

# NEW AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: September 13, 2018

Need Date: FOR BOS 10/30/18 MEETING

**PROCESSING DEPARTMENT:**

Department: CAO - P&C  
Dept. Contact: Linda Silacci-Smith  
Phone: x5417  
Department  
Head Signature: *Karina Schwartz*

**CONTRACTOR:**

Name: The Gordian Group, Inc., dba  
The Mellon Group  
Address: 30 Patewood Drive, Suite 350  
Greenville, SC 29615  
Phone: \_\_\_\_\_  
Org Code: 0640400

**CONTRACTING DEPARTMENT:** CAO - Facilities

Service Requested: Provide services and software for Job Order Contracting (JOC) program  
Contract Term: 3 Years Contract Value: \$ 500,000.00

**COUNTY COUNSEL:** (Must approve all contracts and MOU's)

Approved:  Disapproved:  Date: 10/1/18 By: *(fos)*  
Approved:  Disapproved:  Date: \_\_\_\_\_ By: \_\_\_\_\_

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EL DORADO COUNTY COUNCIL  
2018 SEP 14 AM 7:56

**HR APPROVAL:** WILL BE REVIEWED THROUGH WORKFLOW

**RISK MANAGEMENT:** WILL BE REVIEWED THROUGH WORKFLOW

**PLEASE CALL x5417 FOR PICK-UP...THANKS!**

**The Gordian Group, Inc.**  
**dba**  
**The Mellon Group**

**Job Order Contracting (JOC) Program**

**AGREEMENT FOR SERVICES #3138**

**THIS AGREEMENT**, made and entered 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 doing business as The Mellon Group, duly qualified to conduct business in the State of California, whose principal place of business is 30 Patewood Drive, Suite 350, Greenville, South Carolina 29615, and whose Agent for Service of Process is CT Corporation System (Vivian Imperial), 818 W Seventh Street, Suite 930, Los Angeles, California 90017 (hereinafter referred to as "Consultant").

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a Consultant to provide services and software for Job Order Contracting (JOC) program; and

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

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

**WHEREAS**, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 3100.

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

## ARTICLE I

**Scope of Services:** Consultant shall provide all labor, material, equipment, products and services necessary to for a Job Order Contracting (JOC) program for County 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 VI, "JOC System License."
- B. Unit Price Book. Consultant shall prepare one or more customized unit price books, known as a Construction Task Catalog<sup>®</sup>, 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 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 and proposal documents.
- I. On-Going Technical Support. Consultant shall provide ongoing technical support during normal business hours, excluding 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 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 Article I.A through I.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, a Consultant 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** – A Consultant Project Manager will quickly 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** – Next 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, the Consultant Project Manager will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.
- **Preparation of Price Proposal** – Next, 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** – Then, a Consultant 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 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 is 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 purchase 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.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of November 5, 2018 through November 4, 2023.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, including any deliverables that may be identified herein, County agrees to pay Consultant upon the satisfactory completion and County's acceptance of work, in arrears and within forty-five (45) days following the County's receipt and approval of itemized invoice(s) identifying 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<sup>®</sup> 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: and
- Job Order Development Fee: In consideration for the Job Order Development services set forth in Article I(J)(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.

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<sup>™</sup> 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:

- Consulting Fee: Five and Ninety-Five Hundredths Percent (5.95%) of the value of each Job Order.
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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 60 days to complete shall be payable monthly on a percentage of completion basis. The monthly payments will be calculated as 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 \$500,000.00 (“Maximum Compensation”), inclusive of all expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the Job Order 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 the documents or other deliverables required by the individual Work Orders issued pursuant to this Agreement, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in **Article XIII – Default, Termination, and Cancellation**.

#### **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**

**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 VI**

**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 agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

## **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 Job Order Contracting 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<sup>®</sup> (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 Microsoft<sup>®</sup> Access<sup>®</sup>.

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**

**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 IX**

**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 X**

**Independent Consultant/Liability:** 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 terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

## **ARTICLE XI**

**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 the event of such cancellation, County will pay Consultant for the services rendered and accepted by the County prior to termination. Compensation will be in the amount specified for that item of service or expense as set forth in Article III.

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 the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XII**

**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 California Government Code §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 contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

## **ARTICLE XIII**

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

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. 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 on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a

subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement 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 upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. 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 XIV**

**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 addressed as follows:

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

Attn: Russell Fackrell  
Facilities Manager  
Chief Administrative Office

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

The Gordian Group, Inc.  
dba The Mellon Group  
140 Bridges Road, Suite E  
Mauldin, SC 29662

Attn: David L. Mahler  
Vice President

or to such other location as the Consultant directs.

#### **ARTICLE XV**

**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 pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County 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 XVI**

**Indemnity:** The Consultant shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages 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 Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Consultant, subconsultant(s) and employee(s) of any of these, except for the sole, or active negligence 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 California Civil Code Section 2778.

#### **ARTICLE XVII**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent Consultants' liability and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the 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 is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above 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 the 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 30-day 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. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and

volunteers; or the 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 the 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 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. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management as essential for protection of the County.

#### **ARTICLE XVIII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XIX**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

#### **ARTICLE XX**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to

conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

## **ARTICLE XXI**

### **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, medical condition, marital status, age, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 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 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 Title 2, California Code of Regulations, Section 8103.

## **ARTICLE XXII**

**California Residency (Form 590):** If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

## **ARTICLE XXIII**

**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 the County harmless for any action taken by the California Franchise Tax Board.

## **ARTICLE XXIV**

**Taxpayer Identification Number (Form W-9):** All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

## **ARTICLE XXV**

**County Business License:** 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 Code Section 5.08.070.

## **ARTICLE XXVI**

**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 XXVII**

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

**ARTICLE XXVIII**

**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 to the obligations set forth herein.

**ARTICLE XXIX**

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

**ARTICLE XXX**

**Venue:** 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 XXXI**

**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 XXXII**

**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.

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**Contract Administrator Concurrence:**

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

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

Russell Fackrell  
Facilities Manager  
Chief Administrative Office

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

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

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

By: \_\_\_\_\_  
Chair  
Board of Supervisors  
"County"

ATTEST:  
James S. Mitrising  
Clerk of the Board of Supervisors

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Deputy Clerk

**-- CONSULTANT --**

**THE GORDIAN GROUP, INC.**  
**dba THE MELLON GROUP**  
(A Georgia Corporation)

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Ammon T. Leshner  
Vice President, General Counsel  
"Consultant"

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Roy Kemper  
Corporate Secretary