 |
| California Administrative Office of the Courts | Sole Source | 06-11-10 |
| Orange County Parks | 03-01-10 | 06-29-10 |
| City of Irvine | Sole Source | 07-01-10 |
| Metro. Water Reclamation Dist. of Chicago | Sole Source | 07-08-10 |
| City of Naperville, IL | 09-15-08 | 08-18-10 |
| Los Angeles County Internal Services Dept. | 03-01-10 | 09-12-10 |
| Miami-Dade College | Sole source | 09-22-10 |
| Arizona Dept. of Administration | 05-07-10 | 09-24-10 |
| San Francisco Department of Public Works | 02-26-11 | Pending |

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION

- 1. WAIVING THE REQUEST FOR PROPOSAL PROCESS AND AUTHORIZING THE PRESIDENT OF THE BOARD OF SUPERVISORS TO EXECUTE AN AGREEMENT WITH THE GORDIAN GROUP, WHICH IN NO EVENT SHALL THE COUNTY'S TOTAL FISCAL OBLIGATION UNDER THIS AGREEMENT EXCEED \$500,000 (FIVE HUNDRED THOUSAND DOLLARS) FOR THE MAINTENANCE AND SUPPORT OF THE JOB ORDER GENERAL CONSTRUCTION SYSTEM, EFFECTIVE AUGUST 12, 2011 THROUGH AUGUST 11, 2014 OR UPON EXPENDITURE OF THE NOT TO EXCEED AMOUNT; AND**
- 2. AUTHORIZING THE DIRECTOR OF PUBLIC WORKS, OR HIS DESIGNEE, TO ISSUE AND EXECUTE ON BEHALF OF THE COUNTY OF SAN MATEO, INDIVIDUAL AND/OR SEPARATE JOB ORDERS FEES UNDER THIS AGREEMENT WHICH FEES, IN AGGREGATE, SHALL NOT EXCEED \$500,000**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California that

WHEREAS, the Department of Public Works in 2008 conducted a formal Request for Proposals process for consulting services to develop and provide on-going support for a Job Order Contracting System; and

WHEREAS, the Department received only one proposal from The Gordian Group; and

WHEREAS, the Board of Supervisors adopted Resolution No 069618 of August 5, 2008 authorizing an agreement with The Gordian Group; and

WHEREAS, The Gordian Group has been found to remain the sole provider of said Job Order Contracting System; and

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance, an agreement with The Gordian Group for an amount not to exceed \$500,000 for a term of 3 years; and

WHEREAS, this Board has examined and approved the agreement as to both form and content and desires to enter into the same.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that:

1. It is in the best interests of the County of San Mateo to waive the Request for Proposal requirement for this agreement and this Board hereby waives that requirement as to this agreement, and
2. The President of this Board of Supervisors execute said agreement with The Gordian Group to provide maintenance and support for a Job Order Contracting System for Public Works Projects, and
3. The Director Of Public Works, or his designee, issue and execute on behalf of the County Of San Mateo, individual and/or separate job orders fees under this agreement which fees, in aggregate, shall not exceed \$500,000.

* * * * *

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

THIS AGREEMENT, entered into this _____ day of _____, **2011**,
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 the maintenance and continuing support for the
County's Department of Public Works Job Order Contracting program.

**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 – 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 \$500,000 (Five Hundred
Thousand Dollars).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from August 12, 2011 through August 11, 2014 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 I.

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 Contractor's 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, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, 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 this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this Agreement, the provisions of this body of this 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 States 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
Department of Public Works
County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063

In the case of Contractor, to:

Attn: David L. Mahler
The Gordian Group
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: _____
President, Board of Supervisors

Date: _____

ATTEST:

By: _____
David S. Boesch, 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 Agreement is that the Contractor shall perform all work necessary to maintain and support detailed and comprehensive Job Order Contract (JOC) bid documents customized exclusively for the County of San Mateo Department of Public Works' needs. During the course of the contract the Consultant will provide ongoing support for the administration of the Job Order Contract process, to include software support, maintenance, and training of JOC contractors and County of San Mateo Department of Public Works personnel as necessary. The Contractor shall provide key services and tasks anticipated as necessary to accomplish the identified scope of services including, but not necessarily limited to, the following:

Program Support

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

Procurement & Document Maintenance Support (On-Site)

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

Procurement & Document Maintenance Support (Off-Site)

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

Training Support

- Update the Training Manual to reflect any changes in procedures
- Conduct refresher training on procedures for current Client and JOC contractor staff
- Conduct JOC procedures training for new Client and JOC contractor staff

- Provide hands-on training for new Client and JOC contractor staff in the areas of:
 - Project identification and development
 - Joint scope meetings
 - Project scope development
 - Proposal development and preparation
 - Proposal review and variance resolution
- Conduct PROGEN® software training including:
 - Provide on-site PROGEN® assistance for the Client, as needed or requested
 - Provide refresher training for current Client and JOC contractor staff
 - Provide on-site/Internet based training for new releases of PROGEN®
 - Provide on-site/ Internet based training for all new Client staff
 - Provide Internet based training for current and new JOC contractor staff

Software Support

- Provide access to PROGEN® for an unlimited number of Client and JOC contractor users
- Provide software technical support, including:
- Set-up PROGEN® access for new Client and JOC contractor staff
- Set-up PROGEN® access for new JOC contractors
- Provide systems support in connection with PROGEN®
- Provide access to all new releases of PROGEN® software
- Write, test and finalize modifications to existing PROGEN® reports, as requested
- Write, test and finalize new PROGEN® reports, as requested
- Provide toll free 24/7 telephone support for PROGEN® software

Additionally, and as required, Contractor shall:

- Provide experienced on site staff that will be fully responsible for the complete JOC program. The staff will report to the County and shall assist the County with any JOC related issues.
- Customize all pricing, specifications, forms, software, 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.
- Update, enhance, and publish customized Unit Price Book(s)/Construction Task Catalog(s)®, each containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction. Unit price list will be edited to include the many unique construction components utilized within County of San Mateo's facilities and to reflect the County's "Building Standards". Unit prices will be adjusted to reflect current market conditions as they relate to County of San Mateo projects. Update crew composition and local productivity factor for each of the construction tasks in the unit price books on a regular basis and maintain a comprehensive database containing each of the individual construction tasks and their corresponding unit prices..

- Update, enhance, and publish a comprehensive and customized set of technical specifications describing the materials, performance and installation requirements for each of the construction tasks listed in the Construction Task Catalog.
- Provide and/or maintain an automated JOC system software capable of generating all of the JOC documents including contractor cost proposals, cost estimates, work orders and all other applicable reports and forms.
- Provide designated County users unlimited concurrent access to your web based software system as requested to log on, update the system and use the data. Reports shall have export capability and shall be in formats meeting industry standards and be capable of being downloaded to County data base systems. All data input by the County and any data attached to the respective work order by the system shall be owned by the County of San Mateo and shall not be restricted to its usage on County projects. For emergency and prevention of data loss, the system software will provide backup and restore capability. All application software and data must be able to be backed up. All procedures must be documented and approved by the County Information Systems Department.
- Regularly update all JOC execution procedures and policies and update the detailed and comprehensive JOC training program for County staff. Training program shall include a comprehensive training manual with sample work orders, flow charts, forms and all other documents as needed to fully describe the JOC program. Training shall be tailored to include actual County projects and shall incorporate all applicable County policies and procedures. Provide all training aids and associated materials.
- Assist the County in establishing appropriate safeguards into the JOC program to insure the prevention of fraud, waste and abuse.
- Conduct outreach efforts to maximize contractor participation in bidding on the JOC program construction contract. As a minimum, it is expected that this work will involve contacting qualified contractors and meeting with local contracting organizations to explain the JOC program in detail, and conducting pre-bid meetings.
- Assist the County during the bidding of the JOC construction contract. Work will include, but not be limited to, attendance and participation in pre-bid conferences, assistance in answering bidders' questions and or/providing clarifications, preparation of addenda, evaluating the qualifications of potential bidders, and review and evaluation of submitted bids.
- Train each new JOC contractor on all aspects of the JOC program including the automated software program.
- During the term of this Agreement, provide on-site support once each new JOC contractor is under contract and a Notice(s) to Proceed has(have) 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; train County staff to conduct joint scope meetings, prepare detailed scopes of work, and develop and review Price Proposals; provide PROGEN® software training; prepare status reports requested by the County; assist County staff with resolving issues and questions that arise during the development and execution of work orders; and provide overall JOC program monitoring and guidance.

- Provide the County with continuous documents maintenance support. Support would include updating of construction tasks, unit prices, technical specifications, execution procedures, training materials and all other applicable documents. New updated document sets would be provided to County upon request and as required.
- Provide continuous telephonic support to the County, including debugging and other systems-related support.
- Conduct periodic training sessions for new employees as required.
- County understands that, in order to enable Contractor to meet the stated requirements, County shall:
 - a. review all documentation and respond to requests for information submitted by The Gordian Group in a timely manner.
 - b. provide full information regarding requirements for the JOC Program, including but not limited to, facilities lists, current County procedures, programs, technical specifications and bidding information.
 - c. designate, in writing, a representative who shall render or obtain decisions pertaining to the JOC program in a timely manner.
 - d. provide work space and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by Contractor's JOC development team.
 - e. provide reproduction services for the "Construction Task Catalog®", Technical Specifications, Contract and General Conditions, Instructions to Bidders and Proposal Forms.

Exhibit B – Payments and Rates

In consideration for maintaining and providing on-going technical support to the Job Order Contract (JOC) program, the County agrees to pay The Gordian Group a license fee of 1.95% (One and ninety-five hundredths percent) of the value of work ordered through the JOC program.

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

Attachment I – 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 (JOC) System and other related proprietary materials (collectively referred to as "Proprietary Information") for the sole purpose of operating a Job Order Contracting program for the County of San Mateo Department of Public Works. The parties hereby agree that Proprietary Information shall include, but is not limited to, The Gordian Group's PROGEN[®] software and support documentation, Construction Task Catalog[®] (also commonly referred to as CTC, Unit Price Book and UPB), training materials and other proprietary materials provided 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[®] Access[®].

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.