

AGREEMENT

31565

THIS AGREEMENT is made and entered, in duplicate, as of February 10, 2010 for reference purposes only, pursuant to Resolution No. RES-10-0015 adopted by the City Council of the City of Long Beach at its meeting on February 9, 2010, by and between THE GORDIAN GROUP, INC. DBA THE MELLON GROUP, a Georgia corporation ("Contractor"), with a place of business located at 140 Bridges Road, Suite #E, Maudlin, South Carolina 29662, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, Section 1802 of the Long Beach City Charter permits the City to make purchases under the purchasing contracts of other governmental agencies when authorized to do so by a resolution; and

WHEREAS, the City requires specialized services requiring unique skills to be performed in connection with the development, design and administration of a program for Job Order Contracting ("JOC"), as well as acquiring the rights to use proprietary software to implement JOC; and

WHEREAS, the California State University ("CSU") has an Agreement for the purchase of a Job Order Contract System, Agreement No. 80246 ("CSU Agreement"); and

WHEREAS, Resolution No. RES-10-0015 authorizes the City Purchasing Agent to purchase rights to use proprietary software and to acquire services to manage JOC from Contractor by virtue of the CSU Agreement;

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement, the parties agree as follows:

1. The CSU Agreement, attached hereto as Exhibit "A", with Contractor is incorporated by this reference as if fully set forth, and the same terms and conditions contained in the CSU Agreement shall be applicable here except as follows:

A. Wherever the CSU Agreement refers to the California State

1 University or the Trustees, it shall be deemed to refer to the City of Long Beach;

2 B. Contractor shall sell, furnish and deliver to the City a JOC
3 system of substantially the same type and kind purchased by CSU and on the
4 same terms and conditions offered to CSU for an amount not to exceed Two
5 Hundred Twenty-Five Thousand Dollars (\$225,000.00), including tax, for a
6 period of three (3) years commencing on April 1, 2010. To the extent that the
7 CSU Agreement and this Agreement are inconsistent, the following priority shall
8 govern: (1) this Agreement and (2) the CSU Agreement.

9 C. All warranties shall accrue to the City of Long Beach.

10 D. The parties may, by mutual agreement, amend this
11 Agreement with the approval of the City's City Council.

12 E. Contractor's proposal to the City is attached hereto as
13 Exhibit "B" and incorporated herein by this reference. Notwithstanding the
14 services described in Exhibit "A" and in addition thereto, Contractor shall perform
15 the services described in Exhibit "B". To the extent that Exhibits "A" and "B" are
16 inconsistent, the following priority shall govern: (1) Exhibit "B" and (2) Exhibit "A".

17 F. License and Fees.

18 i. Contractor hereby grants to City and City hereby
19 accepts from Contractor a non-exclusive right, privilege and license to
20 Contractor's JOC System and other related proprietary materials
21 (collectively referred to as "Proprietary Information") to be used for the sole
22 purpose of operating City's JOC program. The parties hereby agree that
23 Proprietary Information shall include, but is not limited to, Contractor's
24 PROGEN® software and support documentation, Construction Task
25 Catalog® (also known as the "CTC", the Unit Price Book, or the "UPB"),
26 training materials and other proprietary materials provided by Contractor. In
27 the event this Agreement expires or terminates as provided herein, the JOC
28 System License shall terminate and City shall return to Contractor all

Proprietary Information in the City's possession.

ii. City acknowledges that disclosure of Proprietary Information will result in irreparable harm to Contractor 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 Contractor. City further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in 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 City, subject to federal and state laws related to public records disclosure.

iii. Upon expiration or termination of this Agreement as provided herein, Contractor shall provide all data generated by City in a form accessible by a standard database program, such as Microsoft® Access®.

iv. 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 City, this JOC System License shall take precedence.

v. In consideration for said license, City shall pay to Contractor a licensing fee equal to one and one-half percent (1.5%) of each Job Order Contract amount, for the duration of the Agreement, including extension periods. Notwithstanding anything in the preceding sentence to the contrary, the maximum obligation of the City during the three (3) year term of this Agreement shall not exceed two hundred twenty-five thousand dollars (\$225,000.00) and the City shall not be obligated to award Job Order Contracts which would generate a fee in excess of said amount.

vi. Contractor shall submit invoices monthly to the City

1 and City shall pay Contractor in due course of payments which is generally
2 thirty (30) days after receipt of invoice.

3 G. Insurance.

4 i. As a condition precedent to the effectiveness of this
5 Agreement, Contractor shall procure and maintain, at Contractor's expense
6 for the duration of this Agreement, from insurance companies that are
7 admitted to write insurance in California and have ratings of or equivalent to
8 A:V by A.M. Best Company or from authorized non-admitted insurance
9 companies subject to Section 1763 of the California Insurance Code and
10 that have ratings of or equivalent to A:VIII by A.M. Best Company, the
11 following insurance:

12 (a) Commercial general liability insurance
13 (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93)
14 in an amount not less than \$1,000,000 per each occurrence and
15 \$2,000,000 general aggregate. This coverage shall include but not
16 be limited to broad form contractual liability, cross liability,
17 independent contractors liability, and products and completed
18 operations liability. City, its boards and commissions, and their
19 officials, employees and agents shall be named as additional
20 insureds by endorsement (on City's endorsement form or on an
21 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG
22 20 26 11 85), and this insurance shall contain no special limitations
23 on the scope of protection given to City, its boards and commissions,
24 and their officials, employees and agents. This policy shall be
25 endorsed to state that the insurer waives its right of subrogation
26 against City, its boards and commissions, and their officials,
27 employees and agents.

28 (b) Workers' Compensation insurance as required

1 by the California Labor Code and employer's liability insurance in an
2 amount not less than \$1,000,000. This policy shall be endorsed to
3 state that the insurer waives its right of subrogation against City, its
4 boards and commissions, and their officials, employees and agents.

5 (c) Professional liability or errors and omissions
6 insurance in an amount not less than \$1,000,000 per claim.

7 (d) Commercial automobile liability insurance
8 (equivalent in scope to ISO form CA 00 01 06 92), covering Auto
9 Symbol 1 (Any Auto) in an amount not less than \$500,000 combined
10 single limit per accident.

11 ii. Any self-insurance program, self-insured retention, or
12 deductible must be separately approved in writing by City's Risk Manager
13 or designee and shall protect City, its officials, employees and agents in the
14 same manner and to the same extent as they would have been protected
15 had the policy or policies not contained retention or deductible provisions.

16 iii. The commercial general liability insurance and
17 commercial automobile liability insurance policies shall be endorsed to state
18 that coverage shall not be reduced, non-renewed or canceled except after
19 thirty (30) days prior written notice to City. The commercial general liability
20 insurance policy shall be primary and not contributing to any other
21 insurance or self-insurance maintained by City. Each insurance policy shall
22 be endorsed to state that coverage maintained by City shall be excess to
23 and shall not contribute to insurance or self-insurance maintained by
24 Contractor. Contractor shall notify City in writing within five (5) days after
25 any insurance has been voided by the insurer or cancelled by the insured.

26 iv. If this coverage is written on a "claims made" basis, it
27 must provide for an extended reporting period of not less than one hundred
28 eighty (180) days, commencing on the date this Agreement expires or is

1 terminated, unless Contractor guarantees that Contractor will provide to
2 City evidence of uninterrupted, continuing coverage for a period of not less
3 than three (3) years, commencing on the date this Agreement expires or is
4 terminated.

5 v. Contractor shall require that all subContractors or
6 contractors that Contractor uses in the performance of these services
7 maintain insurance in compliance with this Section unless otherwise agreed
8 in writing by City's Risk Manager or designee.

9 vi. Prior to the start of performance, Contractor shall
10 deliver to City certificates of insurance and the endorsements for approval
11 as to sufficiency and form. In addition, Contractor shall, within thirty (30)
12 days prior to expiration of the insurance, furnish to City certificates of
13 insurance and endorsements evidencing renewal of the insurance. City
14 reserves the right to require complete certified copies of all policies of
15 Contractor and Contractor's subContractors and contractors, at any time.
16 Contractor shall make available to City's Risk Manager or designee all
17 books, records and other information relating to this insurance, during
18 normal business hours.

19 vii. Any modification or waiver of these insurance
20 requirements shall only be made with the approval of City's Risk Manager
21 or designee. Not more frequently than once a year, City's Risk Manager or
22 designee may require that Contractor, Contractor's subContractors and
23 contractors change the amount, scope or types of coverages required in
24 this Section if, in his or her sole opinion, the amount, scope or types of
25 coverages are not adequate.

26 viii. The procuring or existence of insurance shall not be
27 construed or deemed as a limitation on liability relating to Contractor's
28 performance or as full performance of or compliance with the

indemnification provisions of this Agreement.

H. Indemnity. Contractor shall, with respect to services performed in connection with this Agreement, indemnify and hold harmless City, its Boards, Commissions, and their officials, employees and agents (collectively in this Section, "City") from and against any and all liability, claims, allegations, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses (including attorney's fees, court costs, and expert and witness fees) (collectively "Claims" or individually "Claim") arising, directly or indirectly, in whole or in part, out of any negligent act or omission of Contractor, its officers, employees, agents, sub-Contractors or anyone under Contractor's control (collectively "Indemnitor"), breach of this Agreement by Indemnitor, misrepresentation or willful misconduct by Indemnitor, and Claims by any employee of Indemnitor relating in any way to workers' compensation. Independent of the duty to indemnify and as a free-standing duty on the part of Contractor, Contractor shall defend City and shall continue this defense until the Claim is resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach or the like on the part of Indemnitor shall be required for the duty to defend to arise. Contractor shall notify City of any Claim within ten (10) days. Likewise, City shall notify Contractor of any Claim, shall tender the defense of the Claim to Contractor, and shall assist Contractor at Contractor's sole expense, as may be reasonably requested, in the defense.

I. Equal Benefits Ordinance. Unless otherwise exempted in accordance with the provisions of the Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance ("EBO"), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.

i. During the performance of this Agreement, the Contractor certifies and represents that the Contractor will comply with the EBO. The Contractor agrees to post the following statement in

1 conspicuous places at its place of business available to employees and
2 applicants for employment:

3 "During the performance of a Contract with the City of Long Beach,
4 the Contractor will provide equal benefits to employees with spouses and its
5 employees with domestic partners. Additional information about the City of
6 Long Beach's Equal Benefits Ordinance may be obtained from the City of
7 Long Beach Business Services Division at 562-570-6200."

8 ii. The failure of the Contractor to comply with the EBO
9 will be deemed to be a material breach of the Agreement by the City.

10 iii. If the Contractor fails to comply with the EBO, the City
11 may cancel, terminate or suspend the Agreement, in whole or in part, and
12 monies due or to become due under the Agreement may be retained by the
13 City. The City may also pursue any and all other remedies at law or in
14 equity for any breach.

15 iv. Failure to comply with the EBO may be used as
16 evidence against the Contractor in actions taken pursuant to the provisions
17 of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.

18 v. If the City determines that the Contractor has set up or
19 used its contracting entity for the purpose of evading the intent of the EBO,
20 the City may terminate the Agreement on behalf of the City. Violation of
21 this provision may be used as evidence against the Contractor in actions
22 taken pursuant to the provisions of Long Beach Municipal Code section
23 2.93 et seq., Contractor Responsibility.

24 2. Beginning on April 1, 2011, either party shall have the right to
25 terminate this Agreement for any reason or no reason at any time by giving sixty (60)
26 calendar days prior notice to the other party. In the event of termination under this
27 Section, City shall pay Contractor for services satisfactorily performed and costs incurred
28 up to the effective date of termination for which Contractor has not been previously paid.

1 And, Contractor acknowledges and agrees that City's obligation to make final payment is
2 conditioned on Contractor's delivery of all data to the City as described in Section 1.F.
3 above.

4 3. Neither this Agreement nor any money that becomes due to
5 Contractor under this Agreement may be assigned by Contractor without the prior written
6 consent of the City Manager or his designee.

7 4. Any notice given under this Agreement shall be in writing and
8 personally delivered or deposited in the U.S. Postal Service, return receipt, and shall be
9 delivered or mailed to Contractor at the relevant address first stated above, and to the
10 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.
11 Notice shall be deemed given three days after deposit in the mail.

12 5. The terms appearing on the CSU Agreement are incorporated in this
13 Agreement.

14 6. Contractor shall cooperate with the City in all matters relating to self-
15 accrual of use tax. Contractor shall contact the City Treasurer for additional information
16 regarding self-accrual.

17 7. This Agreement and all documents which are incorporated by
18 reference in this Agreement constitute the entire understanding between the parties and
19 supersede all other agreements, oral or written, with respect to the subject matter of this
20 Agreement. If there is any legal proceeding between the parties to enforce or interpret
21 this Agreement, or to protect or establish any rights or remedies, the prevailing party shall
22 be entitled to its costs and expenses, including reasonable attorney's fees.

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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

IN WITNESS WHEREOF, the parties have caused this document to be duly
executed with all formalities required by law as of the date first stated above.

THE GORDIAN GROUP, INC. DBA THE
MELLON GROUP, a Georgia corporation

By Robert D. Coffey, 2010
President
Type or Print Name

By E Sue Cho, 2010
Secretary
Type or Print Name

"Contractor"

CITY OF LONG BEACH, a municipal
corporation Assistant City Manager

By [Signature], 2010
City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

"City"

This Agreement is approved as to form on 4/12,
2010.

ROBERT E. SHANNON, City Attorney
By [Signature]
Deputy

EXHIBIT “A”

JOC MASTER ENABLING AGREEMENT (9/08/06)

This AGREEMENT is made and entered into this 23rd day of February, 2009 pursuant to the Public Contract Code 10706 et seq., by and between the Trustees of The California State University on behalf of

University	Agreement No:	Amendment No:	Project No:	Project Name:
California State University, Office of the Chancellor	80246	New agreement	80246	Systemwide JOC
hereafter referred to as Trustees, and Service Provider,		CSU Vendor ID No:	Federal ID No:	License No:
The Gordian Group		711		
Address of Service Provider		Telephone No:	Fax No:	
140 Bridges Road, Suite E, Mauldin, South Carolina 29662		800-874-2291	864-915-4584	

WITNESSETH: That the Service Provider in consideration of the covenants, conditions and agreements of the Trustees herein contained, does hereby agree to furnish all labor, materials, and equipment and to perform all work necessary to complete, in a skillful manner, the following:

The Service Provider is to provide a fully functional Job Order Contract (JOC) System complete with all documents including plans and specifications pursuant to Section 10710 of the Public Contract Code. This Agreement sets forth the terms and conditions governing the implementation of a unit price contracting system hereinafter referred to as JOC. This Agreement shall also serve as a Master Enabling Agreement under which each campus and administrative office of the California State University may participate. Campuses shall execute a JOC Campus Participation Agreement in accordance with the provisions in Exhibit 1 to secure services under this Agreement. The Service Provider shall implement and deliver the JOC system to the California State University, Office of the Chancellor. The Service Provider shall consult with Chancellor's Office staff to ensure implementation of an acceptable JOC system, adaptable and easily converted for deployment at each participating campus. Services to be provided by Service Provider shall be in accordance with the Agreement and the Riders and Exhibits, which are incorporated herein and made a part of this Agreement:

Rider A - Scope of Services and Payment Schedule, consisting of four (4) pages;

Rider B - Agreement General Provisions, consisting of three (3) pages;

Rider C - Supplementary General Provisions, consisting of one (1) page;

Exhibit 1 - Sample JOC Campus Participation Agreement, consisting of seven (7) pages

Other Exhibits- Request for Proposal (RFP) No. 80246 and Service Proposer's Response to RFP No. 80246, as approved by and on file with the Trustees are made a part of the Agreement by reference.

The term shall be from July 1, 2009 through June 30, 2014 with the option of the Trustees of extending the Agreement subject to the same terms and conditions for up to two (2) additional one (1) year periods.

Service Provider shall report to the Chief of Construction Management, California State University, Office of the Chancellor, 562-951-4112.

The total amount to be expended under this Agreement shall be determined by the overall usage by each participating campus and the administrative office of the California State University.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon date first above written.

THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY						SERVICE PROVIDER																																																																																																															
Campus						Full Legal Name of Service Provider																																																																																																															
California State University, Office of the Chancellor						The Gordian Group																																																																																																															
By (Trustee's Authorized Signature)						By (Service Provider's Authorized Signature)																																																																																																															
<i>Melody A. Kojima</i>						<i>David L. Mahler</i>																																																																																																															
Printed Name and Title of Person Signing for Trustees						Printed Name and Title of Person Signing for Service Provider																																																																																																															
Melody A. Kojima, Assistant Director, Purchasing						David L. Mahler, Vice President of Finance																																																																																																															
Contract Services and Procurement						Check appropriate box below that best describes Service Provider:																																																																																																															
401 Golden Shore, Long Beach, California 90802						<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Other (specify) _____																																																																																																															
<table border="1"> <thead> <tr> <th>Fund</th> <th>Sub Fund</th> <th>Agency</th> <th>Yr</th> <th>Ref/Item</th> <th>Category</th> <th>Program Element</th> <th>Component</th> <th>Chapter</th> <th>Fiscal Yr</th> <th>Legal Reference</th> </tr> </thead> <tbody> <tr> <td colspan="11">SCO Account Data:</td> </tr> <tr> <td colspan="5">Fund Name</td> <td>PS Account</td> <td>PS Fund</td> <td>PS Dept ID</td> <td>PS Program</td> <td>PS Class</td> <td>PS Project/Grant</td> </tr> <tr> <td colspan="5">Funds assigned on "Job Order Notice to Proceed"</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2">Amount Encumbered \$()</td> <td colspan="10" rowspan="2">I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.</td> </tr> <tr> <td colspan="2">Amount of Increase \$()</td> </tr> <tr> <td colspan="2">Amount of Decrease \$()</td> <td colspan="10">Signature of Accounting Officer</td> </tr> <tr> <td colspan="2">Total Amount Encumbered \$()</td> <td colspan="10">I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of the California State University Contract Law. CHRISTINE HELWICK, General Counsel.</td> </tr> <tr> <td colspan="2"></td> <td colspan="10">By Attorney: <i>Christine Helwick</i></td> </tr> <tr> <td colspan="2"></td> <td colspan="10">Date: 3-4-09</td> </tr> </tbody> </table>												Fund	Sub Fund	Agency	Yr	Ref/Item	Category	Program Element	Component	Chapter	Fiscal Yr	Legal Reference	SCO Account Data:											Fund Name					PS Account	PS Fund	PS Dept ID	PS Program	PS Class	PS Project/Grant	Funds assigned on "Job Order Notice to Proceed"											Amount Encumbered \$()		I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.										Amount of Increase \$()		Amount of Decrease \$()		Signature of Accounting Officer										Total Amount Encumbered \$()		I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of the California State University Contract Law. CHRISTINE HELWICK, General Counsel.												By Attorney: <i>Christine Helwick</i>												Date: 3-4-09									
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Rider A - JOC Master Enabling Agreement Scope of Service and Payment Schedule

The Service Provider shall furnish the Trustees a fully functional Job Order Contract (JOC) System complete with all documents including plans and specifications by which the provisions of Public Contract Code Section 10710 are satisfied and the benefits to the Trustees under the statute are fully realized. The Service Provider shall work closely with CSU Office of the Chancellor staff to implement an acceptable CSU JOC System. The JOC System shall be adaptable and easily converted for application throughout the diverse, multi-campus CSU system. The service provided shall consist of, but is not limited to the following elements:

1. The Service Provider shall provide experienced staff that shall be responsible for the implementation of the CSU JOC program. This staff shall report directly to the Trustees at the CSU Office of the Chancellor and shall be available to assist the CSU multi-campus system with any JOC related issues.
2. The Service Provider shall be responsible for the development of JOC documents including the unit price book, technical specifications, contract terms and conditions and bid documents. The Service Provider shall develop and deliver the following items to CSU Office of the Chancellor:
 - a. Catalog of Construction tasks.
 - b. Standard set of technical specifications.
 - c. Contractual terms and conditions for a Job Order Contract.
 - d. Job Order Contract execution procedures and policies.
 - e. Job Order Contract Management Software package.
3. The Service Provider hereby grants to the Trustees and the Trustees hereby accepts a non-exclusive right, license, and privilege to use JOC and other related Proprietary Information in connection with the terms and conditions set forth in this Agreement.
4. The Service Provider acknowledges that Trustees as the State of California acting in a higher education capacity is governed by the Public Records Act. Consequently, all contract documents and building standards, plans and specifications employed by the Trustees in the repair or improving its campuses are public records discloseable under the Act. To the extent that the Public Records Act allows, the Service Provider and the Trustees mutually agree that "Proprietary Information" shall include, but is not limited to, the Service Provider's PROGEN[®] software and support documentation, Construction Task Catalogs[®] (also commonly referred to as unit price books), training materials and other proprietary materials provided by the Service Provider. The Trustees acknowledges that disclosure of Proprietary Information to unauthorized third parties will result in irreparable harm to the Service Provider for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of the Service Provider. Notwithstanding the foregoing, the Trustees shall be allowed to distribute materials as required for the proper performance of JOC.
5. The Service Provider shall be responsible for providing an unlimited user license for the Trustees and the JOC construction contractors to access the Service Provider's Internet hosted JOC information management system, which includes the Service Provider's PROGEN[®] information management software and Construction Task Catalogs[®].

6. In the Contract Development Phase, Service Provider shall perform the activities necessary to establish the structure of the Trustees' JOC program, inform the internal Trustees staff as well as the contracting community about JOC, assist with procurement of the actual JOC contractors and the development of the actual execution procedures that the Trustees will use in executing the JOC concept. Specific services to be performed by Service Provider will include:
 - a. Development of the JOC Program Structure/Bidding Strategy.
 - b. Prepare and Conduct Pre-Bid Seminars.
 - c. Prepare and Conduct an External Marketing Program.
 - d. Prepare and Conduct an Internal Marketing Program.
 - e. Develop and Coordinate the JOC Execution Procedures.
7. The Service Provider shall be responsible for developing a comprehensive JOC training program that will include different course modules in order for the Trustees staff to receive specialized training.
8. The Service Provider's staff shall assist in the actual execution of the contracts by helping Trustees staff develop the initial Work Orders. The Service Provider's staff shall attend and monitor initial site visits, proposal development and negotiation sessions. The Service Provider shall remain on-site with the Trustees for ninety (90) days after the first JOC contract has been awarded to provide this assistance.
9. The Service Provider shall be responsible for providing comprehensive JOC support to Trustees through the term of the Agreement. The Service Provider shall also monitor the overall program and prepare any status reports required by the Trustees.
10. The Trustees shall assume the following duties and responsibilities:
 - a. Review all documentation and requests for information submitted by the Service Provider in a timely manner.
 - b. Provide full information regarding requirements for the JOC Program, including but not limited to facilities lists, current Trustees procedures, programs, technical specifications and bidding information.
 - c. Designate, in writing, a Trustees representative who shall render or obtain decisions in a timely manner pertaining to the JOC Program.
 - d. Provide office space, furniture, fixtures, telephones, equipment and supplies to the Service Provider's JOC development team.
11. The Service Provider shall deliver all documents and reports and direct any queries it may have regarding this Agreement as follows:

California State University, Office of the Chancellor
Capital Planning, Design and Construction
401 Golden Shore, 2nd Floor
Long Beach, California 90802-4210
Attention: Jim Sowerbrower

Telephone: (562) 951-4112
Email: jsowerbrower@calstate.edu

The CSU Systemwide Chief of Construction Management is the Project Administrator for this Agreement. Any requests for extra services or changes to the Agreement shall be directed to the Chief. Weekly telephone or email project updates shall be made to keep the Chief informed of project progress.

12. The Service Provider shall provide JOC services for the California State University pursuant to this Master Enabling Agreement, the terms and conditions of Request for Proposal (RFP) No. 80246 and Service Provider's Response to RFP No. 80246 dated January 6, 2009, as amended February 4, 2009 for the following fee schedule, which shall be applicable to each CSU campus:
 - a. The Trustees shall pay Service Provider as follows during the term of this JOC Master Enabling Agreement.
 - i. The Trustees shall pay the Service Provider Four Percent (4%) of all work ordered with the JOC system cumulating up to and including Five Million Dollars (\$5,000,000) during the term of this Master Enabling Agreement.
 - ii. The Trustees shall pay the Service Provider One and Ninety-Five Hundredths Percent (1.95%) of all work ordered with the JOC system in excess of Five Million Dollars (\$5,000,000) during the term of this Master Enabling Agreement, subject to the discounted JOC System License Fees specified below.
 - iii. For any twelve (12) month period of July 1st through June 30th during the term of the Master Enabling Agreement that a CSU Campus exceeds Ten Million (\$10,000,000) of work ordered with the JOC system, the following discounted JOC System License Fee shall apply:
 - 1) For all work ordered in excess of Ten Million Dollars (\$10,000,000) up to and including Twenty-Five Million Dollars (\$25,000,000), the Trustees shall pay the Service Provider One and Five Tenths Percent (1.5%) of that amount.
 - 2) For all work ordered in excess of Twenty-Five Million Dollars (\$25,000,000), the Trustees shall pay the Service Provider One and Twenty-Five Hundredths Percent (1.25%) of that amount.
 - iv. Each CSU Campus shall receive a credit against the Five Million Dollar (\$5,000,000) limit for all work ordered with the JOC system under the previous Master Enabling Agreements between CSU and The Gordian Group, No. A980144 dated April 26, 1999 and No. 30781 dated April 19, 2004.
 - v. Each CSU Campus that ordered in excess of Five Million Dollars (\$5,000,000) with the JOC system under the previous Agreements between CSU and The Gordian Group, No. A980144 dated April 26, 1999 and No. 30781 dated April 19, 2004, shall pay One and Ninety-Five Hundredths Percent (1.95%) of all work ordered with the JOC system under this new Master Enabling Agreement, subject to the discounted JOC System License Fee specified above.

- vi. The work shall be valued at the amount paid by the CSU Campus to JOC Contractor under the JOC system. It shall not include amounts that may subsequently be obtained through claims resolution processes such as arbitration, mediation, litigation, or settlement.
 - vii. The JOC System License Fee shall be payable upon the issuance of each *Job Order Notice to Proceed* issued through the Job Order Contract process.
- 13. The Service Provider shall submit triplicate invoices for each Job Order issued to the JOC Project Administrator for approval and processing for payment.
 - 14. The CSU Campus shall pay Service Provider's invoices within thirty (30) calendar days from the invoice date. Any invoice not disputed by CSU Campus in writing within fourteen (14) calendar days from the invoice date shall be deemed proper. In the event of a dispute, the CSU Campus shall pay all undisputed invoice amounts within thirty (30) days of the original invoice date.
 - 15. Upon the expiration or termination as provided herein, the Trustees shall return to the Service Provider all Proprietary Information in the Trustee's possession and the Service Provider shall provide to the Trustees all project data generated by the Trustees in a form accessible by a standard database program, such as Microsoft® Access®.

Rider B - Agreement General Provisions

1. Trustees agree to pay for the services and materials to be furnished by Service Provider as provided by this Agreement. Payment in arrears shall be made upon Service Provider's completion of the services required by this Agreement to the satisfaction of the Trustees and upon Service Provider's submission of billings as shall be prescribed by the Trustees.
2. Service Provider, in the performance of this Agreement, is an independent contractor and is not an employee, agent, or officer of the Trustees.
3. Trustees may cancel this Agreement should Service Provider fail to perform as herein provided. In the event of such cancellation, Trustees shall be relieved of the obligation to make any payment to Service Provider and Trustees may proceed with the work in any manner the Trustees deem proper.
4. Trustees may terminate this Agreement either upon giving fifteen (15) days written notice or upon the immediate notice with payment of \$25.00 to Service Provider. Payment shall be complete by mailing payment to Service Provider at the address appearing on the face of this Agreement. In the event of such termination, Service Provider shall be paid only for the work satisfactorily completed.
5. Service Provider shall not assign benefits or delegate duties under this Agreement in whole or in part without the prior written approval of the Trustees. Thus, Service Provider may not assign any moneys due or to become due hereunder without the written consent of Trustees.
6. The provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns to the parties hereto.
7. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. Oral understandings or other agreements not incorporated herein shall not be binding.
8. Trustees may issue a written order with respect to the services to be performed under this Agreement at any time before the completion of the services. Trustees shall pay Service Provider an amount for such services as provided in this Agreement, or if not so provided, Trustees shall pay Service Provider a reasonable amount, which shall be agreed upon by the parties.
9. Any notice, which may be proper or necessary for either of the parties hereto to serve on the other, in case of Trustees, may be served effectually upon Trustees by delivering it in writing, addressed to the Trustees of the California State University, attention of the official executing this Agreement for Trustees, at 401 Golden Shore, Long Beach, CA 90802, or by depositing it in a United States mail deposit box with first class postage thereon fully prepaid and addressed to Trustees at the above-mentioned address. In the case of Service Provider, notice may be served effectually upon Service Provider by delivering it in writing to Service Provider at the address appearing on the first page of this Agreement or depositing it in a United States mail deposit box with first class postage thereon fully prepaid, and addressed to Service Provider at the Service Provider's above-mentioned address. Any notice may also be served effectually by delivering or mailing it, as in this section provided, addressed to Trustees or Service Provider at any other place or places which Trustees or Service Provider, by written notice served upon the other, may designate, provided, however, that nothing herein shall preclude the giving of notice by personal service.
10. In the performance of this Agreement, the Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status. The Service Provider will take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status as prohibited by the California Fair Employment and Housing Act (Government Code Section 12900 *et seq.*).
11. Service Provider shall not utilize any information, not a matter of public record, which is received by reason of this Agreement, for pecuniary gain not contemplated by the terms of this Agreement, regardless of whether Service Provider is or is not under contract at the time such gain is realized (Education Code Section 89006).
12. The report, survey, or other product developed by Service Provider pursuant to this Agreement is the property of Trustees, and shall not be used in any manner by Service Provider unless authorized by Trustees.

13. In executing this service agreement, Service Provider swears, under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against Service Provider within the immediately preceding two-year period because of Service Provider's failure to comply with an order of a federal court which orders Service Provider to comply with an order of the National Labor Relations Board. Trustees may rescind this contract if Service Provider falsely swears to this statement (Public Contract Code Section 10296).
14. If the Agreement exceeds \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor of the State of California for a period of three years after final payment under the Agreement. This examination and audit shall be confined to those matters connected with the performance of this contract, including, but not limited to, the cost of administering this Agreement (Government Code Section 8546.7).
15. The Service Provider hereby certifies compliance with Government Code Sections 8355, 8356, and 8357 in matters relating to providing a drug-free workplace. In accordance with Government Code Section 8355, the Service Provider shall:
 - A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations;
 - B. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace,
 - (2) The Service Provider's policy of maintaining a drug-free workplace,
 - (3) Any available counseling, rehabilitation, and employee assistance programs, and
 - (4) Penalties that may be imposed upon employees for drug abuse violations;
 - C. Require that each employee engaged in the performance of the Agreement be given a copy of the statement required by subpart A, and require that each employee, as a condition of employment on the Agreement, agree to abide by the terms of the statement.
16. Responsive to direction from the State Legislature (Public Contract Code Section 10115 *et seq.*), the Trustees are seeking to increase the statewide participation of disabled veteran business enterprises in contract awards. To this end, Service Provider shall inform the Trustees of any contractual arrangements with consultants or suppliers that are certified disabled veteran business enterprises.
17. If the Service Provider is a natural person, the Service Provider certifies by signing this Agreement that s/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69), State of California Governor's Executive Order W-135-96.
18. If the Service Provider is a corporation, the Service Provider certifies and declares by signing this Agreement that it is eligible to contract with the State of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code Section 10286 *et seq.*).
19. The Service Provider shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.
 - A. Service Provider shall obtain and maintain the following policies and coverage. The insurance furnished by the Service Provider under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated on the Cover Page of this Agreement:
 - (1) Comprehensive or Commercial Form General Liability Insurance: on an occurrence basis, covering work done or to be done by or on behalf of the Service Provider and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Limits of Liability:
\$2,000,000.00 General Aggregate
\$1,000,000.00 Each Occurrence--combined single limit for bodily injury and property damage.
 - (2) Business Automobile Liability Insurance: on an occurrence basis, covering owned, scheduled, hired, and non owned automobiles used by or on behalf of the Service Provider and providing insurance for bodily injury, property damage, and contractual liability. Limits of Liability:
\$1,000,000.00 Each Accident--combined single limit for bodily injury and property damage.
 - (3) Workers' Compensation: including Employers Liability limits of \$1,000,000.00 and other limits as required under California law.

- (4) Errors and Omissions Insurance: on an occurrence basis is preferred, covering work done or to be done by or on behalf of the Service Provider and providing insurance for errors and omissions in the amount of \$1,000,000.00 each occurrence. At a minimum, Service Provider shall obtain and maintain errors and omissions insurance on a claims-made basis for no less than \$1,000,000.00 each claim and \$2,000,000.00 annual aggregate, and certification of coverage shall be submitted to the Trustees upon signing of this Agreement. If the total contract amount exceeds \$1,000,000, Service Provider shall renew and keep such insurance in effect for at least five (5) years after the recordation of the notice of completion.

B. Service Provider shall submit to the Trustees certificates of insurance and original endorsements to the policies of insurance required by the agreement as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation of coverage without thirty (30) days written notice to the Trustees, as specified in Section 19-C (3). Renewal certifications and endorsements shall be timely filed by the Service Provider for all coverage until the work is accepted as complete. The Trustees reserve the right to require the Service Provider to furnish the Trustees complete, certified copies of all required insurance policies. The Service Provider shall notify the Trustees in writing of any material change in insurance coverage.

C. The insurance policies shall contain, or be endorsed to contain, the following provisions.

- (1) For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be covered as additional insureds.
- (2) For any claims related to the work, the Service Provider's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Service Provider's insurance and shall not contribute with it.
- (3) Each insurance policy required by this Article shall state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Trustees.
- (4) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

D. Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A:VII or equivalent carrier otherwise acceptable to the Trustees.

E. Miscellaneous.

- (1) Any deductible under any policy of insurance required in this Article shall be Service Provider's liability.
- (2) Acceptance of certificates of insurance by the Trustees shall not limit the Service Provider's liability under the agreement.
- (3) In the event the Service Provider does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The Service Provider shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from the Service Provider, the Trustees may pay for the insurance from agreement sums otherwise due the Service Provider.
- (4) If the Trustees are damaged by the failure of Service Provider to provide or maintain the required insurance, the Service Provider shall pay the Trustees for all such damages.
- (5) The Service Provider's obligations to obtain and maintain all required insurance are non-delegable duties under this agreement.

20. The Service Provider agrees to hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, the University, and the officers, employees representatives, and agents of each of them from any and all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, resulting from or in any manner arising out of or in connection with any negligent act or omission or willful misconduct on the part of the Service Provider, its officers, agents, and employees, in the performance of this Agreement.

21. In accordance with Labor Code Section 1720, Service Provider must pay employees the minimum prevailing rate wages for inspection, surveying, or similar work during the design, preconstruction, and construction phases of a public works project.

End of Page 3

Agreement No. 80246
The Gordian Group
Rider C

Supplementary General Provisions for
Public Works Service Agreement

- Article 19, paragraph A. (4), delete in its entirety.

End of Supplementary General Provisions

JOC CAMPUS PARTICIPATION AGREEMENT

(Exhibit 1 of Master Enabling Agreement 80246)

This AGREEMENT is made and entered into this _____ day of _____ pursuant to the Public Contract Code 10700 et seq., by and between the Trustees of The California State University on behalf of

University	Agreement No:	Amendment No:	Project No.	Project Name:
Name of Campus		New Agreement		Job Order Contract
hereafter referred to as Trustees, and Service Provider,		CSU Vendor ID No.	Federal ID No:	License No:
The Gordian Group				
Address of Service Provider		Telephone No:	Fax No:	
140 Bridges Road, Suite E, Mauldin, South Carolina 29662		800-874-2291	864-233-9100	

WITNESSETH: That the Service Provider in consideration of the covenants, conditions and agreements of the Trustees herein contained, does hereby agree to furnish all labor, materials, and equipment and to perform all work necessary to complete, in a skillful manner, the following:

The Service Provider is to provide a fully functional Job Order Contract (JOC) System for the campus complete with all documents including plans and specifications pursuant to Section 10710 of the Public Contract Code. This Agreement sets forth the terms and conditions governing the implementation of a unit price contracting system hereinafter referred to as JOC. The JOC Campus Participation Agreement implements and is subject to the scope of services, terms and conditions of JOC Master Enabling Agreement # 80246, as well as the following Riders and Exhibits, which by this reference are incorporated herein and made a part of this Agreement:

Rider A - Scope of Services and Payment Schedule, consisting of five (5) pages;

Exhibit A - Sample Job Order Notice to Proceed, consisting of one page.

Other Exhibits - JOC Master Enabling Agreement # 80246, Request for Proposal (RFP) No. 80246 and the Response to RFP No. 80246, as approved by and on file with the Trustees are made a part of this Agreement by reference.

The term shall begin upon receipt of a fully executed agreement from the University. The term shall end concurrent with JOC Master Enabling Agreement # 80246.

Service Provider shall report to _____.

The University agrees to compensate the Service Provider based upon a percentage of use of the JOC system in accordance with the fee schedule in Rider A.

The work ordered shall be valued at the amount paid by the University to the Contractor under the JOC system. It shall not include amounts, which may subsequently be obtained through claims resolution processes such as arbitration, medication, litigation, or settlement.

The compensation all be payable upon issuance of each "Job Order Notice to Proceed" issue through the Job Order Contracting Process.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon date first above written.

THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY					SERVICE PROVIDER						
Campus					Full Legal Name of Service Provider						
Name of Campus					The Gordian Group						
By (Trustees' Authorized Signature)					By (Service Provider's Authorized Signature)						
Printed Name and Title of Person Signing for Trustees					Printed Name and Title of Person Signing for Service Provider						
University's Appropriate Signatory											
University Procurement Department					Check appropriate box below that best describes Service Provider:						
					<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Other (specify)						
SCO Account Data:	Fund	Sub Fund	Agency	Yr	Ref/Item	Category	Program Element	Component	Chapter	Fiscal Yr	Legal Reference
Fund Name	Funds assigned on "Job Order Notice to Proceed"				PS Account	PS Fund	PS Dept ID	PS Program	PS Class	PS Project/Grant	
Amount Encumbered	I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.										
\$ On Job Order Notice to Proceed											
Amount of Increase											
\$											
Amount of Decrease	Signature of Accounting Officer: _____ Date: _____										
\$	I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of the California State University Contract Law. CHRISTTNE HELWICK, General Counsel.										
Total Amount Encumbered	By: Attorney _____ Date: _____										
\$ On Job Order Notice to Proceed											

Rider A
JOC Campus Participation Agreement
Scope of Service and Payment Schedule

This Agreement implements and is subject to the scope of services, terms and conditions of JOC Master Enabling Agreement 80246. The Service Provider shall provide services related to and incidental to the implementation and execution of a Job Order Contract (JOC) System for the participating CSU Campus executing this Agreement. The service provided shall consist of, but is not limited to the following elements:

1. The Service Provider shall furnish the CSU Campus a fully functional Job Order Contract process complete with all documents including plans and specifications by which the provisions of Public Contract Code Section 10710 are satisfied and the benefits to the CSU Campus under the statute are fully realized.
2. The Service Provider shall work closely with CSU Campus staff to develop the campus JOC.
3. This JOC Campus Participation Agreement is subject to the provisions of Section 10710 of the Public Contract Code, Job Order Contract Authority. It reads as follows:
 - a. 10710(a) Notwithstanding any other provisions of this chapter, the trustees may award annual contracts that do not exceed three million dollars (\$3,000,000) for repair or other repetitive work, or renovation or modification, to be done according to unit prices. The contracts shall be awarded to the lowest responsible bidder, and shall be based primarily on plans and specifications for typical work. No project shall be performed under a contract of this type except by order of the Trustees. No annual contracts may be awarded under these provisions for capital outlay projects, where the total cost of the project exceeds the value of a minor capital outlay project for which, pursuant to Section 10108, the services of the Department of General Services are not required and a state agency or department is authorized to carry out its own project.
 - b. 10710(b) For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.
4. The Service Provider shall provide experienced staff that shall be responsible for the JOC development and implementation program. This staff shall report directly to the CSU Campus and will be available to assist the CSU Campus with any JOC related issues.
5. The Service Provider shall adapt the CSU Job Order Contract model for the CSU Campus to include the following CSU Campus specific services:
 - a. Customize Catalog of Construction tasks for CSU Campus.
 - b. Customize set of technical specifications for CSU Campus.
 - c. Customize contractual terms and conditions for a Job Order Contract for CSU Campus.
 - d. Customize Job Order Contracting Execution procedures and policies for CSU Campus.
 - e. Customize Job Order Contracting Management Software package for CSU Campus.
 - f. Assist Procurement of Job Order Contractor(s).
 - g. Train CSU Campus personnel in Job Order Contract Management Software.

- h. Train CSU Campus personnel in Job Order Contract procedures.
 - i. Train Contractor personnel in Job Order Contract Management Software.
 - j. Train Contractor personnel in Job Order Contract procedures.
 - k. Assist with preparation of Initial Job Order Contract Project Packages.
 - l. Provide on-going technical support of Job Order Contract System for CSU Campus and Job Order Contractor(s).
6. The Service Provider hereby grants to the CSU Campus and the CSU Campus hereby accepts a non-exclusive right, license, and privilege to use JOC and other related Proprietary Information in connection with the terms and conditions set forth in this Agreement.
7. The Service Provider acknowledges that the CSU Campus as the State of California acting in a higher education capacity is governed by the Public Records Act. Consequently, all contract documents and building standards, plans and specifications employed by the CSU Campus in the repair or improving its campuses are public records discloseable under the Act. To the extent that the Public Records Act allows, the Service Provider and the CSU Campus mutually agree that "Proprietary Information" shall include, but is not limited to, the Service Provider's PROGEN[®] software and support documentation, Construction Task Catalogs[®] (also commonly referred to as unit price books), training materials and other proprietary materials provided by the Service Provider. The CSU Campus acknowledges that disclosure of Proprietary Information to unauthorized third parties will result in irreparable harm to the Service Provider for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of the Service Provider. **Notwithstanding the foregoing, the CSU Campus shall be allowed to distribute materials as required for the proper performance of JOC.**
8. The Service Provider shall be responsible for providing an unlimited user license for the CSU Campus and the JOC construction contractors to access the Service Provider's Internet hosted JOC information management system, which includes the Service Provider's PROGEN[®] information management software and Construction Task Catalogs[®].
9. The Service Provider's staff shall assist in the actual execution of the contracts by helping CSU Campus staff develop the initial Job Orders. The Service Provider's staff shall attend and monitor initial site visits, proposal development and negotiation sessions. The Service Provider shall remain on-site with the CSU Campus for ninety (90) days after the first JOC contract has been awarded to provide this assistance.
10. The Service Provider shall be responsible for providing comprehensive JOC support to CSU Campus through the term of the Agreement. The Service Provider shall also monitor the overall program and prepare any status reports required by CSU Campus.
11. The CSU Campus shall assume the following duties and responsibilities:
- a. Review all documentation and requests for information submitted by the Service Provider in a timely manner.
 - b. Provide full information regarding requirements for the JOC Program, including but not limited to facilities lists, current CSU Campus procedures, programs, technical specifications and bidding information.
 - c. Designate, in writing, a CSU Campus representative who shall render or obtain decisions in a timely manner pertaining to the JOC Program.

- d. Provide office space, furniture, fixtures, telephones, equipment and supplies to the Service Provider's JOC development team.
12. The Service Provider shall deliver all documents and reports and direct any queries it may have regarding this Agreement as follows:

California State University, Campus Name
CSU Campus Department
CSU Campus Address
City, State
Attention: JOC Project Administrator
Telephone Number
Email Address

(Name of Campus JOC Project Administrator) is the JOC Project Administrator for this Agreement. Invoicing and Agreement requests for extra service shall be directed to *(Name of Campus JOC Project Administrator)*. A weekly phone or email project update shall be made to keep *(Name of Campus JOC Project Administrator)* informed of project progress.

13. The Service Provider's compensation for customization and implementation of the JOC for participating CSU Campus shall be as follows:
- a. CSU Campus shall pay the Service Provider Four Percent (4%) of all work ordered with the JOC system cumulating up to and including Five Million Dollars (\$5,000,000) during the term of the Master Enabling Agreement.
- b. CSU Campus shall pay the Service Provider One and Ninety-Five Hundredths Percent (1.95%) of all work ordered with the JOC system in excess of Five Million Dollars (\$5,000,000) during the term of the Master Enabling Agreement, subject to the discounted JOC System License Fees specified below.
- c. For any twelve (12) month period of July 1st through June 30th during the term of the Master Enabling Agreement that a CSU Campus exceeds Ten Million (\$10,000,000) of work ordered with the JOC system, the following discounted JOC System License Fee shall apply:
- 1) For all work ordered in excess of Ten Million Dollars (\$10,000,000) up to and including Twenty-Five Million Dollars (\$25,000,000), CSU Campus shall pay the Service Provider One and Five Tenths Percent (1.5%) of that amount.
- 2) For all work ordered in excess of Twenty-Five Million Dollars (\$25,000,000), CSU Campus shall pay the Service Provider One and Twenty-Five Hundredths Percent (1.25%) of that amount.
- d. Each CSU Campus shall receive a credit against the Five Million Dollar (\$5,000,000) limit for all work ordered with the JOC system under the previous Master Enabling Agreements between CSU and The Gordian Group, No. A980144 dated April 26, 1999 and No. 30781 dated April 19, 2004.
- e. Each CSU Campus that ordered in excess of Five Million Dollars (\$5,000,000) with the JOC system under the previous Agreements between CSU and The Gordian Group, No. A980144 dated April 26, 1999 and No. 30781 dated April 19, 2004, shall pay One and Ninety-Five Hundredths Percent (1.95%) of all work ordered with the JOC system under this new Master Enabling Agreement, subject to the discounted JOC System License Fee specified above.

- f. The work shall be valued at the amount paid by the CSU Campus to JOC Contractor under the JOC system. It shall not include amounts that may subsequently be obtained through claims resolution processes such as arbitration, mediation, litigation, or settlement.
 - g. The JOC System License Fee shall be payable upon the issuance of each Job Order Notice to Proceed issued through the Job Order Contract process.
14. The Service Provider shall submit triplicate invoices for each Job Order issued to the JOC Project Administrator for approval and processing for payment.
15. The CSU Campus shall pay Service Provider's invoices within thirty (30) calendar days from the invoice date. Any invoice not disputed by CSU Campus in writing within fourteen (14) calendar days from the invoice date shall be deemed proper. In the event of a dispute, the CSU Campus shall pay all undisputed invoice amounts within thirty (30) days of the original invoice date.
16. This agreement shall coincide with the JOC Master Enabling Agreement.
17. The Service Provider shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.
- A. Service Provider shall obtain and maintain the following policies and coverage. The insurance furnished by the Service Provider under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated on the Cover Page of this Agreement:
 - (1) Comprehensive or Commercial Form General Liability Insurance: on an occurrence basis, covering work done or to be done by or on behalf of the Service Provider and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Limits of Liability:

\$2,000,000.00	General Aggregate
\$1,000,000.00	Each Occurrence—combined single limit for bodily injury and property damage.
 - (2) Business Automobile Liability Insurance: on an occurrence basis, covering owned, scheduled, hired, and non owned automobiles used by or on behalf of the Service Provider and providing insurance for bodily injury, property damage, and contractual liability. Limits of Liability:

\$1,000,000.00	Each Accident—combined single limit for bodily injury and property damage.
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 - (3) Workers' Compensation: including Employers Liability limits of \$1,000,000.00 and other limits as required under California law.
 - B. Service Provider shall submit to the Trustees certificates of insurance and original endorsements to the policies of insurance required by the agreement as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation of coverage without thirty (30) days written notice to the Trustees, as specified in Section 18 C. (3). Renewal certifications and endorsements shall be timely filed by the Service Provider for all coverage until the work is accepted as complete. The Trustees reserve the right to require the Service Provider to furnish the Trustees complete, certified copies of all required insurance policies. The Service Provider shall notify the Trustees in writing of any material change in insurance coverage.
 - C. The insurance policies shall contain, or be endorsed to contain, the following provisions.

- (1) For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be covered as additional insureds.
 - (2) For any claims related to the work, the Service Provider's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Service Provider's insurance and shall not contribute with it.
 - (3) Each insurance policy required by this Article shall state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Trustees.
 - (4) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- D. Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A:VII or equivalent carrier otherwise acceptable to the Trustees.
- E. Miscellaneous.
- (1) Any deductible under any policy of insurance required in this Article shall be Service Provider's liability.
 - (2) Acceptance of certificates of insurance by the Trustees shall not limit the Service Provider's liability under the agreement.
 - (3) In the event the Service Provider does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The Service Provider shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from the Service Provider, the Trustees may pay for the insurance from agreement sums otherwise due the Service Provider.
 - (4) If the Trustees are damaged by the failure of Service Provider to provide or maintain the required insurance, the Service Provider shall pay the Trustees for all such damages.
 - (5) The Service Provider's obligations to obtain and maintain all required insurance are non-delegable duties under this agreement.
18. Upon the expiration or termination as provided herein, the CSU Campus shall return to the Service Provider all Proprietary Information in the CSU Campus' possession and the Service Provider shall provide to the CSU Campus all project data generated by the CSU Campus in a form accessible by a standard database program, such as Microsoft® Access®.

THE CALIFORNIA STATE UNIVERSITY
JOC Campus Participation Agreement, Exhibit A

Campus Name
JOB ORDER NOTICE TO PROCEED

Date

The Gordian Group
140 Bridges Road, Suite E
Mauldin, South Carolina 29662

Regarding: Project Name
Work Order Number: XXXXXX

Your Proposal dated *(Month) (Day), (Year)* for the above referenced project has been approved. You are authorized to proceed with the work outlined in the Request For Work Order Proposal and Detailed Scope of Work.

In accordance with the provisions of the contract general conditions, you are hereby notified to commence work on the subject contract on or before *(Month) (Day), (Year)* and are to fully complete the work within *(number of days)* consecutive calendar days in accordance with your contract completion date of *(Month) (Day), (Year)*.

The value of this Job Order is *(written and numerical dollar value)*.

If you have questions, please call me *(at telephone number)*

Sincerely,

Name
JOC Contract Administrator
Department

Approved,

Name
Contract Administrator
Department

Fund Certified,

Chart Field String:

Name
Accounting/Fiscal Officer
Department

EXHIBIT "B"

Scope of Services
JOC Program Maintenance & Support

A. Program Support

1. Provide strategic guidance to the project team
2. Monitor program performance, as requested, including any and all new tracking reports which are tailored, useful and applicable to the City
3. Integrate successful experiences from other agencies using JOC
4. Identify and consult on major program issues
5. Provide guidance and interpretations on procedures
6. Assist with interpretation of the Construction Task Catalog® including:
 - a. Resolve Construction Task Catalog® issues
 - b. Manage revisions to the Construction Task Catalog®
7. Conduct annual on-site reviews of the JOC Program, as requested
8. Prepare program evaluations, as requested
9. Provide Construction Cost Index calculations for new adjustment factors to the JOC contracts

B. Procurement & Document Maintenance Support (On-Site)

1. Provide assistance with modifications to the Instructions to Bidders
2. Provide assistance with modifications to the General Conditions
3. Conduct research to identify recurring use of non-prepriced tasks
4. Coordinate preparation of updated Construction Task Catalogs®
5. Manage and coordinate preparation of updated Technical Specifications
6. Conduct informational seminars for local groups, as requested
7. Assist with bidding new JOC contracts including:
 - a. Conduct pre-bid meetings with potential contractors
 - b. Assist with bid review and JOC contractor selection, as requested

C. Procurement & Document Maintenance Support (Off-Site)

1. Prepare customized Construction Task Catalogs® including:
 - a. Maintain the integrity of the CSI numbering system
 - b. Improve task descriptions
 - c. Develop new tasks for recurring non-prepriced tasks
 - d. Remove outdated tasks that are no longer used or available
 - e. Monitor local area pricing
 - f. Incorporate current construction practices and materials
 - g. Publish Construction Task Catalogs® for additional solicitations
2. Prepare customized Technical Specifications including:
 - a. Develop new specifications for recurring non-prepriced tasks
 - b. Incorporate current construction practices, standards and materials
 - c. Publish Technical Specifications for additional solicitations

D. Training Support

1. Update the Training Manual to reflect changes in procedures, if any
2. Conduct refresher training on procedures for current City and JOC contractor personnel
3. Conduct JOC procedures training for new City and JOC contractor personnel
4. Provide hands-on training for new City and JOC contractor personnel in the areas of:
 - a. Project identification and development
 - b. Joint scope meetings
 - c. Project scope development
 - d. Proposal development and preparation
 - e. Proposal review and variance resolution
5. Conduct PROGEN[®] software training including:
 - a. Provide on-site PROGEN[®] assistance for the City, as needed or requested
 - b. Provide refresher training for current City and JOC contractor personnel
 - c. Provide on-site/Internet based training for new releases of PROGEN[®]
 - d. Provide on-site/ Internet based training for all new City personnel
 - e. Provide Internet based training for current and new JOC contractor personnel

E. Software Support

1. Provide access to PROGEN[®] for an unlimited number of COUNTY and JOC contractor users
2. Provide software technical support, including:
 - a. Set-up PROGEN[®] access for new City and JOC contractor personnel
 - b. Set-up PROGEN[®] access for new JOC contractors
 - c. Provide systems support in connection with PROGEN[®], including any and all new tracking reports which are tailored, useful and applicable to the City
3. Provide access to all new releases of PROGEN[®] software
4. Write, test and finalize modifications to existing PROGEN[®] reports, as requested
5. Write, test and finalize new PROGEN[®] reports, as requested
6. Provide toll free 24/7 telephone support for PROGEN[®] software