

AGREEMENT

THIS AGREEMENT FOR JOB ORDER CONTRACTING SERVICES ("Agreement") is made and entered into this 26th day of February, 2019 ("Effective Date"), by and between the County of Fresno, a political subdivision of the State of California ("COUNTY"), and The Gordian Group Inc., a Georgia corporation, which will do business in California as the Mellon Group, whose corporate address is 30 Patewood Dr., Building 2, Suite 350, Greenville, SC 29615, ("CONTRACTOR").

WITNESSETH

WHEREAS, COUNTY needs the administration and maintenance of a Job Order Contracting (JOC) system and JOC consulting services; and

WHEREAS, CONTRACTOR is qualified to perform the services required, and is willing to perform such services pursuant to the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties agree as follows:

SECTION 1. – OBLIGATIONS OF THE CONTRACTOR (GORDIAN JOC SOLUTION®)

CONTRACTOR shall provide the "Gordian JOC Solution®" Job Order Contracting (JOC) products and support services as specified in this Agreement.

A. DEVELOPMENT AND IMPLEMENTATION SERVICES

The development and implementation services shall be performed for the COUNTY's Department of Internal Service Department (ISD) and the Department of Public Works and Planning (PWP) (collectively referred to in this Agreement as "Department"), on or after the Effective Date of this Agreement.

An independent JOC program is defined as a program that requires preparing Department-specific JOC contract documents, preparing Department-specific execution procedures, procuring Department-specific JOC contractors, providing access to eGordian® for Department-specific staff and JOC contractors, and training Department-specific staff and JOC contractors.

The JOC program is a unique, indefinite quantity procurement process that helps facility

1 and infrastructure owners complete a large number of repairs, remodeling, and other
2 repetitive work with a single, competitively-bid contract. Unlike traditional bidding, where
3 each project is identified, designed and then put out to bid, JOC establishes competitively-
4 bid per unit prices up front, and eliminates the need to separately bid each such project.

- 5 1. CONTRACTOR shall provide experienced staff who shall be responsible for the
6 development, implementation, and ongoing support of each independent JOC
7 program for COUNTY during the term of this Agreement. CONTRACTOR's staff
8 shall report directly to COUNTY, and shall be available to assist COUNTY with any
9 JOC-related issues.
- 10 2. CONTRACTOR shall be responsible for conducting the activities necessary for
11 establishing the structure of the COUNTY's JOC program, informing COUNTY staff
12 as well as the contracting community about JOC best practices, assisting with
13 procurement of the actual JOC contractors, and assisting with development and/or
14 modification of the actual procedures COUNTY shall use in executing the JOC
15 program. Specific services CONTRACTOR shall provide will include: develop the
16 JOC program structure/bidding strategy; prepare and conduct pre-bid seminars;
17 prepare and conduct an external marketing program; prepare and conduct an
18 internal marketing program; and coordinate and develop the JOC execution
19 procedures.
- 20 3. CONTRACTOR shall be responsible for developing and conducting a
21 comprehensive JOC training program for any new COUNTY or JOC Contractor
22 staff, which shall include different course modules in order for COUNTY staff to
23 receive specialized training.
- 24 4. All JOC contract order invoicing shall clearly list both (1) the JOC Project Number
25 and the (2) FAMIS¹ work order number, provided the COUNTY enters the FAMIS
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28 ¹ FAMIS is the COUNTY's cloud-based facilities maintenance management software solution, licensed by
Accruent, LLC.

work order number into the JOC system in a timely manner.

5. CONTRACTOR will be responsible for providing comprehensive JOC follow-up support to each user COUNTY Department for the administration of its JOC program. CONTRACTOR will monitor the overall program and prepare any status reports required by the COUNTY. Support services will include, but are not limited to, unlimited toll-free JOC Software support, access to all applicable JOC Software updates and additional functionality, updating for each new JOC construction contract the Construction Task Catalog®, technical specifications, contract and general conditions and bid documents, providing procurement assistance for new JOC contracts, providing training for new COUNTY and JOC contractor staff, and preparing customized forms and reports requested by the COUNTY.
6. CONTRACTOR will be responsible for providing a license for an unlimited number of users for the COUNTY to access Gordian's web-based JOC system, which includes the JOC Software and Construction Task Catalog®. The JOC Software will be capable of generating the JOC documents including independent cost estimates, JOC contractor price proposals, job orders, and management reports and forms. The COUNTY's standard reports and forms will be incorporated as requested.

B. MAINTENANCE AND SUPPORT

All information CONTRACTOR receives from the COUNTY or comes in contact with while performing contracted duties for the COUNTY shall be treated as confidential, and shall not be released or discussed with an outside party without the written consent of the COUNTY.

CONTRACTOR shall provide to COUNTY the following:

1. 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; and
 - ii. Manage revisions to the Construction Task Catalog®.
 - g) Conduct annual on-site reviews of the JOC program, as requested; and
 - h) Prepare program evaluations, as requested.
2. Procurement and 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 new, unpriced 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; and
 - g) Assist with bidding new JOC contracts including:
 - i. Conduct pre-bid meetings with potential contractors; and
 - ii. Assist with bid review and JOC contractor selection, as requested.
3. Procurement and 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 descriptions for new, recurring unpriced tasks;
 - iv. Remove outdated tasks that are no longer used or available;
 - v. Monitor local area pricing;
 - vi. Incorporate current construction practices and materials; and
 - vii. Publish a new Construction Task Catalog® for each additional solicitation.

- b) Update and enhance customized technical specifications including:
 - i. Develop new specifications for new, recurring unpriced tasks;
 - ii. Incorporate current construction practices, standards and materials;
 - and
 - iii. Publish new technical specifications for each additional solicitation

4. 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; and
 - v. Proposal review and variance resolution.
- e) Conduct JOC 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; and
 - v. Provide internet based training for current and new staff.

5. Software Support

- a) Provide unlimited access to the JOC Software;
- b) Provide software technical support, including:
 - i. Maintain software access for staff;
 - ii. Set up software access for new staff; and

1 iii. Provide systems support in connection with the software.

2 c) Provide access to all new releases of the software;

3 d) Write, test and finalize modifications to existing reports, as requested;

4 e) Write, test and finalize new reports, as requested; and

5 f) Provide toll-free technical support from 8 AM EST thru 10 PM EST, Monday
6 through Friday, excluding holidays. Telephone technical support may be
7 contacted at 800-448-8182.

8 C. SECURITY

9 Failure to fully comply with the security requirements as set forth in this Section 1(C)
10 will be considered a breach of this Agreement and shall result in termination of this
11 Agreement for default of the CONTRACTOR. CONTRACTOR personnel shall cooperate
12 with all COUNTY security personnel at all times and shall be subject to and conform to
13 COUNTY security rules and regulations. Any violations or disregard of these rules may be
14 cause for denial of access to COUNTY property. COUNTY may change these policies and
15 procedures at any time, without any prior notice to CONTRACTOR. It is the
16 CONTRACTOR's responsibility to have the most recent versions of the attachments below.

17 1. CONTRACTOR acknowledges that the Juvenile Justice Campus (JJC) and the
18 Fresno Sheriff – Coroner's Office (FSCO) Jail Detention Facilities are "no-hostage
19 facilities". CONTRACTOR shall ensure that its employees and any subcontractors
20 working in the JJC, and associated facilities, agree to abide by COUNTY's rules for
21 a no-hostage facility as set forth in Attachment C and D, attached and incorporated
22 by this reference. CONTRACTOR shall plan and execute all work in such a manner
23 as to prevent a security breach of the JJC and FSCO detention facilities or any
24 other COUNTY secured facility.

25 2. CONTRACTOR shall comply with all Prison Rape Elimination Act (PREA)
26 standards for juvenile correctional facilities as set forth in Attachment E, attached
27 and incorporated by this reference. The Probation Department shall provide
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1 Trainings, as necessary, at no charge to CONTRACTOR. CONTRACTOR shall
2 comply with all Probation Department Policies and Procedures. In the event of a
3 dispute involving COUNTY staff and a CONTRACTOR employee or subcontractor,
4 the on-duty Facility Administrator will have the final decision. Information on the
5 Prison Rape Elimination Act can be found at: <http://www.prearesourcecenter.org/>.

- 6 3. COUNTY may require CONTRACTOR to have its staff pass a background
7 investigation through the Fresno County's Sheriff – Coroner Office, as stated in
8 Attachment F, attached and incorporated by this reference, prior to commencing
9 services. Decision to require a background investigation, or lack thereof, will be at
10 the sole discretion of the COUNTY.

11 D. PREVAILING WAGE

12 In accordance with Labor Code section 1770, et seq., the Director of the
13 Department of Industrial Relations of the State of California has determined the general
14 prevailing wages rates and employer payments for health and welfare pension, vacation,
15 travel time and subsistence pay as provided for in Section 1773.1, apprenticeship or other
16 training programs authorized by Section 3093, and similar purposes applicable to the work
17 to be done.

18 Information pertaining to applicable Prevailing Wage Rates may be found on the
19 website for the State of California – Department of Industrial Relations:

20 <http://www.dir.ca.gov/oprl/PWD/index.htm>. Information pertaining to applicable prevailing
21 wage rates for apprentices may be found on the website for the State of California –

22 Department of Industrial Relations:

23 <http://www.dir.ca.gov/oprl/pwappwage/PWAppWageStart.asp>.

24 It shall be mandatory upon the CONTRACTOR and upon any subcontractor to pay
25 not less than the prevailing wage rates, including overtime and holiday rates, to all workers,
26 laborers, or mechanics employed on this public work project, including those workers
27 employed as apprentices. Further, CONTRACTOR and each subcontractor shall comply
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1 with Labor Code sections 1777.5 and 1777.6 concerning the employment of apprentices. A
2 copy of the above-mentioned prevailing wage rates shall be posted by the CONTRACTOR
3 at the job site where it will be available to any interested party.

4 CONTRACTOR shall comply with Labor Code section 1775 and shall forfeit as a
5 penalty to COUNTY Two Hundred Dollars (\$200.00) for each calendar day or portions
6 thereof, for each worker paid less than the prevailing wage rates for the work or craft in
7 which the worker is employed for any work done under this project by CONTRACTOR or
8 by any subcontractor under CONTRACTOR in violation of Labor Code section 1770, et
9 seq. In addition to the penalty, the difference between the prevailing wage rates and
10 amount paid to each worker for each calendar day or portion thereof for which each worker
11 was paid less than the prevailing wage rate shall be paid to each worker by the
12 CONTRACTOR or subcontractor.

13 CONTRACTOR and each of their subcontractors shall keep an accurate record
14 showing the name, address, social security number, work classification, straight time and
15 overtime hours worked each day and week, and the actual per diem wages paid to each
16 journeyman, apprentice, worker, or other employee employed by him or her in connection
17 with this public work project. In accordance with Labor Code section 1776, each payroll
18 record shall be certified and verified by a written declaration under penalty of perjury stating
19 that the information within the payroll record is true and correct and that the
20 CONTRACTOR or subcontractor has complied with the requirements of Labor Code
21 sections 1771, 1811 and 1815 for any work performed by its employees on this public work
22 project. These records shall be open at all reasonable hours to inspection by the COUNTY,
23 its officers and agents, and to the representatives of the State of California – Department of
24 Industrial Relations, including but not limited to the Division of Labor Standards
25 Enforcement.
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27 **SECTION 2. – JOC SYSTEM LICENSE AND FEES**

28 A. JOC SYSTEM LICENSE -- CONTRACTOR hereby grants to COUNTY a non-exclusive,

1 non-transferable right, privilege and license to use CONTRACTOR's JOC system and other
2 related proprietary materials (collectively referred to as "Proprietary Information") for the
3 sole purpose of operating the COUNTY's JOC program for the Term of this Agreement.
4 This is called a "County License Fee." The parties hereby agree that the Proprietary
5 Information shall include, but is not limited to, CONTRACTOR's JOC Software applications
6 and support documentation, Construction Task Catalog® (also commonly referred to as a
7 unit price book), construction cost data, training materials and other Proprietary materials
8 provided by CONTRACTOR. In the event this Agreement expires or terminates as provided
9 herein, COUNTY shall return all Proprietary Information in the COUNTY's possession to
10 CONTRACTOR, excluding COUNTY data and associated business information for which
11 access remains at the discretion of the COUNTY's Chief Administrative
12 Officer. COUNTY acknowledges the unauthorized disclosure of Proprietary Information will
13 result in irreparable harm to CONTRACTOR for which monetary damages would be an
14 inadequate remedy and agrees that no such disclosure shall be made to anyone without
15 first receiving CONTRACTOR's written consent. The COUNTY further acknowledges and
16 agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of
17 CONTRACTOR in the Proprietary Information during and after the term of this Agreement
18 and shall at all times maintain complete confidentiality with regard to the Proprietary
19 Information provided to the COUNTY, subject to federal and state laws related to public
20 records disclosure.

21
22 The County License Fee is payable by COUNTY to CONTRACTOR when a job
23 order contract is issued to the JOC contractor. The County License Fee will apply to all
24 future JOC contracts awarded by the County and will be assessed regardless of the
25 cumulative value of the work ordered. It is important to note that CONTRACTOR will be
26 responsible for all administrative duties related to the County License Fee, including
27 invoicing and collections.

28 CONTRACTOR agrees to grant a Contractor License to use the applicable Proprietary

1 Information to each contractor awarded a JOC contract by the COUNTY, provided such
2 JOC contractor agrees to pay CONTRACTOR's JOC "Contractor License Fee" in effect
3 when the COUNTY awards the contract, and further provided that COUNTY includes
4 licensing language in such JOC contract similar in form to that set forth in the "JOC System
5 License",

6 Within 30 days of expiration or termination of this Agreement as provided herein,
7 CONTRACTOR shall provide to the County all data generated by the COUNTY in a form
8 accessible by a standard database program, such as Microsoft Access.

- 9 B. The cost of the County License Fee and the Contractor License Fee are discussed in
10 Section 5. – Compensation, see below.

11 **SECTION 3. – OBLIGATIONS OF THE COUNTY**

- 12 A. Review all documentation and requests for information submitted by CONTRACTOR in a
13 timely manner.
- 14 B. Provide full information regarding requirements for the JOC program, including, but not
15 limited to, facilities' lists, current COUNTY procedures, programs, technical specifications,
16 and bidding information.
- 17 C. Designate, in writing, a representative who shall render or obtain decisions in a timely
18 manner pertaining to the JOC program.
- 19 D. Provide office space, furniture, telephone, and internet access as necessary, to
20 CONTRACTOR's JOC development team.
- 21 E. Provide reproduction services for all draft and final versions of the Construction Task
22 Catalog®, technical specifications, contract terms and conditions, instructions to bidders and
23 proposal forms, execution procedures and training materials.
- 24 F. CONTRACTOR shall comply with all applicable Federal, State, County, and City
25 regulations regarding wages, hours, and working conditions.
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1 **SECTION 4. -- TERM**

2 The initial term of this Agreement shall be for a period of three (3) years, commencing on
3 April 28, 2019, through and including April 27, 2022 ("Term"). This Agreement may be extended
4 for two (2) additional consecutive twelve (12) month periods upon written approval of both
5 COUNTY and CONTRACTOR, no later than thirty (30) days prior to the first day of the next twelve
6 (12) month extension period. COUNTY's Director of Internal Services/Chief Information Officer or
7 his or her designee, is authorized to execute such written approval on behalf of COUNTY based on
8 CONTRACTOR's satisfactory performance.

9 **SECTION 5. -- COMPENSATION/INVOICING**

10 COUNTY agrees to pay CONTRACTOR for services provided to Department for Gordian
11 JOC Solution® services and JOC Complete Solution® services as follows:

- 12 A. Gordian JOC Solution® services – For Gordian JOC Solution® services provided to
13 Department, COUNTY shall pay to CONTRACTOR County License Fees totaling 1.95% of
14 the value of construction work awarded to JOC contractors utilizing the JOC system. Such
15 County License Fees shall be billable upon the issuance of a Job Order, purchase order,
16 notice to proceed, or similar purchasing document by COUNTY to the JOC contractors.
17 Additionally, throughout the term of this Agreement, all JOC contractors awarded by
18 COUNTY, who in turn will utilize the JOC system, shall be assessed a Contractor License
19 Fee of one percent (1%) of the value of construction procured from the JOC contractor by
20 the COUNTY. Such Contractor License Fees are payable to CONTRACTOR when a Job
21 Order, purchase order, notice to proceed, or similar purchasing document is issued to the
22 JOC contractor. Such Contractor License Fees shall be billable upon the award of
23 contracts to the JOC construction contractors.

- 24 1. ISD: In no event shall compensation for Gordian JOC Solution® services for
25 COUNTY's ISD under this Agreement exceed Four Hundred Fifty Thousand Dollars
26 (\$450,000.00) during the term of this Agreement, including extension periods.

27 CONTRACTOR shall submit invoices in accordance with the rates and
28

1 charges agreed upon for the services provided to the COUNTY by CONTRACTOR
2 during the previous monthly billing period on the first day of the month. Each invoice
3 shall reference this Agreement number, the date and name of the facility where the
4 services were performed, and a clear itemization of services performed, and shall
5 be mailed to The County of Fresno, Internal Services Department, Facility Services
6 Division, Isdap-ar@FresnoCountyCA.gov, or at address 4590 E. Kings Canyon
7 Road, Fresno, CA 93702-3709. COUNTY shall make payment to
8 CONTRACTOR(S) no later than forty-five (45) days after receipt and approval of
9 each invoice, which shall be given upon verification of satisfactory performance.

- 10 2. PWP: In no event shall compensation for Gordian JOC Solution® services for
11 COUNTY's PWP under this Agreement exceed Five Hundred Thousand Dollars
12 (\$500,000.00) during the term of this Agreement, including extension periods.
13 CONTRACTOR shall submit invoices in accordance with the rates and charges
14 agreed upon for the services provided to the COUNTY by CONTRACTOR during
15 the previous monthly billing period on the first day of the month. Each invoice shall
16 reference this Agreement number, the date and name of the facility where the
17 services were performed, and a clear itemization of services performed, and shall
18 be e-mailed to: PWPBusinessoffice@fresnocountyca.gov or mailed to: County of
19 Fresno, Department of Public Works and Planning, Business Office, 2220 Tulare
20 Street, 6th Floor, Fresno, CA 93721-2127. Payment shall be made by COUNTY
21 forty-five (45) days from receipt of invoice by COUNTY.

- 22 3. COMBINED: In no event shall the combined total compensation paid to
23 CONTRACTOR for both the ISD and PWP departments for the entire potential five-
24 year term of this Agreement for Gordian JOC Solution® services exceed the sum of
25 Nine Hundred Fifty Thousand Dollars (\$950,000).
26

- 27 B. JOC Complete Solution® – COUNTY, at its sole discretion, may request on an as-needed
28 basis "JOC Complete Solution®" described in Attachment B over and above those provided

1 in the "Gordian JOC Solution®" package, described in this Agreement. The JOC Complete
2 Solution® will be utilized by Departments if Departments require services that are excluded
3 in the Gordian JOC Solution® service package. Such services include project managers to
4 assist with developing job orders from project identification to issuing the job orders.

5 In the event COUNTY requests JOC Complete Solution®, CONTRACTOR shall
6 provide a project-specific cost proposal for JOC Complete Solution® as set forth in
7 Attachment B. In consideration for such services, the COUNTY agrees to pay the
8 compensation associated with each additional service as provided in the project-specific
9 cost proposal. CONTRACTOR shall provide additional services to COUNTY as mutually
10 agreed. However, the JOC Complete Solution® will be provided to CONTRACTOR without
11 prior written authorization by COUNTY. The costs for Additional Services shall be as
12 follows:

- 13 1. JOC COMPLETE SOLUTION®: The following fees will apply to all future JOC
14 contracts awarded by the COUNTY for services provided to COUNTY and will be
15 assessed regardless of the cumulative value of the work ordered.
 - 16 i. County License Fee: COUNTY shall pay CONTRACTOR JOC Complete
17 Solution® License Fees totaling 1.95% of the value of contracts awarded to
18 JOC contractors utilizing the JOC system;
 - 19 ii. Job Order Development Fee: COUNTY shall pay CONTRACTOR Job Order
20 Contract Development Fees totaling 3.05% of the value of the work ordered
21 to JOC contractors utilizing the JOC Complete Solution®; and
 - 22 iii. Contractor License Fee: All JOC contractors awarded by COUNTY, who in
23 turn utilize the JOC Complete Solution®, shall be assessed a Contractor
24 License Fee As described in Section 5(A).
- 25 2. In no event shall the total compensation paid to CONTRACTOR for the entire
26 potential five-year term of this Agreement for JOC Complete Solution® exceed the
27 sum of One Million Five Hundred Thousand Dollars (\$1,500,000).
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1 C. It is understood that all expenses incidental to CONTRACTOR's performance of all
2 services under this Agreement shall be borne by CONTRACTOR.

3 D. TOTAL OVERALL CONTRACT MAXIMUM: In no event shall the total compensation paid
4 to CONTRACTOR for all services, including Gordian JOC Solution® services *and* JOC
5 Complete Solution®, for the entire potential five-year term of this Agreement, exceed
6 Two Million, Four-Hundred Fifty Thousand Dollars (\$2,450,000).

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8 **SECTION 6. -- INDEPENDENT CONTRACTOR**

9 In performance of the work, duties, and obligations assumed by each CONTRACTOR
10 under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any
11 and all of CONTRACTOR's officers, agents, subcontractors, and employees shall at all times be
12 acting and performing as independent contractors, and shall act in an independent capacity and
13 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.

14 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or
15 method by which CONTRACTORS shall perform their work and function. However,
16 CONTRACTOR's methods must be compatible with COUNTY's standards and must result in
17 satisfactory and timely completion of the work assigned, and the quality and quantity of work
18 produced must be acceptable to the COUNTY. COUNTY retains the right to verify that each
19 CONTRACTOR is performing their obligations in accordance with this Agreement's terms and
20 conditions. CONTRACTOR and COUNTY shall comply with all applicable provisions of law and
21 the rules and regulations, if any, of governmental authorities having jurisdiction over matters
22 covered by this Agreement.

23 Because of its status as an independent contractor, CONTRACTOR shall have
24 absolutely no right to employment rights and benefits available to COUNTY employees.
25 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, their
26 employees all legally required employee benefits. In addition, CONTRACTOR shall be solely
27 responsible and shall hold the COUNTY harmless from all matters relating to payment of
28 CONTRACTORS' employees, including compliance with Social Security withholding, and all

1 other regulations governing such matters. It is acknowledged that during the term of this
2 Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to
3 this Agreement.

4 **SECTION 7. -- TERMINATION OF AGREEMENT**

5 This Agreement may be terminated for the following reasons:

- 6 A. Non-Allocation of Funds - The terms of this Agreement and any extensions, and the
7 services to be provided, are contingent on the approval of funds by the appropriating
8 government agency. If sufficient funds are not allocated, the services provided may be
9 modified, or this Agreement terminated by COUNTY at any time by giving
10 CONTRACTOR thirty (30) days advance written notice.
- 11 B. Breach of Contract - COUNTY may immediately suspend or terminate this Agreement in
12 whole or in part, where in the determination of the COUNTY there is:
- 13 1. An illegal or improper use of funds;
 - 14 2. A failure to comply with any term of this Agreement
 - 15 3. A substantially incorrect or incomplete report submitted to the COUNTY;
 - 16 or
 - 17 4. Improperly performed services.

18 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of
19 any breach of this Agreement or any default which may then exist on the part of the
20 CONTRACTOR. Such payment shall not impair or prejudice any remedy to the
21 COUNTY with respect to the breach or default. COUNTY shall have the right to demand
22 of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the
23 CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not
24 expended in accordance with the terms of this Agreement. CONTRACTOR shall
25 promptly refund any such funds upon demand.

- 26 C. Without Cause - Under circumstances other than those set forth above, this Agreement
27 may be terminated by COUNTY by giving ninety (90) days advance written notice of an
28 intention to terminate to CONTRACTOR. In the event of such termination, COUNTY

1 shall pay CONTRACTOR for satisfactory services or supplies provided up until the date
2 of termination.

3 COUNTY's Director of Internal Services/Chief Information Officer or his or her designee,
4 is authorized to execute such written notice on behalf of COUNTY.

5 **SECTION 8. -- HOLD HARMLESS AND INDEMNIFICATION**

6 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request,
7 defend the COUNTY, its officers, agents, and employees from any and all costs and expenses
8 (including attorney's fees and costs), damages, liabilities, claims, and losses, and any and all
9 claims, damages, costs, fees, regulatory fines and penalties, and forms of legal action involving
10 Cyber Risks, occurring or resulting to COUNTY in connection with the performance, or failure to
11 perform, by CONTRACTOR, its officers, agents, or employees under this Agreement, and from
12 any and all costs and expenses (including attorney's fees and costs), damages, liabilities,
13 claims, and losses, and any and all claims, damages, costs, fees, regulatory fines and penalties,
14 and forms of legal action involving Cyber Risks, occurring or resulting to any person, firm, or
15 corporation who may be injured or damaged by the performance, or failure to perform, of
16 CONTRACTOR, its officers, agents, or employees under this Agreement.

17 COUNTY agrees to indemnify, save, hold harmless, and at CONTRACTOR'S request,
18 defend the CONTRACTOR, its officers, agents, and employees from any and all costs and
19 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses
20 occurring or resulting to CONTRACTOR in connection with the performance, or failure to
21 perform, by COUNTY, its officers, agents, or employees under this Agreement, and from any
22 and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims,
23 and losses occurring or resulting to any person, firm, or corporation who may be injured or
24 damaged by the performance, or failure to perform, of COUNTY, its officers, agents, or
25 employees under this Agreement.

26 In the event of a claim of alleged infringement of patent rights, copyright, trade secret
27 rights, or intellectual property rights, to the fullest extent permitted by law, CONTRACTOR
28 agrees to and shall indemnify, save, hold harmless, and at COUNTY's request, defend

COUNTY, including its officers, officials, agents, and employees from any and all demands, costs and expenses, penalties, attorney's fees and court costs, damages of any nature whatsoever (including, without limitation, injury or damage to or loss or destruction of property), judgments (including, without limitation, amounts paid in settlement and amounts paid to discharge judgments), liabilities, claims and losses, suits, actions or proceedings of every name, kind and description occurring or resulting to COUNTY, out of or in connection with any claim that is based on the infringement (or assertions of infringement) of any of patent rights, copyright, trade secret rights, or intellectual property rights with respect to services, software, or any Equipment provided by CONTRACTOR as part of this Agreement, including, but not limited to, their materials, designs, techniques, processes and information supplied or used by CONTRACTOR or any of CONTRACTOR's subcontractor of any tier in performing or providing any portion of CONTRACTOR's obligations as outlined in this Agreement. If, in any suit, action, proceeding or claim relating to the foregoing, a temporary restraining order or preliminary injunction is granted, CONTRACTOR shall make every reasonable effort to secure the suspension of the injunction or restraining order. If, in any such suit, action, proceeding or claim, the services, software or any Equipment provided by CONTRACTOR or any part, combination or process thereof, is held to constitute an infringement and its use is enjoined, CONTRACTOR shall immediately (a) pay the reasonable direct out-of-pocket costs and expenses to secure a license to use such infringing work, replace the infringing work or modify the same so that it becomes non-infringing, and (b) make every reasonable effort to secure for the COUNTY a license, at no cost to COUNTY, authorizing COUNTY's continued use of the infringing work. If CONTRACTOR is unable to secure such license within a reasonable time, CONTRACTOR, at its own expense and without impairing performance requirements of the services, software, or any Equipment provided by CONTRACTOR as part of this Agreement, shall either replace the affected services, software, or any Equipment provided by CONTRACTOR as part of this Agreement, combination or process thereof, with non-infringing services, software, or other equipment, or modify the same so that they become non-infringing. The provisions of this Section 8 shall survive the termination of this Agreement.

1 **SECTION 9. -- INSURANCE**

2 Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or any
3 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the
4 following insurance policies or a program of self-insurance, including but not limited to, an
5 insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the
6 Agreement:

7 A. Commercial General Liability

8 Commercial General Liability Insurance with limits of not less than Two Million Dollars
9 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars
10 (\$4,000,000.00). This policy shall be issued on a per occurrence basis. County may
11 require specific coverage including completed operations, product liability, contractual
12 liability, Explosion-Collapse-Underground, fire legal liability or any other liability
13 insurance deemed necessary because of the nature of the contract.

14 B. Automobile Liability

15 Comprehensive Automobile Liability Insurance with limits of not less than One Million
16 Dollars (\$1,000,000.00) per accident for bodily injury and for property damages.
17 Coverage should include any auto used in connection with this Agreement.

18 C. Professional Liability

19 If CONTRACTOR employs licensed professional staff (e.g., Ph.D., R. N., L.C.S.W.,
20 M.F.C.C.) while providing services, Professional Liability Insurance with limits of not less
21 than One Million Dollars (\$1,000,000.00) per occurrence, and Three Million Dollars
22 (\$3,000,000.00) annual aggregate. This coverage shall be issued on a per claim basis.
23 Contractor agrees that it shall maintain, at its sole expense, in full force and effect for a
24 period of three years following the termination of this Agreement, one or more policies of
25 professional liability insurance with limits of coverage as specified herein.

26 D. Worker's Compensation

27 A policy of Worker's Compensation insurance as may be required by the California
28 Labor Code. CONTRACTOR shall obtain endorsements to the Commercial General

1 Liability insurance naming the County of Fresno, its officers, agents, and employees,
2 individually and collectively, as additional insured, but only insofar as the operations
3 under this Agreement are concerned. Such coverage for additional insured shall apply
4 as primary insurance and any other insurance, or self-insurance, maintained by
5 COUNTY, its officers, agents and employees shall be excess only and not contributing
6 with insurance provided under CONTRACTOR's policies herein. This insurance shall
7 not be cancelled or changed without a minimum of thirty (30) days advance written
8 notice given to COUNTY.

9 E. Technology Professional Liability (Errors and Omissions)

10 Technology professional liability (errors and omissions) insurance with limits of not less
11 than Two Million Dollars (\$2,000,000.00) per occurrence. Coverage shall encompass all
12 of the CONTRACTOR's duties and obligations that are the subject of this Agreement.
13 Coverage shall include, but not be limited to, any and all claims, damages, costs, fees,
14 regulatory fines and penalties, or forms of legal action involving Cyber Risks.

15 F. Cyber Liability

16 Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00)
17 per occurrence. Coverage shall include, but not be limited to, any and all claims,
18 damages, costs, fees, regulatory fines and penalties, or forms of legal action involving
19 Cyber Risks. The cyber liability policy shall be endorsed to cover the full replacement
20 value of, damage to, alteration of, loss of, theft of, ransom of, or destruction of intangible
21 property (including but not limited to information or data) that is in the care, custody, or
22 control of CONTRACTOR.

23 For purposes of the technology professional liability insurance and the cyber liability
24 insurance required under this Agreement, Cyber Risks include, but are not limited to, (i)
25 security breaches, which include disclosure of, whether intentional or unintentional,
26 information provided by COUNTY, information provided by or obtained from any inmate,
27 or personal-identifying information relating to any inmate, to an unauthorized third party;
28 (ii) breach of any of CONTRACTOR's obligations under this Agreement relating to data

1 security, protection, preservation, usage, storage, transmission, and the like; (iii)
2 infringement of intellectual property including, but not limited to, infringement of
3 copyright, trademark, and trade dress; (iv) invasion of privacy, including any release of
4 private information; (v) information theft by any person or entity, whatsoever; (vi)
5 damage to or destruction or alteration of electronic information; (vii) extortion related to
6 CONTRACTOR's obligations under this Agreement regarding electronic information,
7 including information provided by COUNTY, information provided by or obtained from
8 any inmate, or personal-identifying information relating to any inmate; (viii) network
9 security; (ix) data breach response costs, including security breach response costs; (x)
10 regulatory fines and penalties related to CONTRACTOR's obligations under this
11 Agreement regarding electronic information, including information provided by
12 COUNTY, information provided by or obtained from an inmate, or personal-identifying
13 information relating to any inmate; and (xi) credit monitoring expenses.

14 Contractor hereby waives its right to recover from County, its officers, agents, and
15 employees any amounts paid by the policy of worker's compensation insurance required by this
16 Agreement. Contractor is solely responsible to obtain any endorsement to such policy that may
17 be necessary to accomplish such waiver of subrogation, but Contractor's waiver of subrogation
18 under this paragraph is effective whether or not Contractor obtains such an endorsement.

19 Within thirty (30) days from the date CONTRACTOR executes this Agreement,
20 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all
21 of the foregoing policies, as required herein, to the County of Fresno, Facility Services, Attn:
22 Facility Manager, 4590 E. Kings Canyon Road, Fresno, CA 93702, stating that such insurance
23 coverage have been obtained and are in full force; that the County of Fresno, its officers, agents
24 and employees will not be responsible for any premiums on the policies; that for such worker's
25 compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY,
26 its officers, agents, and employees any amounts paid under the insurance policy and that
27 waiver does not invalidate the insurance policy; that such Commercial General Liability
28 insurance names the County of Fresno, its officers, agents and employees, individually and

1 collectively, as additional insured, but only insofar as the operations under this Agreement are
2 concerned; that such coverage for additional insured shall apply as primary insurance and any
3 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,
4 shall be excess only and not contributing with insurance provided under CONTRACTOR's
5 policies herein; and that this insurance shall not be cancelled or changed without a minimum of
6 thirty (30) days advance, written notice given to COUNTY.

7 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein
8 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate
9 this Agreement upon the occurrence of such event.

10 All policies shall be with admitted insurers licensed to do business in the State of California.
11 Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc.
12 rating of A FSC VII or better.

13 **SECTION 10. -- MODIFICATION**

14 This Agreement may be modified from time to time by the written consent of all the
15 parties without, in any way, affecting the remainder.

16 **SECTION 11. -- NON - ASSIGNMENT**

17 CONTRACTOR shall not assign, transfer or sub-contract this Agreement or any of its
18 respective rights or duties hereunder without the prior written consent of the COUNTY.

19 **SECTION 12. -- AUDITS AND INSPECTIONS**

20 CONTRACTOR shall at any time during business hours, and as often as the COUNTY
21 may deem necessary, make available to the COUNTY for examination all of its records and
22 data with respect to the matters covered by this Agreement. CONTRACTOR shall, upon
23 request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
24 necessary to ensure CONTRACTORS' compliance with the terms of this Agreement. If this
25 Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the
26 examination and audit of the California State Auditor for a period of three (3) years after final
27 payment under contract (Government Code Section 8546.7).
28

1 **SECTION 13. -- NOTICES**

2 The persons and their addresses having authority to give and receive written notices
3 under this Agreement include the following:

4 **COUNTY OF FRESNO**

5 County of Fresno - ISD
6 Director of Internal Services/
7 Chief Information Officer
8 333 W. Pontiac Way, Clovis, CA 93612

9 County of Fresno - Public Works and
10 Planning
11 Director of Public Works and Planning
12 2220 Tulare Street, 6th floor
13 Fresno, CA 93721-2127

4 **CONTRACTORS**

5 The Gordian Group, Inc.
6 Ammon Leshner, Vice President
7 30 Patewood Dr., Building 2, Suite 350
8 Greenville, SC 29615-6810

11 All notices between the COUNTY and the CONTRACTOR provided for or permitted under
12 this Agreement must be in writing and delivered either by personal service, by first-class United
13 States mail, by an overnight commercial courier service, or by telephonic facsimile transmission.
14 A notice delivered by personal service is effective upon service to the recipient. A notice delivered
15 by first-class United States mail is effective three COUNTY business days after deposit in the
16 United States mail, postage prepaid, addressed to the recipient. A notice delivered by an
17 overnight commercial courier service is effective one COUNTY business day after deposit with the
18 overnight commercial courier service, delivery fees prepaid, with delivery instructions given for
19 next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is
20 effective when transmission to the recipient is completed (but, if such transmission is completed
21 outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
22 next beginning of a COUNTY business day), provided that the sender maintains a machine record
23 of the completed transmission. For all claims arising out of or related to this Agreement, nothing in
24 this section establishes, waives, or modifies any claims presentation requirements or procedures
25 provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of
26 the Government Code, beginning with section 810).
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Each individual executing this Agreement on behalf of CONTRACTOR hereby covenants, warrants, and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such entity, e.g. (without limitation), corporation, limited liability company, limited partnership, partnership or sole proprietorship, in accordance with all applicable formalities and under California law; (ii) that this Agreement is binding on such entity; and (iii) that CONTRACTOR (as applicable) is a duly organized and legally existing corporation, limited liability company, limited partnership, partnership or sole proprietorship in good standing in the State of California.

Venue for any action arising out of or relating to this Agreement shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR changes its status to operate as a corporation.

Members of CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of CONTRACTOR'S Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Attachment G) and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

SECTION 17. -- ENTIRE AGREEMENT

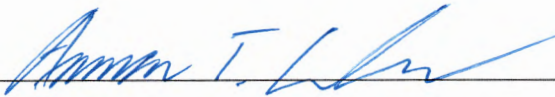
This Agreement constitutes the entire agreement between CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

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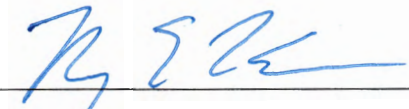
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
2 Effective Date.

3
4 **CONTRACTOR**

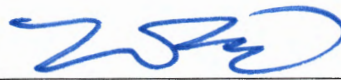
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6
7 Ammon T. Leshner, Vice-President

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9
10 Roy Kemper, Secretary

COUNTY OF FRESNO



Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

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14 By: 
15 Deputy

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19 **FOR ACCOUNTING USE ONLY:**

20 **ISD – FACILITY SERVICES**

21 **FUND: 1045**

22 **SUBCLASS: 10000**

23 **ORG No.: 8935**

24 **Account No.: 7205**

25 **DEPARTMENT OF PUBLIC WORKS AND**
26 **PLANNING**

27 Please see the page that follows.
28

1 DEPARTMENT OF PUBLIC WORKS AND
2 PLANNING

3 Fund: 0400
4 Subclass: 10051
5 Dept: 8851
6 Acct: 8150
7 Fund: 0400
8 Subclass: 10052
9 Dept: 8852
10 Acct: 8150
11 Fund: 0001
12 Subclass: 10000
13 Dept: 4360
14 Acct: 7295
15 Fund: 0001
16 Subclass: 10000
17 Dept: 4365
18 Acct: 7295
19 Fund: 0001
20 Subclass: 11000
21 Dept: 4510
22 Acct: 7295
23 Fund: 0001
24 Subclass: 10000
25 Dept: 7205
26 Acct: 7295
27 Fund: 0001
28 Subclass: 10000
Dept: 7910
Acct: 7295
Fund: 0400
Subclass: 10059
Dept: 8859
Acct: 8150

Fund: 0400
Subclass: 10100
Dept: 8830
Acct: 8150
Fund: 0701
Subclass: 15001
Dept: 9015
Acct: 7295
Fund: 0720
Subclass: 15000
Dept: 9020
Acct: 7295
Fund: 0700
Subclass: 15000
Dept: 9026
Acct: 7295
Fund: 0710
Subclass: 15000
Dept: 9028
Acct: 7295
Fund: 0801
Subclass: 16900
Dept: 9140
Acct: 7295
Fund: 0400
Subclass: 10061
Dept: 8861
Acct: 8150
Fund: 0400
Subclass: 10060
Dept: 8860
Acct: 8150