

CONTRACT MA-080-15011557
FOR
JOB ORDER CONTRACTING AND INDEFINITE QUANTITY CONTRACT PROGRAM ADMINISTRATION
AND SUPPORT SERVICES

THIS Contract MA-080-15011557 to provide Job Order Contracting and Indefinite Quantity Contracting Program Administration and Support Services, (hereinafter referred to as "Contract") is made by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and The Gordian Group, Inc., with a place of business at 140 Bridges Road, Suite E, Mauldin, SC 29662 (hereinafter referred to as "Contractor"), with County and Contractor sometimes individually referred to as ("Party") or collectively referred to as ("Parties").

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Job Order Contracting and Indefinite Quantity Contracting Program Administration and Support Services Program Administration and Support Services under a fixed-fee Contract; and,

WHEREAS, County solicited Job Order Contracting and Indefinite Quantity Contracting Program Administration and Support Services as set forth herein, and Contractor has represented that it is qualified to provide Job Order Contracting and Indefinite Quantity Contracting Program Administration and Support Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Job Order Contracting and Indefinite Quantity Contracting Program Administration and Support Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW THEREFORE, the Parties mutually agree as follows:

Amendment #1(Renewal)

ARTICLES

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Job Order Contracting and Indefinite Quantity Contracting Program Administration and Support Services, on an "as needed" basis under a fixed-fee Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** ~~The initial term of this Contract shall be effective July 1, 2015 and shall continue for five (5) years from that date, unless otherwise terminated as provided herein.~~ Contract shall be renewed, effective July 1, 2020, and shall continue for one (1) year from that date, unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

4. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
5. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
6. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County and District, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
7. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
8. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - c. Terminate the Contract immediately without penalty.
9. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Supervisor and the County's project manager as specified in Article 12. "Notices" by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

- a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
 - c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County DPA or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.
10. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
11. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and Contractor personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
12. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

County: OC Public Works/OC Construction
Attn: ~~Steve Johsz~~ **Jennifer Carroll**
1143 East Fruit Street
Santa Ana, CA 92701
714.667.4918
Steve.Johsz@ocpw.ocgov.com
Jennifer.Carroll@ocpw.ocgov.com

Amendment #1(Renewal)

cc: OC Public Works/Procurement Services
Attn: ~~Eddie Perkins~~, ~~Helen Hernandez~~, County DPA
~~300 N. Flower Street, Suite 838~~ 601 N. Ross Street
Santa Ana, CA 92703
~~714.667.9635~~ 714.667.9626
Eddie.Perkins@ocpw.ocgov.com
Helen.Hernandez@ocpw.ocgov.com

Contractor: The Gordian Group
Attn: Ammon T. Leshner
30 Patewood Dr., Bldg. 2
Greenville, SC 29615
864.752.4545
a.lesher@thegordiangroup.com

13. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
14. **Entire Contract:** This Contract, including attachments which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
15. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
16. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

17. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
18. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears.
19. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in Article "46" below, and as more fully described in Article "46", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
20. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Article "46" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
21. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County, such consent must not be reasonably withheld. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
22. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

23. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
24. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
25. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
26. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
27. **Performance: Contractor shall perform all work under this Contract, taking necessary steps and precautions** to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
28. **Insurance Provisions:** Prior to the provisions of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer: Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A-(Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

This policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance or per occurrence	\$1,000,000 per claims made

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interest's clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to:

County of Orange, OC Public Works
Procurement Services
300 N. Flower, Suite 838 601 N. Ross Street
Santa Ana, CA 92703

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by OC Public Works Procurement Division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

29. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article "46" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

30. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

31. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
32. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
33. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
34. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article "46" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
35. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
36. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Contractors Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
37. **Intentionally Left Blank.**
38. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
39. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
40. **Severability:** 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.
41. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

42. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
43. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
44. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
45. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
46. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
47. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested. Orders may be placed against this contract at the convenience of the using agency/department.
48. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the

County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

49. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another agency or entity that is entered into as an extension of this Contract a contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

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

The County acknowledges that disclosure of Proprietary Information will result in irreparable harm to Contractor for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Contractor. The

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

Contractor agrees to grant a license to each contractor that is awarded a JOC contract by the County, provided the JOC contractor agrees to pay the 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, Contractor shall provide all 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 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date first above written.

THE GORDIAN GROUP, INC.*

By _____

By _____

Print Name _____

Print Name _____

Title _____
Corporate Officer

Title _____
Corporate Officer

Date _____

Date _____

COUNTY OF ORANGE
a political subdivision of the State of California

By _____

Print Name _____

Title Deputy Purchasing Agent

Date _____

APPROVED AS TO FORM:

County Counsel

By _____
Deputy

Date _____

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

ATTACHMENT A
SCOPE OF WORK

Job Order Contracting and Indefinite Quantity Contracting Program
Administration and Support Services

I. INTRODUCTION

The Contractor shall provide professional consulting services for implementation of Job Order Contracting (“JOC”) and Indefinite Quantity Contracts (“IQC”) through cooperative purchasing such as provided by National Joint Powers Association (“NJPA”) and administration of JOC and IQC for various departments within the entire County of Orange, such as, but not limited to, OC Community Resources, OC Public Works, OC Waste and Recycling, OC Sherriff, and John Wayne Airport.

The primary objective of the JOC and IQC program is to enable the County to expedite the accomplishment of various repair, alteration, modernization, maintenance and rehabilitation of buildings, structures and other facility improvement projects.

II. GENERAL SERVICES

A. Program Development

The Contractor shall work with various County departments and staff to develop the JOC and IQC programs. Program development includes reviewing and assessing County needs to determine the size of the program and, in conjunction with County staff, developing execution procedures that will be used to implement and administer the JOC and IQC program.

B. Document Preparation

For each County department that will utilize JOC and IQC, the Contractor shall provide a full and complete set of customized bid and contract JOC and IQC documents including a Unit Price Book, Technical Specifications and the Contractual Terms and Conditions. Copies of the customized Unit Price Books shall be provided to the various County departments using the JOC and IQC Program services.

Each Unit Price Book shall contain no less than 150,000 individual construction tasks along with an associated unit price. Each unit price shall include the prevailing equipment, material and labor prices within County’s geographical region. The labor prices shall include the most current prevailing wages and benefits determined by the California Department of Industrial Relations. The unit price book shall be regularly updated to reflect current marketplace pricing for tasks, equipment, material, etc.

The Technical Specifications shall be prepared in conjunction with the Unit Price Book and, where available, County standards will be incorporated.

The contractual Terms and Conditions shall be prepared in conjunction with County staff and shall incorporate JOC and IQC contract language and forms with all appropriate County contract language and forms.

C. Procurement Support

Develop and implement prequalification processes for certain types of County JOC and IQC work to ensure that all the selected Contractors have the required experience and expertise to successfully provide the construction services needed. Provide procurement support on implementation of the contracting system. Conduct outreach to maximize general contractor participation in bidding.

The Contractor shall provide the County with complete technical and marketing support during the procurement phase. Qualified staff with extensive public sector procurement experience shall provide this support. Contractor will be required to organize and conduct pre-bid meetings with the intending bidders as well as make presentations on behalf of the County with various business and contracting organizations.

D. Automated JOC and IQC System

The Contractor shall provide the County with an automated JOC and IQC system capable of generating all of the necessary JOC and IQC documents including, but not limited to Contractor cost proposals, cost estimates, work orders and other management reports and forms. The automated system shall be customized to meet the specific needs of the various County departments utilizing JOC and IQC regarding forms, reports and formats.

The system shall be compatible with the individual departments Information Technology (IT) systems. The Contractor shall prepare, install, test, and maintain the system software. The Contractor shall test / debug the software under actual field conditions prior to implementation. There shall be no limits on the number of installations of the software.

E. Training

The Contractor shall be responsible for developing a comprehensive JOC and IQC staff training program. As part of the proposal, Contractor shall include its plans to develop specialized training courses. All training shall be "Hands On" with functional use and individual performance as the objective.

Provide training to ensure that the JOC and IQC system functions properly. Develop training sources that would involve all parties utilizing the system. This may include:

1. Procurement Staff
2. Clerical Administrative
3. Project Managers/Inspectors
4. Contractors

All aspects of the system are to be covered in the training. This must include but is not limited to the following:

1. JOC Execution
2. IQC Execution
3. Implementation Procedures
4. System Training
5. Post Implementation Follow up
6. Refreshers as needed

Provide staff user manuals at the end of each training session. Provide training manuals or videos to the County for training additional staff in the future.

Train the awarded JOC Contractors in implementation of the contracts. Conduct/attend orientation meetings, program review conferences, program briefings as needed.

F. Technical Support

Provide a comprehensive JOC/IQC management information and support system. This system must be compatible with the Windows operating system for personal computers. The JOC/IQC management information and support system must be capable of providing full project tracking, automated development of cost proposals (independent of County estimates), generation of all project documentation, providing a project scheduling capability, budget and cost control, and the generation of customized reports. The system must be capable of incorporating current County of Orange forms and documentation.

The Contractor shall provide extensive follow-on technical support, including assisting the County with program execution, troubleshooting, implementation, updating, and continuous system monitoring. Contractor shall update, as often as required, any or all of the JOC/IQC documents including the Unit Price Book, Technical Specifications, and Contractual Terms and Conditions. Contractor shall provide follow-on technical support and prepare and conduct periodic review conferences for County management.

The Contractor shall be required to provide JOC/IQC Program services as needed Monday through Friday of each week from 8:00 a.m. to 5:00 p.m. Pacific Time. Contractor shall be available by phone during these same hours to answer JOC/IQC Program questions.

G. JOC/IQC Facilitation Support

The County may require Contractor for certain procurement to facilitate the work. As such, the Contractor will act on the County's behalf. This service will be on an as-needed basis at the County's discretion. The scope includes:

1. Confirm that a project is an acceptable candidate for JOC/IQC.
2. Establish and create a project file at the inception of a project.
3. Clarify the Scope of Work and obtain project plans and/or data from the County.
4. Recommends appropriate JOC/IQC contractor, if multiple contractors exist.
5. Conduct a Joint Scope Meeting with County staff, JOC/IQC Contractor, and architect or engineer, as applicable.
6. Coordinate and document the Detailed Scope of Work appropriate for the work.
7. Assist with resolving issues when project plans and actual conditions vary.
8. Obtain County approval of the Detailed Scope of Work.
9. Issue a Request for Price Proposal to the JOC/IQC Contractor.
10. Review the Price Proposal submitted by the JOC Contractor.
11. Direct the JOC/IQC Contractor to revise the Price Proposal, as necessary.
12. Finalize the Job Order with the JOC/IQC Contractor.
13. Obtain and review all submissions by the JOC/IQC Contractor pertaining to the Job Order, including schedule, safety plan, submittals, shop drawings, permits, etc.
14. Verify County authorization, approval and budget account information.
15. Recommend issuance of the Notice to Proceed to the JOC/IQC Contractor.

H. Construction Management Services

The County may require the Contractor to provide, on an as-needed basis, construction management services that cover the full spectrum ("cradle-to-grave") of a project, including

owner representation, assistance, support and/or recommendations pertaining to preliminary studies and programming; due diligence, data gathering and analysis; consultant selection, design input and review, cost estimating; construction delivery and means-and-methods, permit requirements and approval process(es); bid solicitation process; observation of onsite construction progress and reporting, ongoing project development and financial oversight, invoicing and disbursements, clarifications and changes in the work; close-out packages, updating as-built drawings, and warranty issues.

**ATTACHMENT B
CONTRACTOR'S PRICING**

- I. COMPENSATION:** This is a fixed-fee Contract between the County and Contractor for Job Order Contracting – Program Administration and Support Services, as set forth in Attachment A, “Scope of Work”.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance requirements and taxes required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed prices specified herein unless authorized by amendment in accordance with Articles “15” and “30” of the County Contract Terms and Conditions.**

- II. PRICING:** Contractor guarantees that pricing is based on best information from Attachment A, “Scope of Work”.

A. JOC Solution License Fee:

Standard license fee (“License Fee”) for the Gordian JOC Solution services, which includes all of the Services and Deliverables set forth in Attachment A, with the exception of the JOC/IQC Facilitation Support and Construction Management Services.

County License Fee: 1.95% of the value of work ordered through the JOC program.

Gordian JOC Solution License Fees are payable when a Job Order, Purchase Order or similar purchasing document is issued to the JOC contractor.

In the event any other County department, public benefit corporation, division, agency or any other public entity (collectively referred to as “Department”) elects to implement an independent JOC program (“Independent JOC Program”) by accessing a contract awarded as a result of this proposal, the standard License Fees for additional departments shall apply separately to each Department, including a Client License Fee of 5% of the first \$4 Million, which shall apply to Departments implementing a Gordian JOC program for the first time. An Independent JOC Program is defined as a program that requires preparing Department specific JOC contract documents (i.e., Contract, General Conditions, Bid Documents, Construction Task Catalog and Technical Specifications), preparing Department specific Execution Procedures, procuring Department specific JOC contractors, providing access to eGordian for Department specific staff and JOC contractors, or training Department specific staff and JOC contractors.

B. Optional JOC Complete Solution (JOC/IQC Facilitation Support) Fee:

JOC Complete Solution Services (JOC/IQC Facilitation Support) may be selected on a project-by-project basis. The fees assessed for the JOC Complete Solution include a Job Order Development Fee in addition to the County License Fee as follows:

County License Fee: 1.95% of the value of the work ordered through the JOC program;

Job Order Development Fee: 3.05% of the value of the work ordered through the JOC program;
and

The JOC Complete Solution Fees are payable when a Job Order, Purchase Order or similar purchasing document is issued to the JOC contractor. The Job Order Development Fee will only apply when JOC Complete Solution services are requested by the County on a project-by-project basis.

C. Optional JOC Complete Solution Plus (Construction Management Services) Fee:

The fees for the JOC Complete Solution Plus (Construction Management Services) include the following Construction Management Fee in addition to the County License Fee and, if applicable, the Job Order Development Fee described above:

Construction Management Fee: 5.95% of the value of the work ordered through the JOC program; and

The County License Fee and Job Order Development Fee are payable when a Job Order, Purchase Order or similar purchasing document is issued to the JOC contractor.. The Construction Management Fee is payable when construction of the Job Order has been completed and accepted by the County. Job Orders requiring more than sixty (60) days to complete may be invoiced monthly on a percentage of completion basis.

- III. RATE INCREASES/DECREASES:** No rate increases will be permitted during the first two years of the Contract. All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of One hundred eighty (180) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
- IV. CONTRACTOR'S EXPENSE:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- V. PAYMENT TERMS:** Invoices are to be submitted in arrears, after project and/or services have been completed, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this contract and shall not be construed as acceptance of any part of the goods or services.

VI. INVOICING INSTRUCTIONS: The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:

- A. Contractor's name and address
- B. Contractor's remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address
- E. Contract number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works
Procurement Services
Attn: Accounts Payable
~~300 N. Flower St., 8th Fl.~~ 601 N. Ross Street
Santa Ana, CA 92703

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.