

ATTACHMENT 2

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Second Amendment The Gordian Group

**SECOND AMENDMENT TO
AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR
BETWEEN COUNTY OF SANTA BARBARA AND THE GORDIAN GROUP, INC.**

THIS AMENDMENT ("Second Amendment") is made by and between the County of Santa Barbara, a political subdivision of the State of California ("County"), and The Gordian Group, Inc., having its principal place of business at 30 Patewood Drive, Suite 350, Greenville, South Carolina 29615 ("Contractor"), parties to the Agreement for Services of Independent Contractor signed into effect on September 22, 2015 ("Agreement").

WHEREAS, County and Contractor entered the Agreement for Job Order Contracting consultant services, under which Contractor agreed to perform services related to the development, implementation and support of a Job Order Contracting ("JOC") program;

WHEREAS, the Agreement expires on September 22, 2017;

WHEREAS, JOC has proven to be a flexible, cost-effective and expeditious contracting method and the County seeks additional support from Contractor managing projects procured through the JOC system provided by Contractor ("Additional Services");

WHEREAS, the Parties now wish to modify (a) the Statement of Work ("Services") to be provided under the Agreement to add the Additional Services, and (b) amend and modify the compensation payable to Contractor for the provision of the Additional Services; and

WHEREAS, County wishes to exercise the second option to extend the Agreement until September 22, 2018.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, County and Contractor agree to amend the Agreement as follows:

1. Effectiveness of Agreement. Except as explicitly modified by this Second Amendment, all of the terms and provisions of the Agreement are and remain in full force and effect.
2. Counterparts. This Second Amendment may be executed in several counterparts, all of which taken together shall constitute a single agreement between the parties.
3. Term. The Agreement's term is hereby extended for one additional year to September 22, 2018.
4. Exhibit A. Exhibit A is hereby deleted and replaced with Exhibit A attached hereto.
5. Exhibit B. Exhibit B is hereby deleted and replaced with Exhibit B attached hereto.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to be effective on the date executed by County.

COUNTY

By: _____
JOAN HARTMANN, CHAIR
BOARD OF SUPERVISORS

Dated: _____

ATTEST:
MONA MIYASATO,
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: _____
Deputy

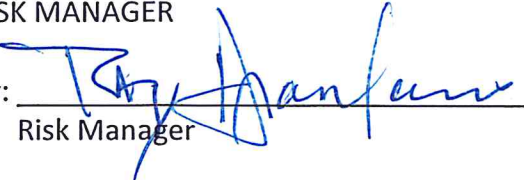
APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By:  _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
THEODORE A. FALLATI, CPA
AUDITOR-CONTROLLER

By:  _____
Deputy

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By:  _____
Risk Manager

RECOMMENDED FOR APPROVAL:
JANETTE D. PELL, DIRECTOR
GENERAL SERVICES DEPARTMENT

By:  _____
Department Head

IN WITNESS WHEREOF, the parties have executed this Second Amendment to be effective on the date executed by County.

COUNTY

By: _____
JOAN HARTMANN, CHAIR
BOARD OF SUPERVISORS

Dated: _____

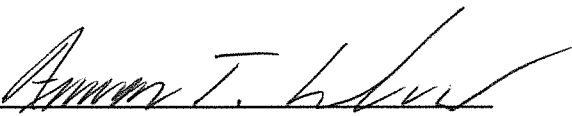
ATTEST:

MONA MIYASATO,
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: _____
Deputy

CONTRACTOR:

THE GORDIAN GROUP, INC.

By: 
AUTHORIZED REPRESENTATIVE

Name: Ammon T. Lesher
Title: VP of Legal Affairs

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

THEODORE A. FALLATI, CPA
AUDITOR-CONTROLLER

By: _____
Deputy

APPROVED AS TO FORM:

RAY AROMATORIO, ARM, AIC
RISK MANAGER

By: _____
Risk Manager

RECOMMENDED FOR APPROVAL:

JANETTE D. PELL, DIRECTOR
GENERAL SERVICES DEPARTMENT

By: _____
Department Head

EXHIBIT A

STATEMENT OF WORK

ARTICLE I

GORDIAN DUTIES AND RESPONSIBILITIES

Gordian ("Gordian" or "Contractor") will perform the duties and responsibilities specified below for County ("County" or "Owner"):

1. **JOC System License** - Gordian shall provide Owner with a license to use Gordian's proprietary JOC System as outlined in Article II, "JOC System License."

2. **Unit Price Book** - Gordian shall prepare two customized unit price books, known as a Construction Task Catalog®, containing prices covering material, equipment and labor costs for various units of construction, and adjusting these costs to current market conditions. The unit price books shall be one each for the following two trades: 1) General Building Construction, and 2) Paving and Concrete Maintenance. Owner will have access to Gordian's pre-existing Construction Cost Database in order to select the construction tasks that will be included in Owner's Construction Task Catalog. Only local prevailing wages and local material and equipment costs (obtained directly from local subcontractors and suppliers) to price the Construction Task Catalog shall be used. The use of generic factors to localize prices is not acceptable. Unit prices for demolition shall be provided for each construction task. Every cost to install an item or unit shall be accompanied by a corresponding cost to remove the same item or unit. Tasks may have several modifiers which adjust the price for variations in materials or for quantity discounts.

3. **Technical Specifications** - Gordian shall prepare and publish Technical Specifications describing the materials, performance and installation requirements for each of the construction tasks list in each of the Construction Task Catalogs. Where available, Owner standard specifications shall be incorporated into the Technical Specifications for each Task Catalog.

4. **Contractual Terms and Conditions and Bid Forms** - Gordian shall prepare, in conjunction with Owner staff, general terms and conditions and bid forms which incorporate JOC language and forms with all appropriate Owner contract language and forms.

5. **Information Management System** - Gordian shall provide Owner with access to the eGordian® JOC information management application ("IMS") for an unlimited number of Owner and JOC contractor users. The IMS must be capable of providing full project tracking, developing cost proposals, preparing independent Owner estimates, generating all project documentation, providing project scheduling, budgeting and cost control, tracking LBE participation, and generating customized reports for Owner. Gordian must incorporate current Owner forms and documentation into the IMS.

6. **Procurement Support** - Gordian shall provide Owner with procurement support to market Owner JOC Program to potential JOC contractors. Gordian shall organize and conduct pre-bid meetings with interested bidders and make presentations on behalf of Owner, with various business and contracting organizations. Gordian's personnel assigned to perform procurement support must have extensive JOC procurement experience. During the development and implementation of the JOC program, Gordian will conduct informational meetings with representatives from the Building Trades Councils, local unions, and the construction community within Santa Barbara County, and will perform necessary reporting to the Department of Industrial Relations for prevailing wage requirements.

7. **Training Program** - Gordian shall develop and conduct all training programs for Owner and JOC contractor to ensure the JOC program functions properly. The training programs must include specialized training courses that will involve all parties utilizing and administering the JOC program. The training programs must include extensive training on the use of the JOC IMS. All training shall be "hands on" with functional use and individual performance as the objective. Actual Owner projects that Owner plans to perform through JOC must be included in the training programs.

8. **JOC Program Development** - Gordian shall provide development, implementation, and on-going support of Owner JOC program, including development of the execution procedures that will be used to operate Owner JOC program and participating in informational meetings with representatives from building trade councils, local unions and the construction community during the development of each of the Construction Task Catalogs and proposal documents.

9. **On-Going 24/7 Technical Support** - Gordian shall provide ongoing 24 hours a day/7 days a week technical support, including, but not limited to, assisting Owner with JOC program execution, analysis of task order proposals, troubleshooting and continuous system monitoring, updated contract documents, assistance with the procurement of additional JOC contractors, providing Owner with access to all updates and revisions to the IMS, and providing training for new Owner staff and JOC contractors. Providing on-going technical support is considered a vital component to ensuring a successful Owner JOC program.

10. In addition, Gordian will assist with the developing of Job Orders from project identification to issuance of the Job Order by performing the following services:

a. **Project Identification** – When a project is identified, a Gordian Account Manager will assist Owner staff with determining whether the project is appropriate for JOC.

b. **Joint Scope Meeting** – A Gordian Account Manager will quickly schedule a Joint Scope Meeting at the project site to help Owner 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.

c. **Develop Detailed Scope of Work** – Next Gordian will assist in preparing a Detailed Scope of Work that describes the work the JOC contractor will perform. Gordian will also assist with resolving issues when project plans and actual conditions vary.

d. **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 Account Manager will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.

e. **Preparation of 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 multiply the unit price of the task by the required quantities times the JOC contractor's competitively bid adjustment factor.

f. **Price Proposal Review** – Then, a Gordian Account Manager will review the Price Proposal to make sure the JOC contractor has selected the appropriate tasks and quantities and shall ask the JOC

contractor to make any required changes. Gordian shall also obtain and review any Owner required information submitted by the JOC contractor such as a construction schedule and list of proposed subcontractors. Then, the Gordian Account Manager shall submit the Price Proposal and related documents to Owner.

g. **Issue Job Order** – Once Owner is satisfied with the Price Proposal and related documents, and decides to move forward with the project, Owner will be responsible for the issuance of a purchase order to the selected JOC contractor and the management of the construction work.

Optional Project Management Services

11. Owner, in its sole discretion, may request project management services on an as-needed basis. Upon request, Gordian will provide the following project management services for each project assigned to Gordian by Owner:

- a. **Preconstruction** – A Gordian project manager will conduct a preconstruction meeting with the Owner representative(s), the JOC contractor and, if applicable, the architect or engineer. The Gordian project manager will coordinate and share any preconstruction information with the Owner, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.
- b. **Site Visit** – During construction, the Gordian project 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.
- c. **Communicate** – The Gordian project manager will provide weekly construction status reports to the Owner, conduct project progress meetings with all JOC contractors and staff on a periodic basis, and coordinate any required technical and code inspections.
- d. **Supplemental Job Orders** – In the event there are unforeseen conditions or the Owner requests changes to the scope after the work has begun, the Gordian project manager will analyze and process a supplemental Job Order by utilizing the procedures used to develop the initial Job Order.
- e. **Approvals** – The Gordian project manager will review and approve, or direct necessary revisions to, the JOC contractor's applications for payment and obtain the Owner's written approval of the work. Final acceptance of the work will be the responsibility of the Owner. Technical and code inspections will be the responsibility of the appropriate inspection agencies.
- f. **Project Close-out** – As the final step in the process, the Gordian project manager will enter all Job Order related information into the eGordian information management system and collect any required as-builts, warranties and OEMs from the JOC contractor.

Optional Construction Cost Estimating Services

12. Owner, in its sole discretion, may request construction cost estimating services on an as-needed basis. Gordian's professional construction cost estimators will provide project estimating services on JOC and non-

JOC projects, consisting of building rough order of magnitude estimates, using national construction cost data, from stated scopes and/or construction drawings and specifications. Gordian will be compensated for Cost Estimating Services only when such services are requested by Owner's authorized representative in writing.

ARTICLE II JOC SYSTEM LICENSE

Gordian hereby grants to Owner, and Owner 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 Owner's Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to, eGordian® applications and support documentation, Construction Task Catalog® (also commonly referred to as a unit price book), training materials and any other proprietary materials provided by Gordian. In the event this Agreement expires or terminates as provided herein, this JOC System License shall terminate and Owner shall return to Gordian all Proprietary Information in Owner's possession.

Owner acknowledges that disclosure of Proprietary Information may result in harm to Gordian for which monetary damages may be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian except disclosures required by law and to the extent disclosure is necessary for bidding. Owner 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 Owner, subject to federal and state laws related to public records disclosure. Gordian shall designate all Proprietary Information and any other information protected by law or agreement. Lack of notice of Proprietary Information to Owner shall be a defense to a claim brought by Gordian for wrongful disclosure by Owner. Additionally, Gordian acknowledges that Owner is a public entity subject to the California Public Record Act and the Ralph M. Brown Act and must act pursuant to the requirements of those statutes. If a third party seeks Confidential Information through a subpoena, Owner shall have no duty other than to provide notice to Gordian, and Gordian shall be responsible for seeking any protective order or filing a motion to quash or similar device. Gordian shall indemnify, defend, and hold harmless Owner from all actions of whatsoever nature relating to, arising out of, or in connection with this Article.

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

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

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

ARTICLE III OWNER DUTIES AND RESPONSIBILITIES

Owner will assume the following duties and responsibilities:

1. Owner shall review all documentation and requests for information submitted by Gordian in a reasonably timely manner.
2. Owner shall provide all reasonable information regarding requirements for the JOC program, including but not limited to, facilities lists, current Owner procedures, programs, technical specifications and bidding information.
3. Owner shall designate, in writing, a representative who shall render or obtain decisions pertaining to the JOC program in a timely manner.
4. Owner shall provide work space and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by Gordian's on-site staff.
5. Owner shall be responsible for reproduction of the Construction Task Catalog®, Technical Specifications, Contract and General Conditions, Instructions to Bidders and Bid Forms, including the bid packages distributed to construction contractors.

Jo Medelman shall be the individual(s) personally responsible for ensuring Gordian provides sufficient staffing to perform the services hereunder. Gordian may not substitute other persons without the prior written approval of County's designated representative. It is understood a number of individuals from the Gordian Group will be involved in meeting Gordian's responsibilities to County.

Suspension for Convenience. County may, without cause, order Contractor in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 180 days. County shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation

ARTICLE I JOC SYSTEM LICENSE FEE

In consideration of the Services provided pursuant to Exhibit A, Art. I, Paragraphs 1 – 10, including the JOC System License and Job Order development services, Gordian shall be paid according to the following schedule:

Owner License Fee: Owner shall pay Gordian a License Fee equal to One and Ninety-Five Hundredths Percent (1.95%) of the value of the work ordered; and

Job Order Development Fee: Owner shall pay Gordian a Job Order Development Fee of Three and Five Hundredths Percent (3.05%) of the value of the work ordered.

The Owner License Fee and Job Order Development Fee shall be payable when a Job Order is issued to the JOC contractor subject to the requirements of Article II - Payment.

In the event Owner requests the project management services set forth in Exhibit A, Art. I, Paragraph 11, Gordian shall be paid according to the following schedule:

Project Management Fee: Owner shall pay Gordian a Project Management Fee of Five and Ninety-Five Hundredths Percent (5.95%) of the value of the work for which the project management services are provided.

The Project Management Fee shall be payable upon completion and acceptance of the work set forth in the Job Order by the Owner. Except at the election of Gordian projects requiring more than sixty (60) days to complete, the Project Management Fee may be billed monthly on a percentage-of-completion basis.

In consideration for the Construction Cost Estimating services set forth in Exhibit A, Article I, Section 12, and when such services are requested by Owner, Owner shall pay Gordian a fee of \$135 per hour. This rate will be effective up to the expiration of the term, unless terminated earlier. In the event Construction Cost Estimating services are provided beyond the term of this Agreement, the hourly rate will be adjusted annually on January 1 of each subsequent year by CPI for the trailing twelve month period or 3%, whichever is less.

ARTICLE II PAYMENT

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursement, not to exceed Five Hundred Thousand Dollars (\$500,000).
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY.

- C. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed. This invoice or claim must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or the item(s) delivered and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.

- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.