

**JOC MASTER ENABLING AGREEMENT** (9/08/06f)

This AGREEMENT is made and entered into this 23rd day of February, 2009 pursuant to the Public Contract Code 10700 *et seq.*, by and between the Trustees of The California State University on behalf of

University <b>California State University, Office of the Chancellor</b>	Agreement No: <b>80246</b>	Amendment No: <b>New agreement</b>	Project No: <b>80246</b>	Project Name: <b>Systemwide JOC</b>
hereafter referred to as Trustees, and Service Provider, <b>The Gordian Group</b>		CSU Vendor ID No. 711	Federal ID No: 58-1900371	License No:
Address of Service Provider <b>140 Bridges Road, Suite E, Mauldin, South Carolina 29662</b>			Telephone No: <b>800-874-2291</b>	Fax No: <b>864-915-4584</b>

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 service 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 <b>California State University, Office of the Chancellor</b>							Full Legal Name of Service Provider <b>The Gordian Group</b>																																																																														
By (Trustees' Authorized Signature) <b>Signed by Melody A. Kojima</b>							By (Service Provider's Authorized Signature) <b>Signed by David L. Mahler</b>																																																																														
Printed Name and Title of Person Signing for Trustees <b>Melody A. Kojima, Assistant Director, Purchasing</b>							Printed Name and Title of Person Signing for Service Provider <b>David L. Mahler, Vice President of Finance</b>																																																																														
Contract Services and Procurement <b>401 Golden Shore, Long Beach, California 90802</b>							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) _____																																																																														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Fund</th> <th style="width: 15%;">Sub Fund</th> <th style="width: 15%;">Agency</th> <th style="width: 10%;">Yr</th> <th style="width: 10%;">Ref/Item</th> <th style="width: 10%;">Category</th> <th style="width: 10%;">Program Element</th> <th style="width: 10%;">Component</th> <th style="width: 10%;">Chapter</th> <th style="width: 10%;">Fiscal Yr</th> <th style="width: 10%;">Legal Reference</th> </tr> </thead> <tbody> <tr> <td colspan="11"><b>SCO Account Data:</b></td> <td></td> </tr> <tr> <td colspan="5">Fund Name <i>Funds assigned on "Job Order Notice to Proceed"</i></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> <td></td> </tr> <tr> <td>Amount Encumbered \$0</td> <td colspan="11" rowspan="2"> <i>I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.</i>                      Signature of Accounting Officer _____ Date _____                 </td> </tr> <tr> <td>Amount of Increase \$0</td> </tr> <tr> <td>Amount of Decrease \$0</td> <td colspan="11" rowspan="2"> <i>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.</i> CHRISTINE HELWICK, General Counsel.                 </td> </tr> <tr> <td>Total Amount Encumbered \$0</td> </tr> <tr> <td colspan="11">By Attorney:</td> <td>Date</td> </tr> </tbody> </table>													Fund	Sub Fund	Agency	Yr	Ref/Item	Category	Program Element	Component	Chapter	Fiscal Yr	Legal Reference	<b>SCO Account Data:</b>												Fund Name <i>Funds assigned on "Job Order Notice to Proceed"</i>					PS Account	PS Fund	PS Dept ID	PS Program	PS Class	PS Project/Grant		Amount Encumbered \$0	<i>I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.</i> Signature of Accounting Officer _____ Date _____											Amount of Increase \$0	Amount of Decrease \$0	<i>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.</i> CHRISTINE HELWICK, General Counsel.											Total Amount Encumbered \$0	By Attorney:											Date
Fund	Sub Fund	Agency	Yr	Ref/Item	Category	Program Element	Component	Chapter	Fiscal Yr	Legal Reference																																																																											
<b>SCO Account Data:</b>																																																																																					
Fund Name <i>Funds assigned on "Job Order Notice to Proceed"</i>					PS Account	PS Fund	PS Dept ID	PS Program	PS Class	PS Project/Grant																																																																											
Amount Encumbered \$0	<i>I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.</i> Signature of Accounting Officer _____ Date _____																																																																																				
Amount of Increase \$0																																																																																					
Amount of Decrease \$0	<i>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.</i> CHRISTINE HELWICK, General Counsel.																																																																																				
Total Amount Encumbered \$0																																																																																					
By Attorney:											Date																																																																										

## **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<sup>®</sup> software and support documentation, Construction Task Catalogs<sup>®</sup> (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<sup>®</sup> information management software and Construction Task Catalogs<sup>®</sup>.

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 1<sup>st</sup> through June 30<sup>th</sup> 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.

**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 <b>Name of Campus</b>	Agreement No: <b>New Agreement</b>	Amendment No:	Project No:	Project Name: <b>Job Order Contract</b>
hereafter referred to as Trustees, and Service Provider, <b>The Gordian Group</b>	CSU Vendor ID No.	Federal ID No: 58-1900371	License No:	
Address of Service Provider 140 Bridges Road, Suite E, Mauldin, South Carolina 29662	Telephone No: 800-874-2291	Fax No: 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 <b>Name of Campus</b>					Full Legal Name of Service Provider <b>The Gordian Group</b>							
By (Trustees' Authorized Signature)					By (Service Provider's Authorized Signature)							
Printed Name and Title of Person Signing for Trustees <b>University's Appropriate Signatory</b>					Printed Name and Title of Person Signing for Service Provider							
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) _____							
<b>SCO Account Data:</b>		Fund	Sub Fund	Agency	Yr	Ref/Item	Category	Program Element	Component	Chapter	Fiscal Yr	Legal Reference
Fund Name <i>Funds assigned on "Job Order Notice to Proceed"</i>					PS Account	PS Fund	PS Dept ID	PS Program	PS Class	PS Project/Grant		
Amount Encumbered \$On Job Order Notice to Proceed	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											Date
Total Amount Encumbered \$On Job Order Notice to Proceed	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:											Date

**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<sup>®</sup> software and support documentation, Construction Task Catalogs<sup>®</sup> (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<sup>®</sup> information management software and Construction Task Catalogs<sup>®</sup>.
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 1<sup>st</sup> through June 30<sup>th</sup> 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.
----------------	--
    - (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