

**The Gordian Group, Inc.  
doing business as  
The Mellon Group**

**Job Order Contracting (JOC) Program**

**AGREEMENT FOR SERVICES #7966**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and The Gordian Group, Inc., a Georgia corporation duly qualified to conduct business in the State of California, doing business as The Mellon Group, whose principal place of business is 30 Patewood Drive, Building 2, Suite 350, Greenville, South Carolina 29615 (hereinafter referred to as "Consultant").

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a consultant to provide services and software for the Job Order Contracting (JOC) program, for its Chief Administrative Office, Facilities Division;

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, is an expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, section 210(b)(6), and/or Government Code section 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

**ARTICLE I**

**Scope of Work:** Consultant is engaged in the business of doing the services and tasks required under this Agreement, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, tools, vehicles, equipment, materials, and services necessary to perform the services and tasks

**The Gordian Group, Inc.**  
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**Exhibit A**

**California Levine Act Statement**

**California Levine Act Statement**

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the Consultant's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

       YES         NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

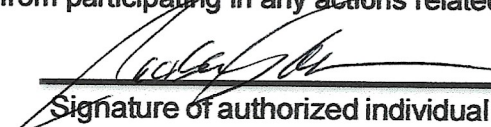
       YES         NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

08/28/2023  
Date

GORDIAN  
Type or write name of company

  
Signature of authorized individual

JACOB A. JOHNSON  
Type or write name of authorized individual

required under this Agreement, including those services and tasks necessary for County's JOC program as described below:

- A. JOC System License. Consultant shall provide County with a license to use Consultant's proprietary JOC System as outlined in ARTICLE VII, JOC System License.
- B. Unit Price Book. Consultant shall prepare one (1) or more customized unit price books, known as a Construction Task Catalog®, containing prices covering material, equipment and labor costs for various units of construction, and adjusting these costs to current market conditions. County will have access to Consultant's pre-existing construction cost database in order to select the construction tasks that will be included in the County's Construction Task Catalog. Only local prevailing wages and local material and equipment costs (obtained directly from local subcontractors and suppliers) to price the Construction Task Catalog shall be used. The use of generic factors to localize prices is not acceptable. Unit prices for demolition shall be provided for each construction task, where applicable. Every cost to install an item or unit shall be accompanied by a corresponding cost to remove the same item or unit. Tasks may have several modifiers which adjust the price for variations in materials or for quantity discounts.
- C. Technical Specifications. Consultant shall prepare and publish technical specifications describing the materials, performance, and installation requirements for each of the construction tasks list in the Construction Task Catalog. Where available, County standard specifications shall be incorporated into the technical specifications.
- D. Contractual Terms and Conditions and Bid Forms. Consultant shall prepare, in conjunction with County staff, general terms and conditions and bid forms which incorporate JOC language and forms with all appropriate County contract language and forms.
- E. Information Management System. Consultant shall provide County with unlimited access to Consultant's JOC information management application ("IMS") for an unlimited number of County and JOC contractor users. The IMS must be capable of providing full project tracking, developing cost proposals, preparing independent County estimates, generating all project documentation, providing project scheduling, budgeting and cost control, tracking local business enterprises (LBE) participation, and generating customized reports for the County. Consultant must incorporate current County forms and documentation into the IMS.
- F. Procurement Support. Consultant shall provide County with procurement support to market the County JOC program to potential JOC contractors. Consultant shall organize and conduct pre-bid meetings with interested bidders and make presentations on behalf of the County, with various business and contracting organizations. Consultant's personnel assigned to perform procurement support must have extensive JOC procurement experience.

- G. Training Program. Consultant shall develop and conduct all training programs for County and JOC contractor to ensure the JOC program functions properly. The training programs must include specialized training courses that will involve all parties utilizing and administering the JOC program. The training programs must include extensive training on the use of the JOC IMS. All training shall be "hands on" with functional use and individual performance as the objective. Actual County projects that the County plans to perform through JOC must be included in the training programs.
- H. JOC Program Development. Consultant shall provide development, implementation, and on-going support of the County JOC program, including development of the execution procedures that will be used to operate the County JOC program and participating in informational meetings with representatives from building trade councils, local unions, and the construction community during the development of the proposal documents.
- I. On-Going Technical Support. Consultant shall provide ongoing technical support during normal business hours, excluding County-recognized holidays, including, but not limited to, assisting the County with JOC program execution, analysis of task order proposals, troubleshooting and continuous system monitoring, updated contract documents, assistance with the procurement of additional JOC contractors, providing County with access to all updates and revisions to the IMS, and providing training for new County staff and JOC contractors. Providing on-going technical support is considered a vital component to ensuring a successful County JOC program.
- J. JOC Solution Level of Service Options. County, at its sole discretion, may choose from the two (2) levels of services available, as described below.

**1. JOC Complete Solution®**

**The JOC Complete Solution includes all of the products and services necessary to implement a successful JOC program described in sections A through J above, and includes project managers provided by Consultant to assist with developing Job Orders from project identification to issuance of the Job Order.**

A detailed list of the tasks Consultant shall perform to develop Job Orders is as follows:

- **Project Identification** – When a project is identified, Consultant's project manager will assist County staff with determining whether the project is appropriate for JOC.
- **Contractor Identification** – In the event there are multiple JOC contractors assigned to the area where the work will be performed, Consultant will assist the County in identifying the appropriate contractor for the project based on the type of work involved and the current workload of the contractor. In addition, Consultant will monitor the performance of each JOC contractor within the JOC program.

- **Joint Scope Meeting** – Consultant’s project manager will schedule a joint scope meeting at the project site to help the County and the JOC contractor agree on the details of the work that the JOC contractor will perform. The scoping process allows the JOC contractor to inspect the site and ask questions before submitting a price proposal.
- **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.
- **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.
- **Preparation of Price Proposal** –The JOC contractor prepares and submits a price proposal by selecting the appropriate tasks from the Construction Task Catalog. Consultant’s JOC software will automatically multiply the unit price of the task by the required quantities times the JOC contractor’s competitively bid adjustment factor.
- **Price Proposal Review** – Consultant’s project manager will then 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 shall also obtain and review any County required information submitted by the JOC contractor such as a construction schedule and list of proposed subcontractors. Then, the Consultant project manager will submit the price proposal and related documents to the County.
- **Issue Job Order** – Once the County approves the price proposal and related documents, and decides to move forward with the project, the County will be responsible for the issuance of a Job Order to the selected JOC contractor.

## 2. JOC Complete Solution Plus™

This option provides support from Job Order issuance all the way through to project completion. Consultant’s JOC Complete Solution Plus services will provide on-site project management experts, using proven methods, to carry out day-to-day JOC operations and relieve the County’s project workload burden. Consultant’s JOC Complete Solution Plus option includes all of the products and services that Consultant provides for the JOC Complete Solution described above, plus Consultant’s project managers will serve as the County’s authorized representative during the construction phase of each Job Order.

Consultant’s services will include all the tasks necessary to oversee the construction from Job Order issuance to completion of the punch list and project closeout. A

detailed list of Consultant's standard services, which Consultant will modify as necessary to meet the needs of the County, is as follows:

- **Preconstruction** – Conduct a pre-construction meeting with the County representative(s), the JOC contractor and, if applicable, the architect or engineer. Coordinate and share any preconstruction information with the County, the JOC contractor, and other appropriate parties. Assist in the coordination of the JOC contractor obtaining the necessary permits.
- **Site Visit** – Monitor the JOC contractor's work in-progress. Manage the JOC contractor's compliance with the approved safety plan. Complete a report for each site visit.
- **Communicate** – Provide weekly construction status reports to the County. Conduct project progress meetings with all JOC contractors and staff on a periodic basis. Coordinate any required technical and code inspections.
- **Supplemental Job Orders** – Analyze and process any changes to the work due to unforeseen conditions or the County requested changes to the scope after the work has begun.
- **Approvals** – Review and approve, or direct necessary revisions to, the JOC contractor's applications for payment. Obtain the County's approval of the work. Final acceptance of the work will be the responsibility of the County. Technical and code inspections will be the responsibility of the appropriate inspection agencies.
- **Project Close-Out** – Enter all Job Order related information into the eGordian information management system. Collect any required as-builts, warranties, etc., from the JOC contractor.

**Additional Services:** County may, from time to time, request changes in the services to be performed by Consultant ("Additional Services"). No such change, including any increase or decrease in the compensation amount, which shall be mutually agreed upon by County and Consultant, shall be effective and enforceable until and unless a written amendment to this Agreement has been authorized and executed by the parties and attached hereto and approved as required by law.

Deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft Office (MS) 365 applications (specifically, MS Word, MS PowerPoint, and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in this Agreement.

Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE XV, Default, Termination, and Cancellation, herein.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subconsultant if applicable, perform the services and tasks required under this Agreement accordingly. All of the services included in the Scope of Work are the responsibility of Consultant unless specifically described as a task or item of work to be provided by County.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties and shall cover the period of November 5, 2023 through November 4, 2028.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, including any deliverables that may be identified herein, payment shall be made within forty-five (45) days following County's receipt and approval of invoices identifying the services rendered.

It is mutually understood and agreed by both parties that Consultant agrees to develop and implement a JOC program for the County and provide the County a license to Consultant's proprietary JOC system. For the purposes hereof, the billing rates shall be as follows:

### **JOC Complete Solution® Fees**

In the event the County elects to utilize the JOC Complete Solution level of service, the County agrees to pay the following fees:

- County License Fee: In consideration for the JOC System License and technical support services, County agrees to pay to Consultant a fee equal to one and ninety-five hundredths percent (1.95%) of the value of construction work procured through the County JOC program.
- Job Order Development Fee: In consideration for the Job Order development services set forth in ARTICLE I, Scope of Work, section J, item 1, County agrees to pay to Consultant a fee equal to three and five-hundredths percent (3.05%) of the value of construction work procured through the County JOC program.

For Job Orders executed under the JOC Complete Solution® option the County license fee and Job Order development fee shall be payable upon the issuance of a Job Order from the County to a JOC contractor.

### **JOC Complete Solution Plus™ License Fees**

In the event the County elects to utilize the JOC Complete Solution Plus level of service, the County agrees to pay the following consulting fee, in addition to the County License Fee and Job Order Development Fee set forth above:

- o Consulting Fee: Five and ninety-five hundredths percent (5.95%) of the value of each Job Order.

For Job Orders executed under the JOC Complete Solution Plus™ option the consulting fee shall be payable when construction of a Job Order has been completed and accepted by the County, except at the election of Consultant, Job Orders requiring more than sixty (60) calendar days to complete shall be payable monthly on a percentage of completion basis. Completion of the percentage of work shall be solely determined by County's Contract Administrator. The monthly payments will be calculated as five and ninety-five hundredths percent (5.95%) of the amount invoiced to the County by the JOC contractor during the project.

The total amount of this Agreement shall not exceed \$650,000, inclusive of all County-issued Job Orders and amended Job Orders, and all costs, taxes, and expenses. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be paid to Contractor for Job Orders and amended Job Orders issued pursuant to this Agreement.

Invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado  
Chief Administrative Office  
Facilities Division  
3000 Fairlane Court, Suite One  
Placerville, California 95667

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XV, Default, Termination, and Cancellation, herein.

#### ARTICLE IV

**Taxes:** Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

#### ARTICLE V

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer



ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without prior written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

#### **ARTICLE VI**

**Standards for Work:** Consultant shall perform all services in a manner consistent with the level of care and skill ordinarily exercised by other members of Consultant's profession currently practicing in the same locality and under similar conditions.

All of Consultant's services and deliverables must adhere to and be in full compliance with ARTICLE I, Scope of Work, and shall be made available to County for review and approval at the appropriate stages specified in the Agreement or upon request by County's Contract Administrator.

Consultant has full responsibility for the accuracy and completeness of the deliverables, reports, and such other documents that may be required for the tasks or items of work assigned. Assistance, cooperation, and oversight by County or other regulatory agencies will not relieve Consultant of this professional responsibility.

All work must be performed and work products prepared in a format and manner customarily anticipated by County and/or other appropriate agencies.

#### **ARTICLE VII**

**JOC System License:** Consultant hereby grants to County, and County hereby accepts from Consultant for the term of this Agreement, a non-exclusive 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 the County's JOC program. The parties hereby agree that Proprietary Information shall include, but is not limited to, the JOC IMS applications and support documentation, Construction Task Catalog® (also commonly referred to as a unit price book), construction cost data, 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 County shall return to Consultant all Proprietary Information in County's possession.

County 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 Consultant. County 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 complete confidentiality with regard to the Proprietary Information provided to County, subject to federal and state laws related to public records disclosure.

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

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

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

#### **ARTICLE VIII**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE IX**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

#### **ARTICLE X**

**Confidentiality:** Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Chief Administrative Office Facilities Division for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

#### **ARTICLE XI**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

## ARTICLE XII

**Independent Contractor:** The parties intend that an independent consultant relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subconsultants, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subconsultant or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

## ARTICLE XIII

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not

provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE XIV**

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to Government Code section 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

#### **ARTICLE XV**

##### **Default, Termination, and Cancellation:**

- A. **Termination by Default:** If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
  2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any

payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.

2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
4. A violation of ARTICLE XXII, Conflict of Interest.

- B. **Bankruptcy:** County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

**ARTICLE XVI**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

With a copy to:

County of El Dorado  
Chief Administrative Office  
Facilities Division  
3000 Fairlane Court, Suite One  
Placerville, California 95667

County of El Dorado  
Chief Administrative Office  
330 Fair Lane  
Placerville, California 95667

Attn.: Charles Harrell  
Facilities Division Manager

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

The Mellon Group  
30 Patewood Drive, Building 2, Suite 350  
Greenville, South Carolina 29615

Attn.: Ammom T. Leshner, Vice President

or to such other location as Consultant directs.

**ARTICLE XVII**

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XVI, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**ARTICLE XVIII**

**Indemnity:** To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the active negligence, sole negligence, or willful acts of the County, its officers

and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in Civil Code section 2778.

The insurance obligations of Consultant are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

#### **ARTICLE XIX**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Workers' Compensation Insurance with statutory limits as required by the laws of any and all states in which Consultant's employees are located, and Employer's Liability Insurance on a per occurrence basis with a limit of not less than \$1,000,000.
- B. Commercial General Liability Insurance (providing scope of coverage equivalent to ISO policy form CG 00 01) of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance

coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
  2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.



## **ARTICLE XX**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

## **ARTICLE XXI**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

## **ARTICLE XXII**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code section 1090, et seq. and the Political Reform Act of 1974 (section 87100, et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of 2 California Code of Regulations section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, nor any officer or employee of the Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.

2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XV, Default, Termination, or Cancellation.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Consultant shall complete and sign the attached Exhibit A, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Consultant, if any, to any officer of County.

### **ARTICLE XXIII**

#### **Nondiscrimination:**

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.) and applicable regulations promulgated thereunder (2 California Code of Regulations section 11000, et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code section 12990 and 2 California Code of Regulations section 11102.

#### **ARTICLE XXIV**

**Nonresident Withholding:** If Consultant is not a California resident, Consultant shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Consultant shall indemnify and hold County harmless for any action taken by the California Franchise Tax Board.

#### **ARTICLE XXV**

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

#### **ARTICLE XXVI**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXVII**

**Licenses:** Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

#### **ARTICLE XXVIII**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

#### **ARTICLE XXIX**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Charles Harrell, Facilities Division Manager, Chief Administrative Office, or successor.

#### **ARTICLE XXX**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

#### **ARTICLE XXXI**

**Electronic Signatures:** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Civil Code sections 1633.1 to 1633.17) as amended from time to time.

#### **ARTICLE XXXII**

**Partial Invalidity:** If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

#### **ARTICLE XXXIII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

#### **ARTICLE XXXIV**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

#### **ARTICLE XXXV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below.

**--COUNTY OF EL DORADO--**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Purchasing Agent  
Chief Administrative Office  
"County"

**--THE GORDIAN GROUP, INC.  
doing business as  
THE MELLON GROUP--**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Ammom T. Leshner  
Vice President  
"Consultant"

By: \_\_\_\_\_

Dated: \_\_\_\_\_

James Mackerer  
Chief Financial Officer

**The Gordian Group, Inc.**  
doing business as  
**The Mellon Group**

**Exhibit A**

**California Levine Act Statement**

**California Levine Act Statement**

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the Consultant's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

       YES         NO

If yes, please identify the person(s) by name:

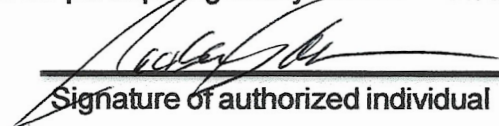
Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

       YES         NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

08/28/2023  
Date

  
Signature of authorized individual

GORDIAN  
Type or write name of company

JACOB A. JOHNSON  
Type or write name of authorized individual