

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the ____ day of _____, 2015, by and between the CITY OF FRESNO, a California municipal corporation ("CITY"), and THE GORDIAN GROUP, INC., a Georgia corporation ("CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional services for the development, implementation and on-going support of a Job Order Contracting ("JOC") program, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a Job Order Contracting Consultant and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Public Works Department Director and the Airports Department Director (collectively referred to as "Administrator") or designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. **Scope of Services.** CONSULTANT shall perform to the satisfaction of CITY the services described in **Appendix A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Appendix A**.

2. **Term of Agreement and Time for Performance.** This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect for a period of 60 months or expenditure of the not to exceed amount specified in Section 3(a) below, whichever occurs first, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Appendix A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement.

3. **Compensation.**

(a) CONSULTANT's compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$300,000 and shall be paid as set forth in **Appendix B** "Calculation of Charges."

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. **Termination, Remedies, and Force Majeure.**

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY's non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY's damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement, and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. **Confidential Information and Ownership of Documents.**

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by CONSULTANT pursuant to this Agreement, exclusive of the Proprietary Information as defined in the JOC System License specified in Section 30 of this Agreement, are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) This Section 5 shall survive expiration or termination of this Agreement.

6. **Professional Skill.** It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT from said professional standards.

7. **Indemnification.** To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. **Insurance.**

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Appendix C** or as may be authorized in writing by CITY's Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CONSULTANT shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor.

9. **Conflict of Interest and Non-Solicitation.**

(a) Prior to CITY's execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Appendix D**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of

a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. **Recycling Program.** In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

(a) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY's Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact CITY's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of CITY's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. **General Terms.**

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

(b) Records of CONSULTANT's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. **Nondiscrimination.** To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT's employment practices including, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of

CONSULTANT's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13. **Independent Contractor.**

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY's express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. **Notices.** Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. **Binding.** Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each

parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. **Assignment.**

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee, such consent not to be unreasonably withheld. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. **Compliance With Law.** In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno City, California.

20. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

21. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

29. **CITY Responsibilities.** CITY shall perform the following duties and responsibilities:

(a) CITY shall review all documentation and requests for information submitted by CONSULTANT in a timely manner.

(b) CITY shall provide full information regarding requirements for the JOC program, including but not limited to, facilities lists, current CITY procedures, programs, technical specifications and bidding information.

(c) CITY shall designate, in writing, a representative who shall render or obtain decisions pertaining to the JOC program in a timely manner.

(d) CITY shall provide work space and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by CONSULTANT's on-site JOC development staff.

(e) CITY shall be responsible for reproduction of the Construction Task Catalogs®, Technical Specifications, Contract and General Conditions, Instructions to Bidders and Bid Forms, including the bid packages distributed to construction contractors.

30. **JOC System License.**

(a) CONSULTANT hereby grants to CITY, and CITY hereby accepts from CONSULTANT for the term of this Agreement, a non-exclusive, non-transferable right, privilege and license to CONSULTANT'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 CITY's Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to, CONSULTANT's eGordian® software and support documentation, Construction Task Catalog® (also commonly referred to as a unit price book), training materials and other proprietary materials provided by CONSULTANT. In the event this Agreement expires or terminates as provided herein, this JOC System License shall terminate and CITY shall return to CONSULTANT all Proprietary Information in CITY's possession.

(b) CITY acknowledges that disclosure of Proprietary Information will result in irreparable harm to CONSULTANT for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone other than CITY officials, officers and employees without first receiving the written consent of CONSULTANT; except when (i) such disclosure is in the course and for the purpose of operating CITY's Job Order Contracting program in accordance with the JOC System License, or (ii) such disclosure is required by law. CITY further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of CONSULTANT in the Proprietary Information during and after the term of this Agreement and shall at all times maintain confidentiality with regard to the Proprietary Information provided to CITY; except when (i) such disclosure is in the course and for the purpose of operating CITY's Job Order Contracting program in accordance with the JOC System License, or (ii) such disclosure is required by law.

(c) CONSULTANT acknowledges that CITY is subject to the California Public Records Act (California Government Code Sections 6250 et seq.) ("Act"). If a court proceeding compelling the production of Proprietary Information, or any part of it, is instituted by a person requesting the Proprietary Information, or any part of it, pursuant to the Act, CONSULTANT will defend the action and indemnify the CITY for court costs and attorney fees awarded to the prevailing plaintiff pursuant to the Act for the CITY's refusal to provide the Proprietary Information, or any part of it, provided that CONSULTANT promptly receives written notice of such action. This paragraph shall survive expiration or termination of this Agreement.

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

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

(f) In the event of a conflict in terms and conditions between this Section 30 and any other terms and conditions of this Agreement or any purchase order or similar purchasing document issued by CITY, the terms and conditions of this Section 30 shall take precedence.

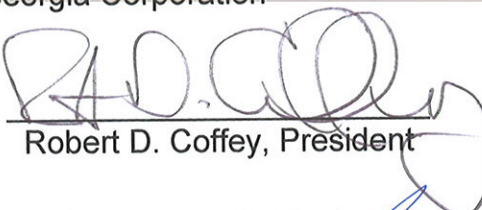
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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

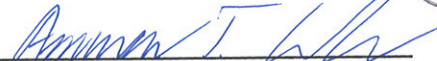
CITY OF FRESNO,
a California municipal corporation

THE GORDIAN GROUP, INC.
a Georgia Corporation

By: _____
Scott Mozier, Director
Public Works Department

By: 
Robert D. Coffey, President

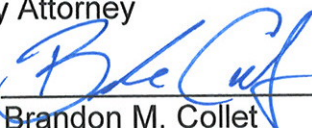
By: _____
Kevin Meikle, Director of Aviation
Airports Department

By: 
Ammon T. Leshner,
Vice President of Legal Affairs

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  7/27/15
Brandon M. Collet Date
Deputy City Attorney

Addresses:

CITY:
City of Fresno
Attention: Debbie Bernard, Project
Manager, Facilities Management
Division
2101 G Street, Bldg. C
Fresno, CA 93706
Phone: (559) 621-1201
FAX: (559) 457-1517

CONSULTANT:
The Gordian Group, Inc.
Attention: Ammon T. Leshner, VP of
Legal Affairs
30 Patewood Drive, BLDG 2,
Suite 350
Greenville SC 29615
Phone: (800) 874-2291
FAX: (864) 233-9100

Attachments:

1. Appendix A - Scope of Services

2. Appendix B - Calculation of Charges
 3. Appendix C - Insurance requirements
 4. Appendix D - Conflict of Interest Disclosure Form
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APPENDIX A

SERVICES TO BE PROVIDED BY CONSULTANT

Consultant Service Agreement between the City of Fresno ("City") and the Gordian Group ("Consultant")

Job Order Contracting

Consultant Duties and Responsibilities

This is an Appendix attached, and incorporated by reference to the AGREEMENT made on _____, 2015 by and between: the City of Fresno, a political subdivision of the State of California, hereinafter referred to as "CITY", and The Gordian Group, 30 Patwood Drive, BLDG 2, Suite 350, Greenville, SC 29615, hereinafter referred to as "CONSULTANT," to provide Job Order CONSULTING (hereinafter referred to as "JOC") Development and Implementation Services for the CITY. **CONSULTANT shall provide all labor, material, equipment, services, software, and supplies necessary to provide JOC development and implementation services as detailed below:**

1. **Program Development, Implementation and Support:** CONSULTANT shall be responsible for the development, implementation and on-going support of the CITY's customized JOC program. CONSULTANT is required to prepare for, and participate in outreach meetings with representatives from the City of Fresno, local Trade Councils, local unions, and the construction community during the development of the JOC program; and
2. **Contract Documents:** CONSULTANT shall be responsible for preparing the JOC documents that will be used by the CITY to procure the JOC construction consulting including:
 - a) **Unit Price Book(s):** CONSULTANT shall prepare one or more customized Unit Price Books (also known as a Construction Task Catalog®) containing prices covering material, equipment and labor costs for various units of construction, and adjusting these costs to current market conditions. Only local prevailing wages and local material and equipment costs (obtained directly from local, contractors, subcontractors and suppliers) to price the Unit Price Books shall be used. The use of generic factors to localize prices is not acceptable. Unit prices for demolition shall be provided for each construction task. Therefore, every cost to install an item or unit shall be accompanied by a corresponding cost to remove the same item or unit. Tasks may also have several modifiers which adjust the price for variations in materials or for quantity discounts; and
 - b) **Technical Specifications:** CONSULTANT shall prepare and publish Technical Specifications describing the materials, performance and installation requirements for each of the construction tasks listed in the unit price book. Where available, the CITY standard specifications shall be incorporated into the Technical Specifications; and **Contractual Terms and Conditions and Bid Forms:** CONSULTANT shall prepare, in conjunction with CITY staff, contractual terms and conditions and bid forms which incorporate JOC language and forms with all appropriate CITY contract language and forms.

3. **Information Management System:** CONSULTANT shall be responsible for providing the CITY with a comprehensive web-based JOC Information Management System (hereinafter referred to as "IMS") for an unlimited number of CITY users. The JOC IMS must be capable of providing full project tracking, developing cost proposals, preparing independent CITY estimates, generating all project documentation, providing project scheduling, budgeting and cost control, tracking MBE participation, and generating customized reports. CONSULTANT must incorporate any current CITY forms and documentation into the IMS; and
4. **Procurement Support:** CONSULTANT shall be responsible for providing CITY with procurement support to market the CITY JOC Program to potential JOC Contractors. If required by the CITY, CONSULTANT shall conduct a bidder prequalification process to determine a qualified list of bidders. CONSULTANT shall be required to organize and conduct pre-bid meetings with the interested bidders as well as make presentations on behalf of the CITY with various business and Construction organizations. CONSULTANT's staff assigned to perform procurement support must have JOC procurement experience; and
5. **Training Programs:** CONSULTANT shall be responsible for developing and conducting all training programs for the CITY and JOC Contractor staff to ensure that the JOC program functions properly. The training programs must include specialized training courses that will involve all CITY staff and JOC contractors utilizing and administering the JOC program. The training programs must include extensive training on the use of the JOC IMS. All training must be "hands on" with user competency as the objective. Actual CITY projects that the CITY plans to perform through JOC may be included in the training programs; and
6. **Job Order Development:** CONSULTANT shall be responsible for providing the following Job Order Development services:
 - a) **Project Identification:** When a project is identified and requested by CITY, CONSULTANT will contact CITY and assist with determining whether the project is appropriate for JOC.
 - b) **Contractor Identification:** In the event CITY has multiple JOC Contractors, CONSULTANT will assist the CITY in identifying the appropriate JOC Contractor for the project based on factors which include, but are not limited to, the type of work involved and the location of the project.
 - c) **Joint Scope Meeting:** The CONSULTANT's project manager will schedule a Joint Scope Meeting at the project site to help CITY and the JOC Contractor agree on the details of the work that the JOC Contractor will perform. The purpose of the scoping process is to allow the JOC Contractor an opportunity to inspect the site and ask questions before submitting a Price Proposal. The goals of this process are to foster open communication, reduce misunderstandings and mistakes that lead to change orders, and provide results that are more cost-effective and collaborative.
 - d) **Develop Detailed Scope of Work:** CONSULTANT will assist in preparing a Detailed Scope of Work that describes the work the JOC Contractor will perform. CONSULTANT will also assist with resolving issues when project plans and actual conditions vary.
 - e) **Request for Price Proposal:** After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, CONSULTANT's project manager will send the Detailed Scope of Work and a Request for Proposal to the JOC Contractor.

- f) **Request Price Proposal:** As the next step in the process, the JOC Contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Unit Price Book. CONSULTANT's IMS will automatically multiply the unit price of the task by the required quantities by the JOC Contractor's competitively bid Adjustment Factor. CONSULTANT shall also request the JOC Contractor's preparation of any additional CITY required information (e.g., construction schedule, list of proposed local subcontractors, etc.).
 - g) **Price Proposal Review:** CONSULTANT's project manager will review the Price Proposal to make sure the JOC Contractor has selected the appropriate tasks and quantities and will ask the JOC Contractor to make any required changes. CONSULTANT will also obtain and review any CITY required information submitted by the JOC Contractor such as a construction schedule and list of proposed subcontractors. CONSULTANT's project manager will submit the Price Proposal and related documents to CITY.
 - h) **Issue Job Order:** Once CITY is 100% satisfied with the Price Proposal and related documents, and decides to move forward with the project, CITY is then responsible for the issuance of a job order (which may be in the form of a purchase order) to the selected JOC Contractor.
 - i) **Construction Management:** During construction, CITY will follow its standard internal policies and procedures for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or CITY desires to change the Detailed Scope of Work, a supplemental Job Order is developed in the same manner as the original Job Order. In the event the CITY elects to receive the JOC Complete Solution *Plus*® level of service, CONSULTANT will perform the services set forth in A.1.3.
7. **On-Going 24/7 Technical Support:** CONSULTANT shall be responsible for providing extensive on-going 24/7 technical support to the CITY. Expectations include, but not limited to assisting the CITY with program execution, analysis of task order proposals, troubleshooting and continuous system monitoring. On-going technical support shall include, but is not limited to providing updated contract documents, assisting with the procurement of additional JOC Contractors, providing CITY with access to all updates and revisions to the IMS, and providing training for new CITY staff and JOC Contractors during the term of the AGREEMENT. Providing on-going technical support is considered a vital component to ensuring a successful CITY JOC program.
8. **Construction Management:** In the event the CITY elects the JOC Complete Solution *Plus*™ services on a project-by-project basis, and for the consideration set forth in Appendix B, Gordian will provide the services set forth below for each Job Order for which the City elects to utilize the JOC Complete Solution *Plus* services. Gordian's Construction Management Services shall include all the tasks necessary to oversee the construction from Job Order issuance to completion of the punch list and project closeout as follows:
- a) **Preconstruction:** CONSULTANT will conduct a pre-construction meeting with CITY representative(s), the JOC Contractor and, if applicable, the architect or engineer. Coordinate and share any preconstruction information with the CITY, the JOC Contractor and other appropriate parties. Assist in the coordination of the JOC Contractor obtaining the necessary permits.
 - b) **Site Visit:** CONSULTANT will monitor the JOC Contractor's work in-progress and manage the JOC Contractor's compliance with the approved safety plan. CONSULTANT will complete a report for each site visit.

- c) **Communicate:** CONSULTANT will provide weekly construction status reports to the CITY, conduct project progress meetings with all JOC Contractors and staff on a periodic basis and coordinate any required technical and code inspections.
- d) **Supplemental Job Orders:** CONSULTANT will analyze and process any changes to the work due to unforeseen conditions or CITY requested changes to the scope after the work has begun.
- e) **Approvals:** CONSULTANT will review and approve, or direct necessary revisions to, the JOC Contractor's applications for payment and obtain CITY's approval of the work. Final acceptance of the work will be the responsibility of the CITY. Technical and code inspections will be the responsibility of the appropriate inspection agencies (including architects and/or engineers as required).
- f) **Project Close-out:** CONSULTANT will enter all Job Order (or purchase order) related information into the eGordian® information management system, collect any required as-builts, warranties, etc., from the JOC Contractor, and prepare the Notice of Completion documentation for processing.

JOC LIAISON

In performing the services provided for in this AGREEMENT, CONSULTANT's liaison with the CITY will be:

Gary Watahira
City of Fresno
2600 Fresno Street
Room 2156
Fresno, CA 93721

APPENDIX B

CALCULATION OF CHARGES

Consultant Service Agreement between the City of Fresno ("City") and the Gordian Group ("Consultant")

Job Order Contracting

This is an Appendix attached to, and incorporated by reference within the AGREEMENT made on _____, 2015 by and between: the City of Fresno, a political subdivision of the State of California, hereinafter referred to as "CITY", and The Gordian Group, 30 Patewood Drive BLDG 2, Suite 350, Greenville, SC 29615, hereinafter referred to as "CONSULTANT" for providing Job Order Contract Development and Implementation Services for the CITY. CONSULTANT agrees to develop and implement a JOC program for CITY and provide a license to the CONSULTANT's proprietary JOC system without any up-front cost. The below agreed to license fees shall be assessed as a percentage of the construction volume purchased by the CITY through the JOC program, and shall be paid to the CONSULTANT when an approved invoice is submitted by the CONSULTANT to the CITY, per the payment provisions set forth below, and approved by the CITY.

1. For the complete and satisfactory performance of the services detailed in Appendix "A" Paragraphs 1 - 7 of this AGREEMENT, the CITY agrees to pay the following City License Fee and Job Order Development Fee:

- a) City License Fee: One and ninety five hundredths percent (1.95%) of the value of construction ordered through the City's JOC program; and
- b) Job Order Development Fee: Three and five hundredths percent (3.05%) of the value of construction ordered through the City's JOC program.

The City License Fee and Job Order Development Fee are payable when a Job Order is issued to the CONSULTANT and is inclusive of all associated costs.

2. In the event the CITY elects, on a project-by-project basis, to utilize the JOC Complete Solution *Plus*™ services set forth in Appendix "A" Paragraph Eight (8), the CITY agrees to pay the following Construction Management Fee in addition to the fees set forth in Appendix B (1) above;

- a) Construction Management ("CM") Fee: 5.95% of the value of work ordered.

The CM fee is payable when construction of the Job Order has been completed and accepted by the CITY, and will only apply when JOC Complete Solution *Plus*™ services are requested by the City on a project-by-project basis. At the election of the CONSULTANT for Job Orders requiring more than sixty (60) days to complete the Construction Management Fee shall be payable on a percentage of completion basis.

3. **Construction Cost Estimating Services**: On an as-needed basis and when requested by the CITY, CONSULTANT shall provide professional construction cost estimating services. This may apply to JOC or non-JOC projects. Cost estimates shall be based on local cost data, and from stated scopes and/or construction drawings. The rate for this service shall be \$150 per hour.

APPENDIX C

INSURANCE REQUIREMENTS

Consultant Service Agreement between The City of Fresno ("CITY") and The Gordian Group ("CONSULTANT")

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT's profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

CONSULTANT shall maintain limits of liability of not less than:

1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
2. Automobile Liability:
 - \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
 - \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limits
4. Professional Liability (Errors and Omissions)
 - \$1,000,000 per claim/occurrence
 - \$2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY's Risk Manager or his/her designee. At the option of the CITY's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
3. CONSULTANT's insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY's Risk Manager.

Verification of Coverage

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY's Risk Manager or his/her designee prior to CITY's execution of the Agreement and before work commences.

Exhibit D

DISCLOSURE OF CONFLICT OF INTEREST

Job Order Contracting
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.

Ammon T. Lesh
Signature

Ammon T. Lesh
(name)

The Gordian Group, Inc.
(company)

30 Patwood Drive, Suite 350
(address)

Greenville, SC 29615
(city state zip)