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**Arlington Public Schools  
Purchasing Office**

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**NOTICE OF ADDENDUM NO. 3**

**Issued on January 27, 2017**

**TITLE:** **JOB ORDER CONTRACTING, GENERAL CONSTRUCTION SERVICES**

**ITB NO.:** **35FY17**

**ITB ISSUE DATE:** **JANUARY 4, 2017**

**BID OPENING DATE  
AND TIME:** **FEBRUARY 14, 2017 PRIOR TO 2:00 P. M., (LOCAL PREVAILING TIME)**

**Please find attached the Section 007100 – JOC Supplemental Conditions that are included as part of the ITB.**

**For Clarification Purposes:**

- Q.1. Are the wage rates listed in CTC Section 01 22 20 the rates used in development of unit prices throughout the book?
- A.1. YES
- Q.2. Does Arlington have a living wage, or any other wage scale requirement applicable to this project?
- A.2. No APS does not have a living wage or other type requirement for wages.
- Q.3. During the pre-bid meeting the need to obtain building permits for certain tasks was discussed. Please confirm the cost of permits (building and trades) will be reimbursed. In regards to labor cost, we find no line item for Project Manager or other administrative personnel necessary to obtain the building or trade permits. Since permits may or may not be required for individual tasks it seems incorrect to include this labor cost in the factor. Will this undefined labor cost be considered Non Pre-priced?
- A.3. This is to be considered part of the factor. Refer to the handout page 00-1 under “Business Costs”
- Q.4. Can Gordian provide a demonstration of the proposal generation Software to be used in creation of task order bids?
- A.4. No, training will be provided after award
- Q.5. At the pre-bid contractors were cautioned against bidding too low a factor since; it is already anticipated that some Job Order prices may result in a loss. Nonetheless, Contractors are required to bid and the County anticipates award to the acceptable and responsible Bidder with the lowest factor. Does this mean the County is not evaluating factor for accuracy or suitability?

- A.5. APS will review the submission as it does with all bids. If APS feels the Contractor may have trouble performing at the submitted bid price, APS reserves the right to conduct a pre-award meeting with the Contractor to discuss the bid, the methodology for preparing the bid, and whether or not the Contractor feels he or she can perform the duties required by the Contract Documents.
- Q.6. Please confirm Bidder Qualifications are to be evaluated as pass/fail.  
A.6. Yes this will be pass/fail.
- Q.7. Bid Bond is not required. Does this also mean that the successful contractor may refuse to accept any individual Job Order that results in an unsustainable price?  
A.7. Participating in an “opt-in” behavior will likely prohibit future work requests. It was discussed that this a Program, with multiple projects with varying profit margins
- Q.8. Substitutions are not permitted after a Job Order is issued. Are requests for proprietary material (e.g. specific light fixtures to “match existing”) handled as a standard line items or as Non Pre-Priced items?  
A.8. Would be handled as Non Pre-Priced unless it is determined that the requirement would be ongoing and then added to the CTC with a contract amendment.
- Q.9. To properly anticipate and evaluate APS needs as it relates to the Construction Task Catalog, can you provide a list of potential upcoming tasks? For example, I doubt there will be much need for Manhole Rehabilitation and the prices appear low against actual cost. If upcoming potential upcoming tasks are not available, a partial list of past actions would be equally helpful.  
A.9. No current list of upcoming tasks is available due to the need for School Board Approval and Budget Approval as well.
- Q.10. General Conditions require that “for any portion of the Work the Contractor is not going to perform with its own forces, the Contractor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The Contractor shall directly solicit bids from at least one certified business in each category to perform such work...” Are compliance reports required? Must proposed subcontractors be included with Job Order pricing?  
A.10. Proposed subcontractors are required to be listed in the proposal package, along with schedule and other information requested at the scope meeting.

**This Addendum #3 for ITB 35FY17 – JOB ORDER CONTRACTING, GENERAL CONSTRUCTION SERVICES, must be signed, dated and received in the Purchasing Office prior to the date and time stated above “OR” acknowledgment of receipt of this addendum may be noted on the ITB. (See Page 00 4100-3)**

**ISSUED BY:**

**Ellen H. Wills, CPPB, VCO**  
**Assistant Director of Purchasing**  
**Telephone: (703) 228-7649**  
**Cell: (703) 244-6580**  
**Email: [ellen.wills@apsva.us](mailto:ellen.wills@apsva.us)**

**SECTION 007100 – JOC SUPPLEMENTAL CONDITIONS****1. CONTRACTOR SELECTION AND AWARD OF INDIVIDUAL JOB ORDERS**

- 1.1. Job Order Contracting: The Owner may award an individual Job Order to any selected Contractor. It is the intent of the Owner to allocate Work in an approximately equal rotation among all Contractors. Selection of the Contractor and award of the Job Order will, however, be based on the following criteria as applicable to the particular selection and award:
  - 1.1.1. Location of Work and the type of Work being performed.
  - 1.1.2. Evaluation of past and current performance on Job Orders, project size, manpower availability, construction management challenges, schedule performance or capabilities, and design management requirements.
  - 1.1.3. Balancing of Job Order dollar volume and construction backlog among Contractors.
  - 1.1.4. Management of Job Order dollar volume within bonding limitations of the Contractor.
  - 1.1.5. Price, as it relates to the Owner's independent cost estimate or to an offer from any other contractor.
  - 1.1.6. Contractor's responsiveness to the Owner on Job Orders.
  - 1.1.7. Other appropriate criteria as deemed in the best interest of the Owner.

**2. INITIATION OF A JOB ORDER**

- 2.1. As the need arises, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 2.2. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - 2.2.1. the general scope of the work;
  - 2.2.2. alternatives for performing the work and value engineering;
  - 2.2.3. access to the site and protocol for admission;
  - 2.2.4. hours of operation;
  - 2.2.5. staging area;
  - 2.2.6. requirements for catalog cuts, technical data, samples and shop drawings;
  - 2.2.7. requirements for professional services, sketches, drawings, and specifications;

- 2.2.8. construction duration;
  - 2.2.9. liquidated damages;
  - 2.2.10. the presence of hazardous materials;
  - 2.2.11. date on which the Job Order Proposal is due.
- 2.3. Upon completion of the joint scoping process, the Owner will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any recommended changes or modifications. When the Owner is satisfied with a Detailed Scope of Work, the Owner will issue a Request for Job Order Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Proposal and the Owner will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

### **3. PREPARATION OF THE JOB ORDER PROPOSAL**

- 3.1. The Contractor's Job Order Proposal shall include, at a minimum:
- 3.1.1. Job Order Price Proposal;
  - 3.1.2. Required drawings or sketches;
  - 3.1.3. List of anticipated Subcontractors;
  - 3.1.4. Construction schedule;
  - 3.1.5. Other requested documents.
- 3.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 3.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Task (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 3.4. The Contractor will prepare Job Order Price Proposals in accordance with the following:
- 3.4.1. Pre-priced Task: A task described in, and for which a unit price is set forth in, the Construction Task Catalog<sup>®</sup>.
  - 3.4.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog<sup>®</sup>.
  - 3.4.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
    - 3.4.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

3.4.3.2. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not reasonable.

3.4.3.3. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with Contractor's Own Forces:**

**A** = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

**B** = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

**C** = Lowest of three independent quotes for all materials.

**Total for a Non Pre-priced Tasks performed with Contractor's Own Forces** = (A+B+C) x Non Pre-Priced Task Adjustment Factor

**For Non Pre-priced Tasks Performed by Subcontractors:**

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

**D** = Lowest of three Subcontractor Quotes

**Total Cost for Non Pre-priced Tasks performed by Subcontractors** = D x Non Pre-Priced Task Adjustment Factor

3.4.3.4. After a Non Pre-priced Task cost is used on three separate Job Orders, the Unit Price for such task will be established, following approval by the Owner, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

3.4.3.5. The Owner's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

3.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Owner may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs

incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.

- 3.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid with mark-up. The Owner shall pay the Contractor a mark-up of 10% on the fees paid to a governmental entity to obtain filings and permits. Contractor shall submit written documentation of such fees. The 10% mark-up shall cover all costs over and above the filing and permit fees, including expeditor fees. The cost of expediting services or equipment use fees are not reimbursable.
- 3.7. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing. Provided, however, such professional services fees shall not exceed \$25,000 per Job Order, and shall not exceed a cumulative total of \$75,000 for the entire term of this Contract. All Job Order Price Proposals and billings after a Job Order is issued shall include a line item breakdown for engineering and architectural services being charged, showing the cumulative total for the Job Order being billed and for all billings under the Contract Term.
- 3.8. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Job Order Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- 3.9. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Job Order Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
- 3.10. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal and all Contract Documents at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Owner.
- 3.11. If the Contractor desires clarifications or additional information regarding the Detailed Scope of Work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

#### **4. REVIEW OF THE JOB ORDER PROPOSAL AND ISSUANCE OF THE JOB ORDER**

- 4.1. The Owner will evaluate the entire Job Order Proposal and compare it with the Owner's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- 4.2. The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:
  - 4.2.1. Will constitute or create a hazard to the Work, or to persons or property;
  - 4.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
  - 4.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 4.3. The Owner reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Owner.
- 4.4. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Proposal prior to delivering it to the Owner.
- 4.5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order **signed** by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Job Order Proposal. A **signed** copy of the Job Order will be provided to the Contractor.
- 4.6. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Job Order Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

## **5. ENR CCI ADJUSTMENT OF THE ADJUSTMENT FACTORS**

- 5.1. Economic Price Adjustment: If the Owner notifies the Contractor of the Owner's intent to exercise the Option to renew the Contract at any time before the end of a term, the Contractor may submit to the Owner within fourteen (14) days after the date of the Owner's notice of intent a written request for a revision of the Contractor's Normal Working Hours and Restricted Working Hours Adjustment Factors ("Adjustment Factors Revision Request"). If the Contractor does not submit an Adjustment Factors Revision Request within the required period with all documentation as provided below, the Adjustment Factors shall remain the

same as for the most recently concluded term of the Contract. The Contractor's Adjustment Factors Revision Request shall contain the following information and documentation:

- 5.1.1.1. A Base Year Index calculated by averaging the twelve (12) month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (12) months immediately prior to the month of the Bid Due Date (e.g. April bid date, Base Year Index is April of the prior year to March of the bid date year).
- 5.1.1.2. A Current Year Index calculated by averaging the twelve (12) month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (12) months beginning with the month of anniversary of the Bid Due Date (e.g. April bid date, Current Year Index is April of the prior year to March of the current year).
- 5.1.1.3. The Economic Price Adjustment calculated by dividing the Current Year Index by the Base Year Index.
- 5.1.1.4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's requested new Adjustment Factors effective for the next twelve (12) months.
- 5.1.1.5. Averages shall be obtained by summing the twelve (12) month indices and dividing by twelve (12).
- 5.1.1.6. All calculations in this article shall be carried to the fifth (5<sup>th</sup>) decimal place and rounded to the fourth (4<sup>th</sup>) decimal place. The following rules shall be used for rounding:
- 5.1.1.7. The fourth (4<sup>th</sup>) decimal place shall be rounded up when the fifth (5<sup>th</sup>) decimal place is five (5) or greater.
- 5.1.1.8. The fourth (4<sup>th</sup>) decimal place shall remain unchanged when the fifth (5<sup>th</sup>) decimal place is less than five (5).
- 5.1.1.9. The Owner shall be under no obligation to agree to any Adjustment Factor increase supported by the foregoing calculation, with any such increase remaining solely within the discretion of the Owner.
- 5.1.1.10. The Owner shall notify the Contractor within twenty-one (21) days following receipt of the Contractor's Adjustment Factors Revision Request whether the request was submitted timely, with the required documentation, and with accurate calculations. Failure by the Owner to respond within twenty-one (2) days shall be deemed a denial of the request without further action required. Any revision to the Adjustment Factors to which the Owner agrees shall be documented by a Change



Order. If a request for revision of the Adjustment Factors is denied, or an adjustment in an amount less than that requested by the Contractor is approved, the Contractor shall continue to meet its obligations under the Contract at the Adjustment Factor rates in effect for the immediately preceding Contract term.

- 5.2. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 5.3. Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
- 5.4. The Contractor cannot delay submission of the Job Order Proposal past the date for the Owner's response to the Adjustment Factors Revision Request to take advantage of an anticipated revision of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 5.5. *The Adjustment Factor for Non Pre-priced Tasks will remain constant for the duration of the Contract.*

## **6. Job Order Contracting Software**

- 6.1. The Owner selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") Solution (Gordian JOC Solution®) for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian® JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor to prepare and submit Job Order Price Proposals, subcontractor lists, and other requirements specified by the Owner. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a JOC System License Fee to obtain access to Gordian's JOC Solution. The Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Owner is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following JOC System License.

## **7. Job Order Contracting System License**

- 7.1. Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Contract and any renewal hereof or Gordian's Contract with the Owner, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's proprietary JOC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to the Owner under this Contract. The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's JOC Applications and support documentation, Construction Task Catalog, training materials and other Gordian provided proprietary materials. In the event this Contract expires or terminates as provided herein, or Gordian's Contract with the Owner expires or terminates, or the Contractor fails to pay the JOC System License Fee specified in

this Contract, this JOC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.

- 7.2. In consideration for a non-exclusive, non-transferable, license to the Gordian JOC Solution, **the Contractor shall pay Gordian a license fee (“Contractor License Fee”) equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document (“Purchase Order”) issued to the Contractor by the Owner.** The Contractor License Fee shall be included in the Contractor’s overhead costs, shall not be included as an additional line item cost in Job Order Price Proposals, and shall be payable to Gordian within ten (10) days of Contractor’s receipt of each Purchase Order issued to the Contractor by the Owner. Gordian is hereby declared to be an intended third-party beneficiary of this Agreement. In the event any court action is brought to enforce payment of the Contractor License Fee by any party or third-party beneficiary of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and collection costs. The Contractor shall remit the Contractor License Fees as follows:

**Payments Made Payable to:** The Gordian Group, Inc.

**Mail Checks to:** P.O. Box 751959  
Charlotte, NC 28275-1959

- 7.3. Gordian may terminate this License Agreement in the event of: (1) any breach of a material term of this Agreement by the Contractor which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party’s making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.
- 7.4. The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian 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 Gordian. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor.
- 7.5. In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Owner, this JOC System License shall take precedence.

**JOC System License and Fee Agreement**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between \_\_\_\_\_, whose address is [Insert Contractor's Legal Address] ("Contractor"), and The Gordian Group, Inc., whose address is 30 Patewood Drive, Suite 350, Greenville, SC 29615 ("Gordian").

WHEREAS, **Arlington Public Schools** ("Owner") has awarded Contract No. \_\_\_\_\_ ("Contract") to the Contractor.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and Owner ("Owner Contract"), Gordian has agreed to provide Contractor with a license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, the parties agree to the terms and conditions of the following JOC System License and Contractor License Fee ("Agreement"):

Gordian hereby grants to Contractor, and Contractor hereby accepts from Gordian for the term of the Contract, or the term of the Owner Contract, whichever is shorter, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Contractor's responsibilities under the Contract ("Limited Purpose"). Contractor hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog®, training materials, and any other proprietary materials provided to Contractor by Gordian. In the event the Contract expires or terminates, or the Owner Contract expires or terminates, this JOC System License shall terminate and Contractor shall return all Proprietary Information in its possession to Gordian.

Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

In accordance with the terms of the Contract, Contractor hereby agrees to pay Gordian a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document issued to Contractor by Owner pursuant to the Contract. Contractor further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Contractor's receipt of each Job Order, Purchase Order or other similar purchasing document from the Owner. Contractor shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month. In the event a modification to an issued Job Order results in a reduction of the value of the Job Order, Gordian shall issue a credit to Contractor only when the applicable license fee credit is greater than or equal to \$25.00.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing

by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian 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 Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Agreement by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney’s fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Contract, the Owner Contract, or any Job Order, Purchase Order or similar purchasing document issued to Contractor by Owner, this Agreement shall take precedence.

**[Insert Contractor’s Full Legal Name]**

**The Gordian Group, Inc.**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: Ammon T. Leshner  
Title: Vice President of Legal Affairs

**ACKNOWLEDGMENT OF [Contractor]**

STATE OF

COUNTY OF

I, the undersigned Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ and the document was executed by the above named \_\_\_\_\_ of his/her own free will.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

**END OF SECTION 00 7100**