

*Job Order Contracting Program Management Services
(Project No: 50492)*

This contract, made and entered into on this 24th day of April, 2012, by and between the County of Ventura, hereinafter referred to as AGENCY, and The Gordian Group, Inc., hereinafter referred to as CONSULTANT. CONSULTANT, or a Principal of the firm, is registered, licensed or certified by the State of California as a N/A, number N/A.

The Board of Supervisors action of April 24, 2012 (Item Number 17) approved this contract. The Board has delegated by Resolution to the Director of the Public Works Agency the authority to execute this contract as approved by the Board.

This contract shall be administered for AGENCY by the Ventura County Director of Public Works or his authorized representative.

The parties hereto agree as follows:

1. Scope of Work

AGENCY hereby retains CONSULTANT to perform services as provided in the "Scope of Work and Services", attached hereto as Exhibit "A", and the "County of Ventura Public Works Agency Consultant's Guide to Ventura County Procedures" as amended from time to time, which is on file in the office of the Public Works Agency, and which by reference is made a part hereof. This contract shall take precedence over the Guide in case of conflicting provisions; otherwise they shall be interpreted together.

2. Time Schedule

All work under this contract, and any portion thereof separately identified, shall be completed within the time provided in the "Time Schedule", attached hereto as Exhibit B. AGENCY shall issue a suspension of the contract time whenever CONSULTANT is delayed by action or inaction of AGENCY and CONSULTANT promptly notifies AGENCY of such delays.

3. Fees and Payments

Payment shall be made monthly, or as otherwise provided, on presentation of completed AGENCY claim form in accordance with the "Fees and Payment", attached hereto as Exhibit C. CONSULTANT shall submit a properly completed claim form requesting payment for work that has been completed, and for which payment is due in accordance with Exhibit C, no later than 30 calendar days after said work has been accepted by the AGENCY.

4. Right to Review

AGENCY shall have the right to review the work being performed by CONSULTANT under this contract at any time during AGENCY's usual working hours. Review, checking, approval or other action by the AGENCY shall not relieve CONSULTANT of CONSULTANT's responsibility for the accuracy and completeness of the work performed under this contract.

5. Assignment

This contract is for the professional services of CONSULTANT and is non-assignable by CONSULTANT without prior consent by AGENCY in writing except that CONSULTANT may assign money due or which will accrue to CONSULTANT under this contract. If given written notice, the AGENCY will recognize such assignment to the extent permitted by law, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the AGENCY and to all deductions provided for in this contract. All money withheld, whether assigned or not, shall be subject to being used by the AGENCY for completion of the work, should the contract be in default. Such professional services shall be actually performed by, or shall be immediately supervised by, CONSULTANT or a principal of the firm. In performing these professional services, CONSULTANT is an independent contractor and is not acting as an agent or employee of AGENCY.

6. Termination

AGENCY retains the right to terminate this contract for any reason prior to completion by notifying CONSULTANT in writing, and by paying charges accumulated prior to such termination. Subject to the provisions of paragraph 5,

such charges shall be limited to the maximum fee specified in Exhibit C for completion of any separately identified phase of the work which, at the time of termination, has been started by request of AGENCY, plus the outstanding amount of retention withheld to date.

7. Work Product

On completion or termination of contract, AGENCY shall be entitled to immediate possession of, and CONSULTANT shall furnish, on request, all computations, plans, correspondence and other pertinent data gathered or computed by CONSULTANT for this particular project prior to any termination. Neither the designs nor any of the documents prepared pursuant to this contract or any modifications thereof shall be copyrighted by CONSULTANT or by the AGENCY. CONSULTANT may retain copies of said original documents for CONSULTANT's files. Any substantive modification of the documents by the AGENCY or any use of the completed documents for other projects or any use of uncompleted documents, without specific written verification by CONSULTANT, will be at AGENCY's sole risk and without liability or legal exposure to CONSULTANT.

8. Alteration of Documents

Reports and other documents prepared pursuant to this contract shall not be altered except by CONSULTANT unless CONSULTANT's name, signatures and professional seals are completely deleted from the documents. CONSULTANT shall not be responsible for any liabilities to AGENCY for the use of such reports or other documents altered by persons other than CONSULTANT.

9. Conflicts with Agency Interests

During the term of this agreement CONSULTANT shall not hire personnel currently employed by AGENCY to perform any work under this contract which action is considered detrimental to AGENCY's interests. CONSULTANT shall promptly inform AGENCY of any contract, arrangement, or interest that he may enter into or have during the performance of this contract that might appear to conflict with AGENCY's interests. This includes contracts and arrangements with manufacturers, suppliers, contractors or other clients whose interests might be served by the work performed under this contract and CONSULTANT's or CONSULTANT's client's interest in land that might be affected by the work performed under this contract. CONSULTANT shall take such measures as are necessary in the performance of this contract to prevent actual conflicts of interest.

10. Indemnification of the Agency

CONSULTANT shall defend, indemnify, and save harmless the AGENCY, including all of its boards, agencies, departments, officers, employees, agents and volunteers, against any and all claims, lawsuits, judgments, debts, demands and liabilities that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT in the performance of this contract.

11. Insurance Requirements

- a. CONSULTANT shall, at CONSULTANT's sole cost and expense and throughout the term of this contract and any extensions thereof, carry one or more insurance policies that provide the following minimum coverage:
 - 1) Commercial General Liability insurance shall provide a minimum of \$1,000,000.00 coverage for each occurrence and \$2,000,000.00 in general aggregate coverage.
 - 2) Automobile Liability insurance shall provide a minimum of either a combined single limit (CSL) of \$1,000,000.00 for each accident or all of the following: \$250,000.00 bodily injury (BI) per person, and \$500,000.00 bodily injury per accident, and \$100,000.00 property damage (PD). Automobile Liability insurance is not required if the CONSULTANT does NO traveling in providing services during the completion of this agreement.
 - 3) Workers' Compensation insurance in full compliance with California statutory requirements for all employees of Consultant in the minimum amount of \$1,000,000, including a waiver of subrogation in favor of the Agency as evidence by a policy endorsement. This Workers' Compensation insurance requirement may only be waived if CONSULTANT is a sole proprietor with no employees and CONSULTANT provides AGENCY with evidence of such before commencing any work under the contract."
- b. CONSULTANT shall notify AGENCY immediately if the CONSULTANT's general aggregate of insurance is exceeded by valid litigated claims then additional levels of insurance must be purchased to maintain the above stated requirements. Each type of insurance mentioned herein shall be written by a financially responsible

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company or companies authorized to do business in the State of California. CONSULTANT agrees to name County of Ventura and Agency as additional insured as its interests may appear on CONSULTANT's general liability and automobile liability insurance policies.

- c. CONSULTANT agrees to provide AGENCY with copies of certificates of all policies written prior to beginning any work associated with this contract. In the case of policy cancellation, AGENCY shall be notified by the insurance company or companies as provided for in the policy. CONSULTANT shall notify AGENCY of any and all policy cancellations within three working days of the cancellation.

12. Disputes

- a. Disputes arising under or related to the performance of the contract shall be resolved by arbitration unless the AGENCY and the CONSULTANT agree in writing, after the dispute has arisen, to waive arbitration and to have the claim or dispute litigated in a court of competent jurisdiction. Arbitration shall be pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2 of the Public Contract Code and the regulations promulgated thereto, Chapter 4 (commencing with Section 1300) of Division 2 of Title 1 of the California Code of Regulations.
- 1) Arbitration shall be initiated by a Complaint in Arbitration made in compliance with the requirements of said Chapter 4.
 - 2) Where an election is made by either party to use the Simplified Claims Procedure provided under Sections 1340-1346 of said Chapter 4, the parties may mutually agree to waive representation by counsel.
- b. Prior to filing a Complaint in Arbitration, the CONSULTANT shall exhaust his administrative remedies by attempting to resolve his dispute with AGENCY's staff in the following sequence: 1) Project Manager, 2) Deputy Director of Public Works (Department Director) and 3) Director of Public Works Agency (Agency Director). Consultant shall submit to the AGENCY [or Project Manager] a written statement describing each dispute and explaining why CONSULTANT believes AGENCY is in error, as well as all correspondence and evidence regarding each dispute.

CONSULTANT:

The Gordian Group, Inc.



Signature

58-1900371

Vendor Number

AGENCY:

County of Ventura



Public Works Director or
Deputy Purchasing Agent

EXHIBIT A - SCOPE OF WORK AND SERVICES

A. Project Description

The AGENCY intends to implement a Job Order Contracting (JOC) program for the Public Works Agency Transportation Department in accordance with California Public Contract Code 20128.5. This program will provide an alternative delivery method for maintenance, paving, and repair projects. CONSULTANT shall assist AGENCY in developing, implementing and supporting the JOC program as described in Exhibits A, B and C herein called the Project.

CONSULTANT shall exercise CONSULTANT'S best judgment, guided by consultation with AGENCY, in determining the optimum balance between the needs of AGENCY, aesthetics, methods for completing the PROJECT, quality, and the funds available for completing the PROJECT.

CONSULTANT shall assist AGENCY in establishing the exact requirements for the project and perform the professional services necessary to satisfactorily complete the project.

B. Basic Services

The following services shall be performed by CONSULTANT:

1. CONSULTANT shall provide experienced staff who will be responsible for the ongoing JOC program. This staff will report directly to AGENCY and will be available to assist AGENCY with any JOC related issues.
2. CONSULTANT shall be responsible for the development of JOC documents including the unit price book, technical specifications, contract terms and conditions and bid documents.
3. CONSULTANT shall be responsible for the automated JOC proposal development system (PROGEN[®]), which will be capable of generating the JOC documents including contractor cost proposal, cost estimates and other management reports and forms.
4. CONSULTANT shall be responsible for providing an unlimited user license for AGENCY and the JOC construction contractors to access CONSULTANT's Internet/Web hosted JOC System, which includes the PROGEN[®] information management software and Construction Task Catalog[®]. AGENCY will have no restrictions on the number of AGENCY and JOC construction contractor computers from which PROGEN[®] may be accessed.
5. CONSULTANT shall be responsible for the activities necessary to establish the structure of the AGENCY JOC Program, inform the internal AGENCY staff as well as the contracting community about JOC, and assist with procurement of the actual JOC contractors and the development of the actual execution procedures that AGENCY will use in executing the JOC concept. Specific services will include: JOC Program Structure/Bidding Strategy, Pre-bid Seminars, External Marketing Program, Internal Marketing Program and JOC Execution Procedures.
6. CONSULTANT shall be responsible for developing a comprehensive JOC training program, which will include different course modules in order for AGENCY staff to receive specialized training.
7. CONSULTANT shall assist AGENCY in the execution of the first JOC contract by helping AGENCY staff develop the initial Job Orders issued under the JOC. CONSULTANT's staff will attend and monitor initial site visits, and proposal development and negotiation sessions for a period of 90 days after award of the first JOC contract.
8. CONSULTANT will be responsible for providing comprehensive JOC follow-on support to AGENCY for the term of this Agreement. CONSULTANT will monitor the overall program and prepare any status reports required by AGENCY. Support services will include, but are not limited to, unlimited toll-free software support, updating for new JOC contracts the Construction Task Catalog[®], Technical Specifications, Contract and General Conditions and Bid Documents, providing procurement assistance for new JOC contracts, providing training for new AGENCY and JOC construction

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contractor staff, preparing customized forms and reports requested by AGENCY, and conducting audits of the JOC program as requested by AGENCY.

9. Whenever the Construction Task Catalog[®] is updated, CONSULTANT shall send AGENCY a list of the revisions within 30 days of the update.
10. CONSULTANT shall develop a report in PROGEN[®] that will allow AGENCY to monitor "Non Pre-Priced" items that have been incorporated into issued Job Orders, including the item, units, costs, and the product name and number.
11. CONSULTANT hereby grants to the AGENCY and the AGENCY hereby accepts from CONSULTANT for the term of this Agreement, a non-exclusive right, privilege, subscription and license to use the CONSULTANT'S Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") for the sole purpose of operating a Job Order Contracting Program for the County of Ventura Public Works Agency Transportation Department. The parties hereby agree that Proprietary Information shall include, but is not limited to, CONSULTANT'S PROGEN[®] software and support documentation, Construction Task Catalog[®] (also commonly referred to as a unit price book), training materials and other proprietary materials provided by the CONSULTANT. Upon the expiration or termination of this Agreement as provided herein, the AGENCY shall return to the CONSULTANT all proprietary Information in the AGENCY'S possession.

The AGENCY 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 without first receiving the written consent of the CONSULTANT. The AGENCY further acknowledges and agrees to respect the copyrights, registration, trade secrets and other proprietary rights of the CONSULTANT in the Proprietary Information during and after the term of this Agreement and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the AGENCY, subject to federal and state laws related to public records disclosure.

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

In the event of a conflict in terms and conditions between this Job Order Contracting System license and any terms and conditions of this Agreement or any purchase order or other purchasing document issued by the AGENCY, this Job Order Contracting System License shall take precedence.

C. Extra Services

Extra Services are not included but are within the scope of the PROJECT and are related to the Basic Services described above. Extra Services shall be performed by CONSULTANT when ordered in writing by the Project Manager for AGENCY. Extra Services shall include the Price Proposal Review Services described below and shall be requested by the AGENCY'S written order, which will include a time schedule for completion. Payment for Extra Services performed by CONSULTANT will be paid by AGENCY as provided in Exhibit C. Only Extra Services that are considered within the scope and intent of this contract as described herein shall be authorized.

CONSULTANT shall provide the following scope of services to perform Price Proposal Review Services:

1. Review and become familiar with the Detailed Scope of Work including, as necessary, meeting with AGENCY's Project Manager to obtain a clear understanding of the work to be performed,
2. Determine that the JOC construction contractor is proposing reasonable means and methods to perform the work specified in the Detailed Scope of Work,
3. Verify that the correct tasks have been selected to perform the Detailed Scope of Work,

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4. Verify that a task is not available in the Construction Task Catalog® for each non-prepriced task included in the Price Proposal, and
5. Verify that the correct adjustment factor has been used to prepare the Price Proposal.

D. County Services

The following will be provided by AGENCY:

1. Provide full information as to the requirements of the project.
2. Review documents submitted by CONSULTANT and provide comments, direction, or approval as needed in a timely manner.
3. Provide full information regarding requirements for the JOC Program, including but not limited to current County procedures, programs, technical specifications and bidding information
4. Designate a representative who shall render or obtain decisions in a timely manner pertaining to the JOC Program.
5. 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.
6. Reproduction of the Construction Task Catalog®, Technical Specifications, Contract and General Conditions, Instructions to Bidders and Bid Forms, including the bid packages distributed to construction contractors.

END OF EXHIBIT A

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EXHIBIT B - TIME SCHEDULE

A. Schedule

All work on this contract shall be completed by April 24, 2015 or when the not to exceed amount specified in Exhibit C is reached, whichever occurs first.

CONSULTANT shall complete the Basic Services in accordance with the Development and Implementation Schedule attached hereto as Table 1. The parties agree that CONSULTANT's ability to adhere to the schedule is dependent upon AGENCY's cooperation and timely response in completing the tasks specified for the AGENCY in Table 1.

B. Delays

In accordance with paragraph 2 of the Consultant Services Contract, AGENCY shall issue a suspension of the contract time when CONSULTANT is delayed by any public agency reviewing documents produced by CONSULTANT under this contract, or solely due to acts or omissions of AGENCY, when CONSULTANT promptly notifies AGENCY in writing of such delays.

**County of Ventura PWA
Transportation Department
JOC Program Development
and Implementation
Schedule**

THE GORDIAN GROUP

TAB 05

DAYS

Legend:

- Meetings
- PWA Task
- JOC Task

Task	Start Date	End Date	Task Type
Construction Meeting	10/1/01	10/1/01	Meetings
JOC Mobilization	10/1/01	10/1/01	Meetings
EMULSION JOURNAL LHM with PWA	10/1/01	10/1/01	Meetings
PROGEN System	10/1/01	10/1/01	Meetings
Configuration of PROGEN System	10/1/01	10/1/01	Meetings
Load CTC into PROGEN	10/1/01	10/1/01	Meetings
PROGEN Test	10/1/01	10/1/01	Meetings
Construction Task Catalog (CTC) Kick-off Meeting	10/1/01	10/1/01	Meetings
Review of CTC Line Items	10/1/01	10/1/01	Meetings
Completion of CTC Changes	10/1/01	10/1/01	Meetings
Line Pricing of Line Items	10/1/01	10/1/01	Meetings
Validation Testing of Unit Prices	10/1/01	10/1/01	Meetings
Publish CTC	10/1/01	10/1/01	Meetings
Technical Specifications Kick-off Meeting	10/1/01	10/1/01	Meetings
Obtain Copies of PWA Specifications	10/1/01	10/1/01	Meetings
Est. JOC Specifications	10/1/01	10/1/01	Meetings
Cost Reference Specifications with CTC	10/1/01	10/1/01	Meetings
Publish Specifications	10/1/01	10/1/01	Meetings
JOC Drawings Kick-off Meeting	10/1/01	10/1/01	Meetings
Develop Draft Applications	10/1/01	10/1/01	Meetings
PWA Review & Approval of Draft AP	10/1/01	10/1/01	Meetings
Develop Evaluation Criteria	10/1/01	10/1/01	Meetings
Develop JOC Terms & Conditions	10/1/01	10/1/01	Meetings
PWA Review & Approval of Contract Documents	10/1/01	10/1/01	Meetings
Publish Contract Documents	10/1/01	10/1/01	Meetings
Marketing of the JOC System	10/1/01	10/1/01	Meetings
Prepare Contract Advertisements	10/1/01	10/1/01	Meetings
Process Bidding Package Support	10/1/01	10/1/01	Meetings
Organize & Conduct Pre-bid Conference	10/1/01	10/1/01	Meetings
Assist with Bid Opening/Analysis	10/1/01	10/1/01	Meetings
PWA Approval of Contracts	10/1/01	10/1/01	Meetings
Mobilizing JOC Contractors	10/1/01	10/1/01	Meetings
Organize PWA Workshops for Execution Concepts	10/1/01	10/1/01	Meetings
Develop Draft Internal Execution Procedures	10/1/01	10/1/01	Meetings
PWA Review & Approval of Proposal Procedures	10/1/01	10/1/01	Meetings
Finalize Execution Procedures	10/1/01	10/1/01	Meetings
Develop JOC Training Program	10/1/01	10/1/01	Meetings
Develop Practical Exercises	10/1/01	10/1/01	Meetings
Conduct PWA JOC Training	10/1/01	10/1/01	Meetings
Conduct Contractor JOC Training	10/1/01	10/1/01	Meetings
Prepare Initial Project Package	10/1/01	10/1/01	Meetings
Monitor Initial JOC Work	10/1/01	10/1/01	Meetings

TABLE 1

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EXHIBIT C - FEES AND PAYMENT

A. Fees

Basic Services

AGENCY will compensate CONSULTANT as specified in this Exhibit but not to exceed the maximum fee amount of \$200,000 to complete all PROJECT work specified in Exhibit A, using the fee schedule herein.

Fee Schedule

Item	Description	Percentage
1	Fee calculated as a percentage of the aggregate value of all Job Orders issued up to and including \$4,000,000. The maximum fee for this item shall be \$200,000.	5.00%
2	Fee calculated as a percentage of the aggregate value of all Job Orders issued greater than \$4,000,000.	1.95%

Extra Services (when authorized in Exhibit A)

CONSULTANT will provide Extra Services upon AGENCY's request for Price Proposal Review Services for a fee equal to one percent (1%) of the value of the Job Order. In the event the CONSULTANT performs Price Proposal Review Services for work that is subsequently not ordered, the fee will be based on AGENCY's estimate of the work or the value of the reviewed construction Price Proposal, whichever is less.

Fees for Extra Services will be paid only when the work is authorized in writing by AGENCY'S Project Manager prior to the work being performed. The total amount for all Extra Services under this contract shall not exceed \$20,000.

Delays

If all work under this contract cannot be completed by the dates specified in Exhibit B through no fault of CONSULTANT, the fee for the work not then completed may be adjusted to reflect increases in cost which occur, due to delay, from the date that the work was required to be complete as specified in Exhibit B until the time the work can actually be completed. Any payments of additional fee as described in this paragraph must be authorized by AGENCY with a modification to this contract.

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B. Payments

AGENCY will make payments to CONSULTANT as follows:

Basic Services

Payments will be made monthly by AGENCY upon presentation of a properly completed AGENCY claim form by CONSULTANT. Requests for payment shall include an itemized listing of the Job Orders issued to the JOC construction contractor(s) by AGENCY during the period being claimed, a listing of all Job Orders where Extra Services have been provided and a copy of the written authorization from AGENCY to provide the Extra Services being claimed, if any. Upon approval, AGENCY will pay CONSULTANT according to the Fee Schedule in paragraph 1 of this Exhibit.

Extra Services (when authorized in Exhibit A)

When invoicing for Extra Services, CONSULTANT shall clearly mark on the CONSULTANT'S invoice which payments are for Extra Services and keep them separate from the costs for Basic Services. CONSULTANT shall also include a copy of the AGENCY letter authorizing the Extra Services with the claim request.

Invoicing

CONSULTANT shall submit all requests for payments to:

Public Works Agency
County of Ventura L#1670
800 South Victoria Avenue
Ventura, CA 93009-1670
Attn: Contracts Technician

Timely invoicing by CONSULTANT is very important to AGENCY. Delays in invoicing for services performed increases the management effort required by AGENCY to ensure accurate payments to CONSULTANT and manage project budgets. Accordingly, CONSULTANT shall request payment for services no later than 60 calendar days after the date that the AGENCY notifies CONSULTANT that a Job Order has been issued or the date the Extra Services were performed. Requests for payment on items received by Agency more than 60 calendars days after the AGENCY notifies CONSULTANT that a Job Order was issued or the date the Extra Services were performed shall be reduced by 5% to compensate AGENCY for the additional management costs. Additionally, since increases in administrative and budgetary problems caused by late invoicing correlate to the length of delay in invoicing, there will be an additional 5% reduction in compensation for each 30 day period beyond 60 days from when the AGENCY notifies CONSULTANT that a Job Order was issued or the date the Extra Services were performed.

CONSULTANT shall submit a final invoice within 60 days of the earliest of the following events: 1) contract completion date, 2) completion and acceptance by AGENCY of all work required by this contract, or 3) termination of the contract.

END OF EXHIBIT C