

PROFESSIONAL SERVICES AND LICENSE AGREEMENT

This Agreement is made this 16th day of September, 2020 by and between The City of Shoreline, whose address is 17500 Midvale Ave. N., Shoreline, Washington 98133 ("Owner"), and The Gordian Group, Inc., whose address is 30 Patewood Drive, Suite 350, Greenville, South Carolina 29615 ("Gordian").

WITNESSETH

WHEREAS, Owner desires to engage the services of a firm to perform services related to the development, implementation and support of a Job Order Contracting ("JOC") program (the "Services") in accordance with the terms and conditions set forth herein, and

WHEREAS, Gordian has the necessary skills and expertise required to perform the Services and is willing and able to provide the Services to Owner.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I
TERM**

Owner hereby retains Gordian as Owner's JOC Services provider for the term commencing on the date of this Agreement and expiring sixty (60) months thereafter, unless terminated or extended as provided for herein.

**ARTICLE II
JOC SYSTEM LICENSE**

Gordian hereby grants to Owner, and Owner hereby accepts from Gordian for the term of this Agreement, a non-exclusive right, privilege and license to Gordian's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of operating Owner's Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to Gordian's JOC Information Management System (as defined below), and support documentation, Construction Task Catalog® (also commonly referred to as a unit price book), construction cost data, training materials and other proprietary materials provided by Gordian. In the event this Agreement expires or terminates as provided herein, this JOC System License shall terminate and Owner shall return to Gordian all Proprietary Information in Owner's possession.

Owner 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. Owner 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 Agreement and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Owner, subject to federal and state laws related to public records disclosure.

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

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

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

ARTICLE III GORDIAN DUTIES AND RESPONSIBILITIES

Gordian will perform the following duties and responsibilities to complete the Services:

1. **Program Development, Implementation and Support:** Gordian shall be responsible for the development, implementation and on-going support of the Owner's customized JOC program.
2. **Contract Documents:** Gordian shall be responsible for preparing the JOC documents that will be used by the Owner to procure the JOC construction contractors including:
 - a) **Unit Price Book(s):** Gordian shall prepare one or more customized Unit Price Books (also known as a Construction Task Catalog[®]) containing prices covering material, equipment and labor costs for various units of construction, and adjusting these costs to current market conditions. Only local prevailing wages and local material and equipment costs (obtained directly from local, contractors, subcontractors and suppliers) to price the Unit Price Books shall be used. The use of generic factors to localize prices is not acceptable. Unit prices for demolition shall be provided for each construction task. Therefore, every cost to install an item or unit shall be accompanied by a corresponding cost to remove the same item or unit. Tasks may also have several modifiers which adjust the price for variations in materials or for quantity discounts; and
 - b) **Technical Specifications:** Gordian shall prepare and publish Technical Specifications describing the materials, performance and installation requirements for each of the construction tasks listed in the unit price book. Where available, the Owner standard specifications shall be incorporated into the Technical Specifications; and
 - c) **Contractual Terms and Conditions and Bid Forms:** Gordian shall prepare, in conjunction with Owner staff, contractual terms and conditions and bid forms which incorporate JOC language and forms with all appropriate Owner contract language and forms.
3. **Information Management System:** Gordian shall be responsible for providing the Owner with a comprehensive web-based JOC Information Management System (hereinafter referred to as "IMS") for an unlimited number of Owner users. The JOC IMS must be capable of providing full project tracking, developing cost proposals, preparing independent Owner estimates, generating all project documentation, providing project scheduling, budgeting and cost control, tracking MBE participation, and generating customized reports. Gordian must incorporate any current Owner forms and documentation into the IMS; and
4. **Procurement Support:** Gordian shall be responsible for providing Owner with procurement support to market the Owner JOC Program to potential JOC Contractor's. If required by the Owner, Gordian

shall conduct a bidder prequalification process to determine a qualified list of bidders. Gordian shall be required to organize and conduct pre-bid meetings with the interested bidders as well as make presentations on behalf of the Owner with various business and Construction organizations. Gordian's staff assigned to perform procurement support must have JOC procurement experience; and

5. **Training Programs:** Gordian shall be responsible for developing and conducting all training programs for the Owner and JOC Contractor staff to ensure that the JOC program functions properly. The training programs must include specialized training courses that will involve all Owner staff and JOC contractors utilizing and administering the JOC program. The training programs must include extensive training on the use of the JOC IMS. All training must be "hands on" with user competency as the objective. Actual Owner projects that the Owner plans to perform through JOC may be included in the training programs; and
6. **Job Order Development:** Gordian shall be responsible for providing the following Job Order Development services:
 - a) **Project Identification:** When a project is identified and requested by Owner, Gordian will contact Owner and assist with determining whether the project is appropriate for JOC.
 - b) **Contractor Identification:** In the event Owner has multiple JOC Contractors, Gordian will assist the Owner in identifying the appropriate JOC Contractor for the project based on factors which include, but are not limited to, the type of work involved and the location of the project.
 - c) **Joint Scope Meeting:** The Gordian's project manager will schedule a Joint Scope Meeting at the project site to help Owner and the JOC Contractor agree on the details of the work that the JOC Contractor will perform. The purpose of the scoping process is to allow the JOC Contractor an opportunity to inspect the site and ask questions before submitting a Price Proposal. The goals of this process are to foster open communication, reduce misunderstandings and mistakes that lead to change orders, and provide results that are more cost-effective and collaborative.
 - d) **Develop Detailed Scope of Work:** Gordian will assist in preparing a Detailed Scope of Work that describes the work the JOC Contractor will perform. Gordian will also assist with resolving issues when project plans and actual conditions vary.
 - e) **Request for Price Proposal:** After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, Gordian's project manager will send the Detailed Scope of Work and a Request for Proposal to the JOC Contractor.
 - f) **Request Price Proposal:** As the next step in the process, the JOC Contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Unit Price Book. Gordian's IMS will automatically multiply the unit price of the task by the required quantities by the JOC Contractor's competitively bid Adjustment Factor. Gordian shall also request the JOC Contractor's preparation of any additional Owner required information (e.g., construction schedule, list of proposed local subcontractors, etc.).
 - g) **Price Proposal Review:** Gordian's project manager will review the Price Proposal to make sure the JOC Contractor has selected the appropriate tasks and quantities and will ask the JOC Contractor to make any required changes. Gordian will also obtain and review any Owner required information submitted by the JOC Contractor such as a construction schedule and list

of proposed subcontractors. Gordian's project manager will submit the Price Proposal and related documents to Owner.

- h) **Issue Job Order:** Once Owner approves the Price Proposal and related documents, and decides to move forward with the project, Owner is then responsible for the issuance of a job order (which may be in the form of a purchase order) to the selected JOC Contractor.
 - i) **Construction Management:** During construction, Owner's project managers will follow its standard internal policies and procedures for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or Owner desires to change the Detailed Scope of Work, a supplemental Job Order is developed in the same manner as the original Job Order.
7. **On-Going Technical Support:** Gordian shall be responsible for providing extensive on-going technical support to the Owner during normal business hours, excluding holidays. On-going technical support shall include providing updated contract documents, assisting with the procurement of additional JOC Contractors, providing Owner with access to all applicable updates and revisions to the IMS, and providing training for new Owner staff and JOC Contractors during the term of the Agreement. Providing on-going technical support is considered a vital component to ensuring a successful Owner JOC program.
8. **Optional Project Management Services:** On a project-by-project basis, Gordian shall provide project management services to Owner, to be requested by Owner in its sole discretion. The project management services shall include the following:
- a) **Preconstruction** – Gordian's project manager will assist Owner in determining whether professional design services are required and conduct a pre-construction meeting with the Owner's representative(s), the JOC contractor and, if applicable, the architect or engineer to review the basic project parameters and funding. Where design services are required, the project manager will work with the architects or engineers to coordinate necessary studies and design standards, and deliver plans and specifications that maximize the benefits of JOC for each Owner project. Next, the project manager will coordinate and share any preconstruction information with Owner, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.
 - b) **Site Visit** – During construction, Gordian's project manager will monitor the JOC contractor's work in-progress, manage the JOC contractor's compliance with the approved safety plan and complete a report for each site visit.
 - c) **Communication** – Gordian's project manager will provide weekly construction status reports to Owner, conduct project progress meetings with the JOC contractor and staff on a periodic basis, and coordinate any required technical and code inspections.
 - d) **Supplemental Job Orders** – In the event there are unforeseen conditions or Owner requests changes to the Detailed Scope of Work after construction has begun, Gordian's project manager will analyze and process a supplemental Job Order by utilizing the procedures to develop the initial Job Order.
 - e) **Approvals** – Gordian's project manager will review and recommend for approval, or direct necessary revisions to, the JOC contractor's applications for payment and obtain Owner's

approval of the work. Final acceptance of the work will be the responsibility of Owner. Technical and code inspections will be the responsibility of the appropriate inspection agencies.

- f) **Project Close-out** – As the final step in the process, Gordian’s project manager will enter all Job Order related information into the IMS and collect any required as-builts, warranties and OEMs from the JOC contractor.

ARTICLE IV ADDITIONAL SERVICES

Owner may, from time to time, request changes in the services to be performed by Gordian (“Additional Services”). No such change, including any increase or decrease in the compensation amount, which shall be mutually agreed upon by Owner and Gordian, shall be effective and enforceable until and unless a written amendment to this Agreement has been executed by the parties and attached hereto.

ARTICLE V OWNER DUTIES AND RESPONSIBILITIES

Owner will assume the following duties and responsibilities:

1. Owner shall review all documentation and requests for information submitted by Gordian in a timely manner.
2. Owner shall provide full information regarding requirements for the JOC program, including but not limited to, facilities lists, current Owner procedures, programs, technical specifications and bidding information.
3. Owner shall designate, in writing, a representative who shall render or obtain decisions pertaining to the JOC program in a timely manner.
4. Owner shall provide work space and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by Gordian’s on-site staff.
5. Owner shall be responsible for reproduction of the Construction Task Catalog®, Technical Specifications, Contract and General Conditions, Instructions to Bidders and Bid Forms, including the bid packages distributed to construction contractors.

ARTICLE VI INDEMNIFICATION

Gordian agrees to indemnify and hold harmless Owner and its officers, agents and employees from any and all claims against Owner or its officers, agents, or employees that arise out of any negligent act of Gordian or its officers, agents, employees or subcontractors.

Owner agrees to indemnify and hold harmless Gordian and its officers, agents, employees and subcontractors from any and all claims against Gordian or its officers, agents, employees or subcontractors that arise out of any negligent act of Owner or its officers, agents or employees.

ARTICLE VII INSURANCE

Gordian shall maintain general liability insurance coverage of \$1,000,000 per occurrence, automobile liability insurance of \$1,000,000 per occurrence, employers' liability insurance of \$1,000,000 and workers' compensation insurance as required by law during the entire term of this Agreement. Gordian shall maintain Technology Errors or Omissions insurance with limits of liability not less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Gordian shall maintain Cyber Liability insurance with limits of liability not less than \$1,000,000 per occurrence. Coverage shall include both first and third party coverage, covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information and network security. Gordian shall furnish to Owner a certificate of insurance evidencing the required coverage, naming Owner as an additional insured and providing that the insurance will not be cancelled without thirty (30) days written notice to Owner.

ARTICLE VIII FEES

In consideration of the Services provided pursuant to Article III, Paragraphs 1 – 7, and the JOC System License granted in Article II above, Gordian shall be paid a JOC System License Fee ("License Fee") and Job Order Development Fee according to the following schedule:

JOC System License Fee – Owner shall pay Gordian a License Fee equal to one and ninety-five hundredths percent (1.95%) of the value of the work ordered; and

Job Order Development Fee – Owner shall pay Gordian a Job Order Development Fee of three and five hundredths percent (3.05%) of the value of work ordered.

The JOC System License Fee and Job Order Development Fee shall be payable when a Job Order is issued to the JOC contractor.

In consideration of the option project management services set forth in Article III, Paragraph 8, to be provided on a project-by-project basis and only upon request by Owner, Gordian shall, in addition to the applicable fees set forth above, be paid a Project Management Fee according to the following schedule:

Project Management Fee – Owner shall pay Gordian a Project Management Fee equal to five and ninety-five hundredths percent (5.95%) of the value of work ordered.

The Project Management Fee shall be payable upon completion and acceptance of the work by Owner, except at Gordian's election Job Orders requiring more than sixty (60) days to complete may be invoiced monthly on a percentage of completion basis.

It is understood that Gordian shall charge participating construction contractors a Contractor Licensing Fee ("CLF") of one percent (1%) of the value of the work ordered for the JOC contractors' access to the Gordian's proprietary construction data and JOC applications. Gordian shall be responsible for all administrative duties relating to the invoicing and collections of the CLF.

ARTICLE IX PAYMENT

Gordian shall submit invoices for the Services to Owner monthly. Invoices for Fees shall include a description of all work ordered through the JOC program during the month. Invoices for Additional Services shall include a detailed description of the Additional Services provided during the month.

Owner shall pay Gordian's invoices within thirty (30) calendar days from the invoice date. Any invoice not disputed by Owner in writing within fourteen (14) calendar days from the invoice date shall be deemed proper. In the event of a dispute, Owner shall pay all undisputed invoice amounts within thirty (30) days of the original invoice date.

ARTICLE X TERMINATION

Owner may terminate this Agreement for any reason by providing written notice to Gordian specifying the termination date, which shall be a minimum of thirty (30) days after the date such notice is given. In the event Owner exercises such termination right, Owner shall pay Gordian, within thirty (30) days, the Fees for all work ordered prior to the effective date of termination.

Gordian may terminate this Agreement for cause if Owner shall fail to fulfill its obligation under this Agreement, or if Owner shall violate any of the material provisions of this Agreement, by providing written notice to Owner specifying the cause for such termination and the termination date, which shall be a minimum of seven (7) days after the date such notice is given. In the event Gordian exercises such termination right, Owner shall pay Gordian, within thirty (30) days, the Fees for all work ordered prior to the effective date of termination.

ARTICLE XI EQUAL EMPLOYMENT OPPORTUNITY

Gordian shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital/domestic partner status or disability, except where any of the above is a bona fide occupational qualification or need. Gordian has an affirmative action program to ensure that applicants are employed, and employees are treated during employment without regard to race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital/domestic partner status or disability. Such action includes, but is not limited to, hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

ARTICLE XII FORCE MAJEURE

Neither party shall be held responsible for failure to perform the duties and responsibilities imposed by this Agreement if such failure is due to fires, riots, rebellions, natural disasters, wars or an act of God beyond the control of the parties and outside the scope of the parties' respective disaster plans that make performance of the obligations impossible.

ARTICLE XIII INDEPENDENT CONTRACTOR

Gordian is an independent contractor, and neither Gordian nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of Owner. Owner will not be legally responsible for any negligence or other wrongdoing by Gordian, its employees, servants or agents. Owner will not withhold

from payments to Gordian any federal, state or unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Gordian or its employees, servants or agents. Furthermore, Owner will not provide to Gordian any insurance coverage or other benefits, including workers' compensation, normally provided by Owner for its employees.

ARTICLE XIV ASSIGNMENT

Gordian shall not assign, transfer, convey or otherwise dispose of its rights, obligations or interests under this Agreement without the prior written consent of Owner, such consent not to be unreasonably withheld.

ARTICLE XV APPLICABLE LAW

This Agreement and the work performed hereunder shall be governed in all respects by the laws of the State of Washington. The jurisdiction, venue and forum for any litigation with respect hereto shall be in the courts of the King County, WA, and in no other court.

ARTICLE XVI WAIVER

The failure of either party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right, or any other right.

ARTICLE XVII NOTICES

Unless otherwise provided for herein, all notices and other communications required by this Agreement shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

To the Owner:

City of Shoreline
Attn: Janet Bulman
17500 Midvale Ave N.
Shoreline, WA 98133
Phone: 206-801-2322
Email: jbulman@shorelilnewa.gov

To Gordian

The Gordian Group, Inc.
Attn: Ammon T. Leshner
30 Patewood Drive, Suite 350
Greenville, SC 29615
Phone: (800) 874-2291
Email: a.lesher@thegordiangroup.com

**ARTICLE XVIII
SEVERABILITY**

The sections, paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining clauses, phrases, sentences, paragraphs or sections of this Agreement.

**ARTICLE XIX
ENTIRE AGREEMENT**

This Agreement represents the entire and integrated agreement between Owner and Gordian and may be amended only by written instrument approved by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner

By: _____

Authorized Signature

John Norris, Acting City Manager

The Gordian Group, Inc.

By: _____

Corporate Officer