

**CONTRACT FOR PROFESSIONAL CONSULTANT SERVICES  
JOB ORDER CONTRACTING CONSULTANT AGREEMENT**

This Contract, entered into this 19 day of April, 2016 ("Effective Date"), by and between the County of San Luis Obispo, a political subdivision of the State of California, herein called "COUNTY," and The Gordian Group Inc., an independent contractor whose address is 30 Patewood Drive, Suite 350, Greenville, SC 29615, herein called "CONSULTANT."

The COUNTY department responsible for administering this Contract is the Department of Public Works ("Public Works"), and all written communications hereunder with the COUNTY shall be addressed to the Director of Public Works.

WHEREAS, the COUNTY has need for special services and advice with respect to the work described herein for the Job Order Contracting Project (hereafter, the "Project"); and

WHEREAS, the CONSULTANT warrants that it is specially trained, experienced expert, and competent to perform such special services;

**NOW, THEREFORE**, the parties agree with the above recitals, and hereby further agree as follows:

**ARTICLE 1. SCOPE OR WORK**

The CONSULTANT shall, at its own cost and expense, provide all the services, equipment, and materials necessary to complete the work described in the CONSULTANT's Scope of Work (hereafter, collectively "Work") attached hereto as Exhibit A. STATEMENT OF WORK CONSULTANT warrants and represents that said Work encompasses all services, equipment, and materials necessary for the CONSULTANT's implementation and development of an automated Job Order Contract system for facilities and infrastructure. All Work shall be performed to the highest professional standard.

**ARTICLE 2. CONTRACT TERM**

No Work shall be commenced prior to the CONSULTANT's receipt of the COUNTY's Notice to Proceed. This Contract shall commence on the Effective Date and continue for an initial term until April 19, 2019. At the COUNTY'S sole discretion, COUNTY may extend the Term of the Contract for one (1) year periods, for a total of two years beyond the expiration of the Initial Term, but in no event shall the Contract extend beyond April 19, 2021. Unless County notifies CONSULTANT in writing, not less than 30 days prior to the expiration date, that COUNTY does not intent to renew the Agreement, this Agreement will be automatically renewed for another year.

**ARTICLE 3. PAYMENT FOR SERVICES**

**A. COMPENSATION**

1. Payments will be made to CONSULTANT based on compensable services provided and allowable costs incurred at the rates set forth in the CONSULTANT'S Payment Schedule attached hereto as Exhibit B. All payments

to CONSULTANT shall be based on actual services performed and costs incurred at the rates set forth in Exhibit B.

2. The COUNTY reserves the right to delete Work from CONSULTANT's Scope of Work, but that such deletion must be in writing from the COUNTY's Director of Public Works that expressly states that certain Work is being deleted. CONSULTANT shall be entitled to no compensation for any Work that is deleted.

#### B. REPORTS

The CONSULTANT shall submit to the COUNTY, on a job order basis, a detailed statement of all services performed and fees owed by accomplished job order under this Contract. For the purpose of timely processing of invoices, the CONSULTANT's invoices are not regarded as received until the report is submitted. Any anticipated problems in performing any future Work shall be noted in the monthly reports. The CONSULTANT shall also promptly notify the COUNTY of any perceived need for a change in the scope of Work, and an explanation as to why the CONSULTANT did not include said Work in the attached Scope of Work.

#### C. INVOICES

Billing invoices shall be based upon the CONSULTANT's Cost Proposal, attached hereto as Exhibit B. Invoices shall be detailed by job order and service level. Invoices shall follow a format based upon the Cost Proposal and shall reference this Contract number and job order.

#### D. CONSULTANT'S ASSIGNED PERSONNEL

All Work performed under this Contract shall be performed by the CONSULTANT's key personnel identified in the organizational chart, attached hereto as Exhibit C. CONSULTANT'S key personnel has fulfilled all applicable requirements of the laws of the State of California to perform the work under this Contract and has the full authority to act on behalf of the CONSULTANT hereunder. CONSULTANT'S key personnel shall perform the work or oversee the performance of the work described in Exhibit A. Statement of Work. CONSULTANT'S key personnel shall not be changed during the Term of the Contract without COUNTY'S prior written consent. COUNTY reserves the right to terminate this Contract pursuant to Article 12, "Termination for Cause". If CONSULTANT'S key personnel should leave CONSULTANT'S employ, or, if in the County's judgement, the work hereunder is not performed by Consultant's key personnel.

### **ARTICLE 4. ACCOUNTING RECORDS**

- A. The CONSULTANT shall maintain accounting records in accordance with generally accepted accounting principles. The CONSULTANT shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. The CONSULTANT shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal, and payroll journal.
- B. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later.

The CONSULTANT shall safeguard the accounting records and supporting documentation.

## **ARTICLE 5. NON-ASSIGNMENT OF CONTRACT**

Inasmuch as this Contract is intended to secure the specialized services of the CONSULTANT, the CONSULTANT may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of the COUNTY, such consent not to be unreasonably withheld, and any such assignment, transfer, delegation, or sublease without the COUNTY's prior written consent shall be considered null and void.

## **ARTICLE 6. INSURANCE**

CONSULTANT shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

### **A. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES**

Coverage shall be at least as broad as:

#### **1. COMMERCIAL GENERAL LIABILITY (CGL)**

Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

#### **2. AUTOMOBILE LIABILITY**

ISO Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

#### **3. WORKERS' COMPENSATION**

Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. If CONSULTANT will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage shall also include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the COUNTY as the Alternate Employer, and the endorsement form shall be modified to provide that COUNTY will receive not less than thirty (30) calendar days advance written notice of cancellation of this coverage provision. If applicable to CONSULTANT's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

#### 4. PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS

Insurance covering CONSULTANT's liability arising from or related to this Contract, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, CONSULTANT understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Contract's expiration, termination or cancellation.

If the CONSULTANT maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

#### B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### 1. ADDITIONAL INSURED STATUS

The COUNTY, its officers, officials, employees, and volunteers are to be covered as insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

##### 2. PRIMARY COVERAGE

For any claims related to this Contract, the CONSULTANT's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

##### 3. NOTICE OF CANCELLATION

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) calendar days' prior written notice (ten (10) calendar days for non-payment) has been given to the COUNTY.

##### 4. FAILURE TO MAINTAIN INSURANCE

CONSULTANT's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract, upon which the COUNTY immediately may withhold payments due to CONSULTANT, and/or suspend or terminate this Contract. The COUNTY, at its sole discretion, may obtain damages from CONSULTANT resulting from said breach.

##### 5. WAIVER OF SUBROGATION

CONSULTANT hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the COUNTY by

virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

#### 6. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

#### 7. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.

#### 8. CLAIMS MADE POLICIES

If any of the required policies provide coverage on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of Contract Work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract Work
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Contract work.

#### 9. SEPARATION OF INSURED

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

#### 10. VERIFICATION OF COVERAGE

CONSULTANT shall furnish the COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

San Luis Obispo County  
Department of Public Works  
Rich Kopecky, Contract Administrator  
County Government Center, Room 206  
San Luis Obispo, CA 93408

## 11. SUBCONSULTANTS

CONSULTANT shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein.

## 12. SPECIAL RISKS OR CIRCUMSTANCES

COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## ARTICLE 7. INDEMNIFICATION

The CONSULTANT shall defend, indemnify and hold harmless the COUNTY, its officers, agents, and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities, or other losses (hereafter, collectively "claims") that may be asserted by any person or entity, and that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. The parties agree that, in addition to the CONSULTANT's general and professional duties of care, the CONSULTANT has a duty of care to act in accordance with the terms of this Contract. In addition to whatever other acts or omissions of CONSULTANT that constitute negligence, recklessness, or willful misconduct under applicable law, the parties acknowledge that any act or omission of the CONSULTANT that causes any damages or monetary losses, and constitutes a breach of any duty under, or pursuant to, this Contract, shall at a minimum constitute negligence (and may constitute recklessness or willful conduct if so warranted by the facts).

The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Article of the Contract, "CONSULTANT" shall include the CONSULTANT, and/or its agents, employees, subconsultants, or other independent contractors hired by, or working under, the CONSULTANT.

It is the intent of the parties to provide the COUNTY the fullest indemnification, defense, and "hold harmless" rights allowed under the law. No provisions of this Contract shall be construed in a manner that would constitute a waiver or modification of Civil Code section 2782.8. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Contract and the remaining language shall be given full force and effect. Nothing contained in this Contract shall be construed to require the CONSULTANT to indemnify the COUNTY against any responsibility or liability in contravention of Civil Code 2782.8.

## ARTICLE 8. CONSULTANT'S RESPONSIBILITY FOR ITS WORK

- A. Pursuant to the provisions of this Article, the CONSULTANT is responsible for all Work under this Contract, including the Work performed by any subconsultants or any other independent contractors which CONSULTANT hires or contracts with regarding the Work.
- B. The CONSULTANT accepts the relationship of trust and confidence established with COUNTY by this Contract, and covenants with the COUNTY to furnish the CONSULTANT's reasonable skill and judgment in furthering the interests of the

COUNTY. The CONSULTANT shall use its best efforts to perform in an expeditious and economical manner consistent with the interests of the COUNTY.

- C. If CONSULTANT ever has reason to believe that any of its general or professional duties of care conflict with any requirements of this Contract, the CONSULTANT shall promptly so notify the COUNTY in writing.

#### **ARTICLE 9. INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS**

The parties expressly agree that the indemnification and insurance clauses in this Contract are an integral part of the performance exchanged in this Contract. The compensation stated in this Contract includes compensation for the risks transferred to the CONSULTANT by the indemnification and insurance clauses.

#### **ARTICLE 10. CONSULTANT'S ENDORSEMENT ON REPORTS, ETC**

The CONSULTANT shall endorse all reports, maps, plans, documents, materials, and other data in accordance with applicable provisions of the laws of the State of California.

#### **ARTICLE 11. DOCUMENTS, INFORMATION AND MATERIALS OWNERSHIP**

All documents, information, and materials of any and every type prepared by the CONSULTANT (or any subconsultant) pursuant to this Contract shall be the property of the COUNTY. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT (or any subconsultant) in performing Work under this Contract, whether completed or in process. The CONSULTANT shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Contract.

#### **ARTICLE 12. TERMINATION OF CONTRACT WITHOUT CAUSE**

The COUNTY may terminate this Contract at any time by giving the CONSULTANT thirty (30) calendar days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, the CONSULTANT shall be entitled to no further compensation or payment of any type from the COUNTY.

#### **ARTICLE 13. TERMINATION OF CONTRACT FOR CAUSE**

If the CONSULTANT fails to perform the CONSULTANT's duties to the satisfaction of the COUNTY; or if the CONSULTANT fails to fulfill in a timely and professional manner the CONSULTANT's obligations under this Contract; or if the CONSULTANT violates any of the terms or provisions of this Contract; or if the CONSULTANT, or the CONSULTANT's agents or employees fails to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the COUNTY, then the COUNTY shall have the right to terminate this Contract effective immediately upon the COUNTY giving written notice thereof to the CONSULTANT. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. The

CONSULTANT shall be paid for all Work satisfactorily completed prior to the effective date of such termination. If the COUNTY's termination of the Contract for cause is defective for any reason, including but not limited to the COUNTY's reliance on erroneous facts concerning the CONSULTANT's performance, or any defect in notice thereof, this Contract shall automatically terminate without cause thirty (30) calendar days following the COUNTY's written notice of termination for cause to the CONSULTANT, and the COUNTY's maximum liability shall not exceed the amount payable to the CONSULTANT under Article 13 above.

#### **ARTICLE 14. COMPLIANCE WITH LAWS**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the Work of this Contract. This includes compliance with prevailing wage rates and their payment in accordance with the California Labor Code. The CONSULTANT acknowledges that labor performed on site to support any Work required under this Contract is a public work within the meaning of Labor Code Section 1720. The CONSULTANT will comply, or cause its subconsultant(s) to comply, with the provisions of Labor Code Section 1774.

#### **ARTICLE 15. COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Contract. For breach or violation of this warranty, the COUNTY shall have the right to annul this Contract without liability or, in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **ARTICLE 16. DISPUTES & CLAIMS**

##### **A. EXCLUSIVE REMEDY**

Any demand or assertion by CONSULTANT seeking any additional compensation and/or time extension, or other relief, for any reason whatsoever (hereafter collectively "Claim"), must be in strict compliance with the requirements of this Article. For purposes of this Article, any and all Work relating to any such demand or assertion shall be referred to as "Disputed Work", regardless of whether the basis of the demand or assertion arises from an interpretation of the Contract, an action or inaction of CONSULTANT or COUNTY, or any other event, issue, or circumstance. If the Disputed Work relates to any Work performed by any subconsultants hired by CONSULTANT in compliance with the provisions of this Contract, any such Claims must also be processed by CONSULTANT in accordance with the provisions of this Article.

The administration of a Claim as provided in this Article, including CONSULTANT's performance of its duties and obligations specified in this Article is CONSULTANT's sole and exclusive remedy for disputes of all types pertaining to the payment of money, extension of time, the adjustment or interpretation of this Contract or other contractual or tort relief arising from this Contract. Compliance with the procedures

described in this Article is a condition precedent to the right to file a Government Code Claim, commence litigation, or commence any other legal action. CONSULTANT waives the right to pursue or submit any Claims not processed in accordance with Article.

#### B. MANDATORY PROCEDURE AND CONDITION PRECEDENT

The requirements set forth in this Article are mandatory, and CONSULTANT shall strictly comply with these requirements. Strict compliance with these requirements is a condition precedent to CONSULTANT's ability to exercise any rights or remedies that may otherwise be available to CONSULTANT under the Contract or any applicable Laws or Regulations relating to the Claim. No action or inaction by CONSULTANT and/or COUNTY to try to resolve any Claim(s) through agreement, amendment, mediation, settlement, or any other means shall excuse CONSULTANT from strictly complying with the requirements of this Article. CONSULTANT shall bear all costs incurred in complying with the provisions of this Article.

#### C. NOTICE OF POTENTIAL CLAIM

The CONSULTANT shall not be entitled to any additional compensation and/or time under this Contract for any act, or failure to act, by the COUNTY, or for the happening of any event, thing, occurrence, or other cause, unless the CONSULTANT has provided the COUNTY's Director of Public Works with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation and/or time will or may be due, the nature of the cost involved, and, insofar as possible, the full amount of additional compensation and/or time extension sought in relation to the potential claim. The said notice as above required must have been given to the COUNTY prior to the time that the CONSULTANT shall have performed any Disputed Work. It is the intention of this paragraph that differences between the parties relating to this Contract be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The CONSULTANT hereby agrees that it shall have no right to additional compensation and/or time regarding any Claim for which no written Notice of Potential Claim as herein required was filed with the COUNTY's Director of Public Works.

#### D. NOTICE OF FINAL CLAIM

As soon as reasonably practical upon completion of the Disputed Work, and no later than thirty (30) calendar days after completion of the Disputed Work, CONSULTANT shall provide to COUNTY a Notice of Final Claim containing a full and final documentation of the Claim that provides the following information:

1. A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of Work affected by the dispute.
2. The specific provisions of this Contract that support the Claim and a statement of the reasons these provisions support and provide a basis for entitlement of the Claim.

3. When additional monetary compensation is requested, the exact amount requested, including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:
  - a. Labor – A listing of individuals, classifications, hours and dates worked, hourly labor rates, and other pertinent information related to the requested reimbursement of labor costs.
  - b. Materials/Equipment – Invoices, purchase orders, location of materials/equipment used to perform the Disputed Work, dates they were used, and other pertinent information related to the requested reimbursement of material/ equipment costs. (Any applicable equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the Disputed Work was performed.)
  - c. Other categories as specified by COUNTY.

#### E. CONSULTANT'S CONTINUING OBLIGATIONS

Neither the filing of a Notice of Potential Claim or of a Notice of Final Claim, nor the pendency of a dispute or claim, nor its consideration by the COUNTY, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Contract. CONSULTANT shall promptly respond to any requests for further information or documentation regarding CONSULTANT's potential or final Claim. If CONSULTANT fails to provide an adequate written response to COUNTY within fifteen (15) calendar days of COUNTY's written request for such further documentation or information, CONSULTANT shall be deemed to have waived its Claim. If the further documentation or information requested by COUNTY, in the opinion of the COUNTY, reasonably take the CONSULTANT more than fifteen (15) calendar days to comply with, the written request shall provide the CONSULTANT a specific response deadline that is commensurate to a reasonable response time.

#### F. RESPONSE TO NOTICE OF FINAL CLAIM

The COUNTY shall respond in writing to the Notice of Final Claim within sixty (60) calendar days of receipt thereof Claim, or may request, in writing, within forty-five (45) calendar days of said receipt, any additional information or documentation relating to the Claim or any defenses to the Claim the COUNTY may have against the CONSULTANT. CONSULTANT shall comply with the request within the reasonable time deadline provided by COUNTY in the request. If any additional information is thereafter requested by COUNTY, it shall likewise be provided by CONSULTANT within the reasonable time deadline provided by COUNTY in such follow-up request. The written response to the Notice of Final Claim shall be submitted to the CONSULTANT within thirty (30) calendar days after receipt of such further information and documentation, or within a period of time no greater than that taken by the CONSULTANT in producing the additional information or documentation, whichever is greater. CONSULTANT may request an informal conference to meet and confer for settlement of the issues in dispute, but CONSULTANT shall have no right to demand such a conference. Neither the requesting of any such conference by CONSULTANT or COUNTY, nor the holding of such conference shall affect the date of the final decision on the Claim. No written

communications of COUNTY sent to CONSULTANT after any such conference will change the date of the final decision on the Claim unless the writing expressly states that the date of the final decision is being changed to a new specific date.

A Claim may be granted in whole or in part only by a written response that contains the signature of the COUNTY's Director of Public Works or his authorized representative. In the event a valid written decision is not provided to CONSULTANT within the time prescribed in this Article, the Claim shall be deemed denied on the last day a written response was due. The date upon which the Claim is approved or denied pursuant to the provisions of this Article, shall constitute the date of the final decision on the Claim under the provisions of this Article. The date of the final decision on a Claim can only be changed by a subsequent writing signed by COUNTY that expressly states that the date of the final decision on the Claim has been changed to a new specific date.

#### **G. GOVERNMENT CODE CLAIM REQUIREMENTS**

For all Claims not resolved as a result of these Article 16 procedures, CONSULTANT must submit each Claim in a Government Code Section 910 form of claim for final investigation and consideration of its settlement prior to initiation of any litigation on any such Claim, as required by Government Code Section 945.4. Pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 is hereby reduced to 150 calendar days. This time deadline is measured from the accrual date of each separate cause of action. The time deadline for filing a Government Code claim shall not be tolled by any action or inaction by CONSULTANT or COUNTY, including but not limited to any action or inaction to try to resolve the Claim through negotiation, mediation, settlement, agreement (including Change Order), or by any other means, other than by a separate written tolling agreement expressly approved as to form (on the face of the agreement) by the County Counsel's Office.

#### **ARTICLE 17. CONSULTANT IS AN INDEPENDENT CONTRACTOR**

CONSULTANT shall, during the entire term of the Contract, be construed to be an independent contractor and nothing in this Contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow the COUNTY to exercise discretion or control over the professional manner in which the CONSULTANT performs the services which are the subject matter of this Contract; provided always however that the services to be provided by the CONSULTANT shall be provided in a manner consistent with all applicable standards and regulations governing such services.

The CONSULTANT understands and agrees that the CONSULTANT's personnel are not and will not be eligible for membership in or any benefits from any COUNTY group plan for hospital, surgical or medical insurance or for membership in any COUNTY retirement program or for paid vacation, paid sick leave, or other leave, with or without pay or for any other benefit which accrues to a COUNTY employee.

#### **ARTICLE 18. ENTIRE CONTRACT AND MODIFICATION**

This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. The CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments,

or alterations shall be effective unless in writing and signed by both parties. Any changes increasing the CONSULTANT's compensation and/or benefits must be approved by the COUNTY's Board of Supervisors; any other changes may be signed by the COUNTY's Director of Public Works on behalf of the COUNTY. The CONSULTANT specifically acknowledges that in entering into and executing this Contract, the CONSULTANT relies solely upon the provisions contained in this Contract and no others. To the extent there is any inconsistency between the text in the body of this Contract and anything in any of the Exhibits attached hereto, the text in the body of this Contract shall prevail.

#### **ARTICLE 19. ENFORCEABILITY**

If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

#### **ARTICLE 20. SUBCONTRACTING**

- A. Nothing contained in this Contract or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COUNTY's obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Contract shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the approved Scope of Work and Cost Proposal (Exhibits A and B).
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.
- D. Any subcontract in excess of \$25,000 entered into as a result of this Contract shall contain all the provisions stipulated in this Contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).

#### **ARTICLE 21. EQUIPMENT PURCHASE.**

- A. Prior authorization in writing, by the COUNTY's Contract Administrator, shall be required before the CONSULTANT enters into any unbudgeted purchase order or subcontract exceeding \$5,000 for supplies, equipment, or consultant services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by COUNTY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

- C. Any equipment purchased as a result of this Contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of this Contract, or if this Contract is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY."
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

## **ARTICLE 22. APPLICABLE LAW AND VENUE**

This Contract has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with, or by reason of this Contract.

## **ARTICLE 23. NOTICES**

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the COUNTY at:

San Luis Obispo County  
Department of Public Works  
Rich Kopecky, Contract Administrator  
County Government Center, Room 206  
San Luis Obispo, CA 93408

And to the CONSULTANT:

The Gordian Group, Inc.  
Attn: Ammon T. Leshner  
30 Patewood Drive, Suite 350  
Greenville, SC 29615

## **ARTICLE 24. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS**

Pursuant to Government Code section 7550, if the total cost of this Contract is over \$5,000, the CONSULTANT shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such

documentation or written report. The Contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

#### **ARTICLE 25. CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this Contract, shall be protected by the CONSULTANT from unauthorized use and disclosure, and shall not be made available to any individual or organization by the CONSULTANT without the prior written approval of the COUNTY.
- B. Permission to disclose information on one occasion, or public hearing held by the COUNTY relating to this Contract, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the COUNTY.
- D. The JOC System License included as Exhibit D is hereby incorporated by reference into this Agreement.

#### **ARTICLE 26. QUALITY CONTROL AND QUALITY ASSURANCE**

The CONSULTANT shall provide a description of its Quality Control procedure. The process shall be implemented for all facets of Work and a QC-QA statement and signature shall be placed on all submittals to the COUNTY.

#### **ARTICLE 27. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed against the COUNTY by the COUNTY's construction contractor or any other third party that relates in any way to any Work within the CONSULTANT's Scope of Work under this Contract, and additional information or assistance from the CONSULTANT's personnel is requested by the COUNTY in order to evaluate or defend against such claims, the CONSULTANT agrees to cooperate with and provide timely response to any reasonable requests for information submitted to the CONSULTANT by the COUNTY relating to such claims. To the extent the information requested by the COUNTY only seeks documents or other factual information relating to Work performed by the CONSULTANT, the CONSULTANT will only be compensated for any clerical costs associated with providing the COUNTY the requested documents or factual information.
- B. The CONSULTANT's personnel that the COUNTY considers essential to assist in defending against such claims will be made available for consultation with the COUNTY upon reasonable notice from the COUNTY. In the event the expert opinions of the CONSULTANT's personnel is sought by the COUNTY through such consultation or through testimony, and only in such event, such consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this Contract. In the event the testimonies of any of the CONSULTANT's personnel are sought by another party, the CONSULTANT reserves the right to charge other party a different rate for deposition or trial testimony.

- C. Services of the CONSULTANT's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written Contract amendment, if necessary, extending the termination date of this Contract in order to finally resolve the claims.
- D. Any subcontract entered into by the CONSULTANT relating to this Contract, shall bind the subconsultant to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subconsultant in place of the word "CONSULTANT" where it appears in this Article.

#### **ARTICLE 28. CONFLICT OF INTEREST**

- A. The CONSULTANT shall disclose any financial, business, or other relationship with the COUNTY that may be affected by the outcome of this Contract, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Contract, or any ensuing COUNTY construction project, which will follow.
- B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Contract.
- C. Any subcontract entered into by the CONSULTANT relating to this Contract, shall bind the subconsultant to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subconsultant in place of the word "CONSULTANT" where it appears in this Article.
- D. The CONSULTANT hereby certifies that neither the CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Contract. An affiliated firm is one, which is subject to the control of one or more of the same persons through joint-ownership, or otherwise.
- E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Contract.

#### **ARTICLE 29. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, and hereby promises to comply with the provision on contractor agreements contained in Presidential Executive Order Number 11246 as amended by Executive Order (1) 75 and as approved by Department of Labor Relations (41 CFR Part 61).

#### **ARTICLE 30. STATE PREVAILING WAGE RATES**

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into by CONSULTANT relating to this Contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition,

repair, or maintenance of public works, shall incorporate the provisions of this Article in a manner that binds the subconsultant to all of the provisions of the Article.

- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

**IN WITNESS THEREOF**, the parties hereto have executed this Contract, and this Contract shall become effective on the date shown signed by the County of San Luis Obispo.

COUNTY OF SAN LUIS OBISPO

By: \_\_\_\_\_  
Chairperson of the Board

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

ATTEST:

\_\_\_\_\_  
County Clerk and Ex-Officio Clerk of the  
Board of Supervisors, County of San Luis Obispo

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

CONSULTANT

The Gordian Group, Inc.

By: Ammon T. L. L.

Title: Vice President

Date: 4/7/16

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL  
County Counsel

By: [Signature]  
Deputy County Counsel

Date: 4/12/16

## Exhibit A – STATEMENT OF WORK

The Consultant will provide all necessary labor, equipment, and materials, as customarily rendered when providing professional consulting services for the establishment of a JOC Program within the County's Department of Public Works and assistance in the administration of Job Order Contracts. Services shall include, but not be limited to, those services listed in items 1 and 2 of the County's RFP PS-#1344 (as included below) and listed in the Consultant's proposal and shall include, but not be limited to the following:

1. Program Development. The Consultant shall work with the County's facility, procurement, legal and other appropriate staff to develop the JOC program. Program development includes reviewing and assessing the County's needs to determine the size of the program and, in conjunction with the County's staff, developing execution procedures that will be used to implement and administer the JOC program. The following additional items are required of the JOC Program Development:
  - a. The Consultant shall organize and manage a series of conferences in order to promulgate general operating and organizational concepts.
  - b. The Consultant shall assist the County in developing draft internal execution procedures/policies for the JOC Program. These procedures should incorporate all applicable Federal, State and County laws, regulations and policies, including those of FEMA.
  - c. The Consultant shall fully document the final JOC Program execution procedures and policies.
  - d. The Consultant shall assist the County in incorporating appropriate safeguards into the execution procedures for the prevention of fraud, waste and abuse.
  - e. The Consultant shall coordinate the County JOC Program, policies and procedures with various County Departments as well as other Local, State and Federal agencies as designated by the Department of Public Works.
2. Document Preparation. The Consultant shall provide a full set of customized JOC documents including a San Luis Obispo County specific Construction Unit Pricing Catalog, Technical Specifications and the Contractual Terms and Conditions. The full JOC documents will be comprised of the following:
  - a. The Construction Unit Pricing Catalog shall contain comprehensive individual construction tasks, along with applicable unit prices associated with County buildings and public works facilities (roadways, sidewalks, water, wastewater systems, drainage facilities, etc.). Each unit price shall be based on the prevailing equipment, material and labor prices within the County's geographical region. The use of factors to localize prices is not acceptable. A price for demolition shall be provided for each construction task, if applicable. Consultant shall be responsible for maintaining and updating semi-annually the Construction Unit Pricing Catalog, including labor composition, regional rates, and local productivity factors. Consultant shall also maintain a comprehensive database containing each of the individual construction tasks and their corresponding unit prices. The Consultant shall publish one master or reference copy of the Construction Unit Pricing Catalog.
  - b. The Technical Specifications shall be prepared in conjunction with the Construction Unit Pricing Catalog and, where available, the County standards will be incorporated. The Consultant shall maintain a comprehensive set of technical

- specifications for each of the construction tasks listed in the Construction Unit Pricing Catalog and shall publish one master or reference copy of the Technical Specifications.
- c. The contractual Terms and Conditions shall be prepared in conjunction with County staff and shall incorporate JOC Contract language and forms with all appropriate County Contract language and forms.
  - d. The Construction Unit Pricing Catalog and Technical Specifications shall conform to current standard Construction Specifications Institute (CSI) Master Format convention.
  - e. For road and drainage facilities, the Unit Pricing Catalog and Technical Specifications shall conform to the Caltrans 2010 Standard Specifications, Standard Plans, and Basic Engineering Estimating System pay item convention utilized by Caltrans, as appropriate.
  - f. The complete customized JOC documents shall be electronic format, in a current version of Adobe Portable Document File (.PDF) or Microsoft Word.
3. Program Support
- a. Provide strategic guidance to the project team
  - b. Monitor program performance, as requested
  - c. Integrate successful experiences from other agencies using JOC
  - d. Identify and consult on major program issues
  - e. Provide guidance and interpretations on procedures
  - f. Assist with interpretation of the Construction Task Catalog including:
    - i. Resolve Construction Task Catalog issues
    - ii. Manage revisions to the Construction Task Catalog
  - g. Conduct annual on-site reviews of the JOC program, as requested
  - h. Prepare program evaluations, as requested.
4. Procurement & Document Maintenance Support (On-Site)
- a. Provide assistance with modifications to the Contract and General Conditions
  - b. Provide assistance with modifications to the Instructions to Bidders
  - c. Conduct research to identify recurring use of non-prepriced tasks
  - d. Coordinate preparation of updated Construction Task Catalogs
  - e. Coordinate preparation of updated Technical Specifications
  - f. Conduct informational seminars for local groups, as requested
  - g. Assist with bidding new JOC contracts including:
    - i. Conduct pre-bid meetings with potential contractors
    - ii. Assist with bid review and JOC contractor selection, as requested
5. Procurement & Document Maintenance Support (Off-Site)
- a. Update and enhance the customized Construction Task Catalog including:
    - i. Maintain the integrity of the CSI numbering system
    - ii. Improve task descriptions
    - iii. Develop new tasks for recurring non-prepriced tasks
    - iv. Remove outdated tasks that are no longer used or available
    - v. Monitor local area pricing
    - vi. Incorporate current construction practices and materials
    - vii. Publish a new Construction Task Catalog for each additional solicitation
  - b. Update and enhance customized Technical Specifications including:
    - i. Develop new specifications for recurring non-prepriced tasks
    - ii. Incorporate current construction practices, standards and materials

- iii. Publish new Technical Specifications for each additional solicitation

#### 6. Training Support

- a. Update the Training Manual to reflect any changes in procedures
- b. Conduct JOC procedures refresher training for staff, as requested
- c. Conduct JOC procedures training for new staff
- d. Provide hands-on training for new staff in the areas of:
  - i. Project identification and development
  - ii. Joint scope meetings
  - iii. Project scope development
  - iv. Proposal development and preparation
  - v. Proposal review and variance resolution
- e. Conduct eGordian software training including:
  - i. Provide on-site software assistance, as needed or requested
  - ii. Provide refresher training for current staff
  - iii. Provide on-site/Internet based training for new releases of the software
  - iv. Provide on-site/ Internet based training for all new staff
  - v. Provide Internet based training for current and new staff

#### 7. Software Support

- a. Provide unlimited access to the eGordian® software
- b. Provide software technical support, including:
  - i. Maintain software access for staff
  - ii. Set-up software access for new staff
  - iii. Provide systems support in connection with the software
- c. Provide access to all new releases of the software
- d. Write, test and finalize modifications to existing reports, as requested
- e. Write, test and finalize new reports, as requested
- f. Provide toll free software telephone support

#### 8. JOC Complete Solution.

The following services will be provided by Gordian if requested by the County:

- a. Project Identification – When a project is identified and when requested by the County, Gordian will contact the County and assist with determining whether the project is appropriate for JOC.
- b. Contractor Identification – In the event the County has multiple JOC contractors, Gordian will assist the County with identifying the appropriate JOC contractor for the project based on the type of work involved and the location of the project.
- c. Joint Scope Meeting – Then a Gordian Account Manager will quickly schedule a Joint Scope Meeting at the project site to help the 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.
- d. Develop Detailed Scope of Work – Next, the Gordian Account Manager will assist in preparing a Detailed Scope of Work that describes the work the JOC contractor will perform. We will also assist with resolving issues when project plans and actual conditions vary.
- e. Request for Price Proposal – After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, the Gordian project

manager will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.

- f. Prepare the Price Proposal – Next, the JOC contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Construction Task Catalog. Gordian's JOC software will automatically calculate the total cost for each line item by multiplying the unit price of the task by the required quantities and the JOC contractor's competitively bid Adjustment Factor. The JOC contractor will also prepare additional County required information (e.g., construction schedule, list of proposed local subcontractors, etc.).
- g. Price Proposal Review – Then, the Gordian Account Manager will review the Price Proposal to make sure the JOC contractor has selected the appropriate tasks and quantities and will ask the JOC contractor to make any required changes. Gordian 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 the Gordian Account Manager will submit the Price Proposal and related documents to the County.
- h. Issue Job Order – Once the County is 100% satisfied with the Price Proposal and related documents, and decides to move forward with the project, the County simply issues a purchase order to the contractor.
- i. Construction Management – During construction, the 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 the County desires to change the Detailed Scope of Work, a supplemental Job Order is developed in the same manner as the original Job Order. With JOC, changes to the work are pre-priced.

9. JOC Complete Solution PLUS.

The following services will be provided by Gordian if requested by the County:

- i. Preconstruction – First, a Gordian construction manager will conduct a preconstruction meeting with the County representative(s), the JOC contractor and, if applicable, the architect or engineer. The construction manager will coordinate and share any preconstruction information with the County, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.
- ii. Site Visit – During construction, the Gordian construction manager will monitor the JOC contractor's work in-progress, manage the JOC contractor's compliance with the approved safety plan and complete a report for each site visit.
- iii. Communicate – The Gordian construction manager will provide weekly construction status reports to the County, conduct project progress meetings with all JOC contractors and staff on a periodic basis, and coordinate any required technical and code inspections.
- iv. Supplemental Job Orders – In the event there are unforeseen conditions or the County requests changes to the scope after the work has begun, the Gordian construction manager will analyze and process a supplemental Job Order by utilizing the procedures used to develop the initial Job Order.

- v. Approvals – The Gordian construction manager will review and approve, or direct necessary revisions to, the JOC contractor’s applications for payment and obtain the County’s approval of the work. Final acceptance of the work will be the responsibility of the County. Technical and code inspections will be the responsibility of the appropriate inspection agencies.
- vi. Project Close-out – As the final step in the process, the Gordian construction manager will enter all Job Order related information into the eGordian information management system and collect any required asbuilts, warranties, etc., from the JOC contractor

## EXHIBIT B – PAYMENT SCHEDULE

The COUNTY shall pay CONSULTANT in accordance with the provisions set forth below.

The COUNTY pays the CONSULTANT the License Fees, in percentage format, for each service listed below, which will be charged to the County based upon the value of each individual Job Order only as the project job orders are awarded.

In consideration for the Gordian JOC Solution services as set forth in Exhibit A, Paragraphs 1 – 7, COUNTY shall pay CONSULTANT the County License Fee set forth below:

County License Fee: 5% of the first \$2,000,000 in construction work ordered through the JOC program, and 1.95% of the value of work ordered through the JOC program thereafter.

In consideration for the optional JOC Complete Solution services set forth in Exhibit A, Paragraph 8, COUNTY shall pay the following Job Order Development Fee in addition to the County License Fee:

Job Order Development Fee: 3.05% of the value of each Job Order for which the County requests the JOC Complete Solutions services.

In consideration for the JOC Complete Solution Plus services set forth in Exhibit A, Paragraph 9, COUNTY shall pay the following Construction Management Fee in addition to the County License Fee and, if applicable, the Job Order Development Fee set forth above:

Construction Management Fee\*: 5.95% of the value of each Job Order for which the County requests JOC Complete Solution Plus services.

\* The COUNTY agrees to pay CONSULTANT fees not to exceed \$50,000 annually for this service.

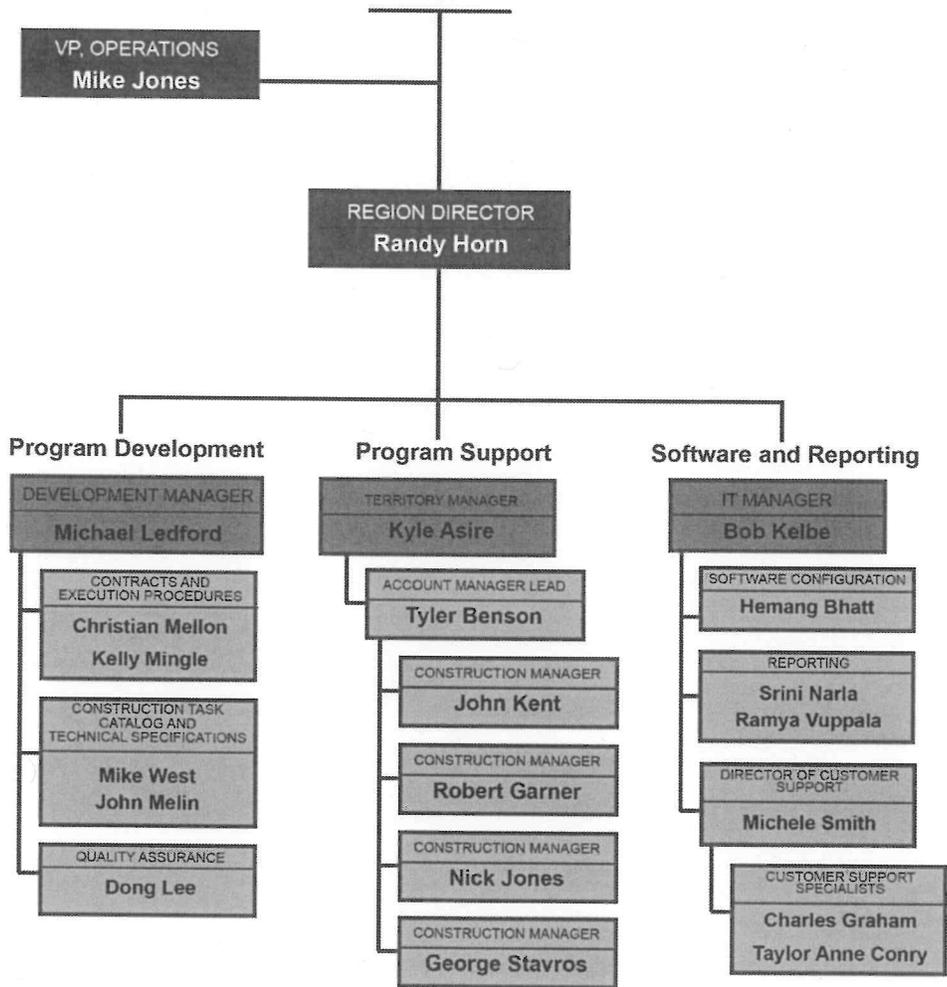
The County License Fee and Job Order Development Fee are payable when the work is ordered from the JOC contractor. The Construction Management Fee is payable when construction of the Job Order has been completed and accepted by the County, except at the election of Gordian Job Orders requiring more than sixty (60) days to complete may be invoiced monthly on a percentage of completion basis.

Contractor License Fee

In addition to the fees set forth above, Gordian will charge each JOC contractor a contractor license fee ("Contractor License Fee") of one percent (1.00%) of the value of each Job Order, Purchase Order, or similar purchasing document issued to the JOC contractor by the County. The Contractor License Fee is assessed to the JOC contractor in return for their access to our proprietary construction data and JOC applications, and is not a direct cost to the County. Gordian is responsible for all administrative duties related to the invoicing and collections of the Contractor License Fee. The Contractor License Fee is payable by the JOC contractor when a Job Order is issued by the County, and will be

applicable to all JOC construction contracts awarded after the Effective Date of this Agreement to The Gordian Group. JOC construction contracts awarded by the County during the term of any previous contract will not be assessed the Contractor License Fee.

# EXHIBIT C – KEY PERSONNEL



## EXHIBIT D – JOC SYSTEM LICENSE

The Gordian Group, Inc. ("Gordian") hereby grants to the County of San Luis Obispo Department of Public Works ("County"), and the County hereby accepts from Gordian for the term of this Agreement, a non-exclusive, non-transferable 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, Gordian's eGordian<sup>®</sup> application or similar information management system and support documentation, Construction Task Catalog<sup>®</sup> (also commonly referred to as a unit price book) and information contained therein, 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.

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

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

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.