



PROFESSIONAL SERVICES AND LICENSE AGREEMENT

This professional services and license agreement (the "Agreement") is entered into and effective as of _____ by and between Ector County Independent School District, whose address is 802 N. Sam Houston, Odessa, TX 79760 ("Owner"), and The Gordian Group, Inc., whose address is 30 Patewood Drive, Suite 350, Greenville, South Carolina 29615 ("Gordian") (each a "Party" and, collectively, the "Parties").

RECITALS

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

National Intergovernmental Purchasing Alliance Company ("OMNIA") is a national service cooperative created to provide programs and services to members in education and government, and is authorized to establish competitively awarded cooperative purchasing contracts, through a lead agency model, on behalf of itself and its member agencies. Gordian and the University of California have entered into a competitively awarded agreement, Contract Number 2021002786 dated January 8, 2021, (the "Underlying Contract") for the purchase of JOC Services. The Underlying Contract provides that any OMNIA members may purchase JOC Services directly from Gordian at the prices stated in the Underlying Contract.

Owner is an OMNIA member and is authorized to enter into this Agreement. Owner desires, through this Agreement, to procure certain services set forth in the Underlying Contract in accordance with the pricing and other terms set forth in the Underlying Contract which is incorporated by reference herein in Exhibit A. The parties intend that this Agreement, including all additional terms stated in this Agreement that are not expressly stated in the Underlying Contract, and the Underlying Contract serve as the Agreement between the parties. Notwithstanding the foregoing, neither party shall be obligated to comply with any provision of the Underlying Contract to the extent any such provision is not in compliance with, or contrary to, Texas law, or inapplicable to the relationship of the parties under this Agreement.

Therefore, in consideration of the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. **TERM.** Owner hereby retains Gordian as Owner's JOC Services provider for the term commencing on the date of this Agreement and expiring 24 months after the award of the first JOC construction contract (the "Term"), unless terminated or extended as provided for herein. This Agreement may be extended for three additional periods of 12 months each by the mutual written agreement of the parties.
2. **DUTIES**
 - 2.1 **Gordian's Duties.** In addition to any other duties and responsibilities set forth in this agreement and incorporated attachments, Gordian shall assume the following duties and responsibilities:
 - (A) Gordian agrees to perform the services ("Services") set forth in the Underlying Contract and detailed in scope of work attached as Exhibit B, which is incorporated by reference herein, using a reasonable and customary professional degree of care for the type of work being performed.
 - (B) Gordian grants Owner, for the term of this Agreement, a license ("JOC System License") to Gordian's Job Order Contracting System and other related proprietary materials (collectively, the "Proprietary Information") as set forth in Exhibit D, which is incorporated by reference herein.

- 2.2 **Owner's Duties.** In addition to any other duties and responsibilities set forth in this agreement and incorporated attachments, Owner shall assume the following duties and responsibilities:
- (A) Owner shall review all documentation and requests for information submitted by Gordian in a timely manner.
 - (B) 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.
 - (C) Owner shall designate, in writing, a representative who shall render or obtain decisions pertaining to the JOC program in a timely manner.
 - (D) Owner shall provide workspace and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by Gordian's on-site staff.
 - (E) 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 interested construction contractors.
3. **COMPENSATION.** . In consideration of the Services and JOC System License provided by Gordian, Gordian shall be paid the applicable fees ("Fees") set forth in Exhibit C, which is incorporated herein by reference.
4. **TERMINATION.**
- 4.1 Owner may terminate this Agreement for any reason by providing written notice to Gordian specifying the reason for termination and the effective date of termination, which shall be a minimum of 30 days after the date such notice is given. In the event Owner exercises such termination right, Owner shall pay Gordian, within 30 days, the Fees for all work ordered prior to the effective date of termination.
 - 4.2 Either party may terminate this Agreement for cause if the other party fails to fulfill its obligation under this Agreement or violates any of the material provisions of this Agreement, by providing written notice to the breaching party specifying the cause for such termination and the termination date, which shall be a minimum of 15 days after the date such notice is given. In the event Gordian exercises such termination right, Owner shall pay Gordian, within 30 days, the Fees for all work ordered prior to the effective date of termination.
 - 4.3 Notwithstanding the foregoing, it shall be a condition precedent to either Party's right to terminate for cause that (i) the terminating Party shall first have given the other Party written notice stating with specificity the nature of the alleged breach and (ii) if such breach is susceptible of cure or remedy, a period of fifteen (15) days from and after the giving of such notice shall have elapsed without the breaching party having effectively cured or remedied such breach during such 15-day period, unless such breach cannot be cured or remedied within fifteen (15) days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed an additional thirty (30) days) provided the breaching Party has made and continues to make a diligent effort to effect such remedy or cure.
5. **INTELLECTUAL PROPERTY OWNERSHIP.** Gordian alone shall own all right, title and interest, including all related Intellectual Property Rights in the Proprietary Information, the Services, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Proprietary Materials or the Services. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Proprietary Information, Services, or the Intellectual Property Rights owned by Gordian. Use of Gordian's Proprietary Information is governed by the JOC System License as set forth in Exhibit D.

6. **INDEMNIFICATION.** Gordian agrees to indemnify and hold harmless Owner and its officers, agents, and employees from all claims against Owner or its officers, agents, or employees to the extent arising out of any negligent act of Gordian or its officers, agents, employees, or subcontractors. To the extent permitted by Texas law and Constitution, 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 to the extent arising out of any negligent act of Owner or its officers, agents or employees.
7. **INSURANCE.**
 - 7.1 **Required Insurance.** Gordian, at its sole cost and expenses, shall obtain and maintain coverage as set forth in Exhibit E, which is incorporated by reference herein, for the Term of this Agreement.
 - 7.2 **Certificates of Insurance:** Gordian shall provide certificates of insurance to Owner within 7 days of signing of this Agreement. Such certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.
 - 7.3 **Additional Insured:** All policies except Workers Compensation and Professional Liability shall cover the Owner as an additional insured.
 - 7.4 **Waiver of Subrogation.** Waiver of subrogation language shall be included in all policies required by this Agreement.
 - 7.5 **Notice of Cancellation.** Gordian agrees that no required insurance policy may be canceled until after Gordian has given 30 days prior written notice to Owner unless such policy is replaced with a policy that meets the requirements hereunder.
 - 7.6 **Claims Reporting and Handling:** Gordian is responsible for reporting of claims to its insurers. Owner shall notify Gordian in writing as soon as practicable after notice of an injury or claim is received and shall reasonably cooperate in the defense of such injury or claim.
8. **EQUAL OPPORTUNITY EMPLOYEMENT.** 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.
9. **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.
10. **INDEPENDENT CONTRACTOR STATUS.** 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.

11. **TAXES.** Unless expressly provided otherwise in this Agreement, the Fees set forth in this Agreement do not include taxes. It is expressly understood that Owner is a tax-exempt entity. In the unlikely event that owner loses its tax-exempt status in the future, Owner agrees to pay any taxes arising out of the Agreement, other than those based on Gordian net income.
12. **ASSIGNMENT.** Neither Party shall assign, transfer, convey or otherwise dispose of its rights, obligations or interests under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Gordian may assign its rights and obligations under this Agreement to Gordian's affiliates, parent companies or subsidiaries to effect a corporate reorganization, consolidate with, or merge into, Gordian's affiliates, parent companies or subsidiaries.
13. **CHOICE OF LAW AND VENUE.** This Agreement and the work performed hereunder shall be governed in all respects by the laws of the State of Texas, and the jurisdiction, venue and forum for any litigation with respect hereto shall be in the state or federal courts located within Ector County, and in no other court.
14. **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. The waiver by either Party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach by the other party of the same or of different provisions.
15. **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:
 - 15.1 **Notice to Gordian.**

The Gordian Group, Inc.
Attn: Legal Department
30 Patewood Drive, Suite 350
Greenville, SC 29615
Phone: (800) 874 2291
Email: legal@gordian.com
 - 15.2 **Notice to Owner.**

Ector County ISD
Attn: Jerry Mahana, Director of Purchasing
802 N. Sam Houston
Odessa, TX 79761
jerry.mahana@ectorcountyisd.org
432-456-9719
16. **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.
17. **HEADINGS.** The headings of the various paragraphs herein are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this agreement.
18. **ENTIRE AGREEMENT.** This Agreement, including all exhibits, attachments, or documents incorporated by reference, constitutes the entire and integrated agreement between Owner and Gordian and may be amended

only by written instrument approved by both parties. This Agreement supersedes any other agreements or understanding between the Parties, whether oral or written, relating to the subject matter of this Agreement. No such other agreements or understandings may be enforced by either Party nor may be employed by either Party for interpretation purposes in any dispute involving this Agreement.

Owner

The Gordian Group, Inc.

By: _____
Authorized Signature

By: _____
Authorized Signature

Name and Title

Name and Title

Date

Date

EXHIBIT A

UNDERLYING CONTRACT

The Underlying Contract is University of California Purchasing Agreement # 2021002786 between the University of California and The Gordian Group, Inc., effective January 8, 2021, a copy of which has been provided to Owner prior to execution of this Agreement.

EXHIBIT B

SCOPE OF WORK

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

1. **Required Services:** Gordian shall provide the following services ("Required Services") to Owner for the term of this Agreement:
 - a) **Program Development, Implementation and Support:** Gordian shall be responsible for the development, implementation, and on-going support of the Owner's customized JOC program.
 - b) **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:
 - i. **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
 - ii. **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 Bid Documents; and
 - iii. **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.
 - c) **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; and
 - d) **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
 - e) **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

- f) **Job Order Development:** Gordian shall be responsible for providing the following Job Order Development services:
- i. **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.
 - ii. **Contractor Identification:** In the event Owner has multiple JOC Contractors, Gordian will assist the Owner in identifying the appropriate JOC Contactor for the project based on factors which include, but are not limited to, the type of work involved and the location of the project.
 - iii. **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.
 - iv. **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.
 - v. **Request for Price Proposal:** After all parties agree 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.
 - vi. **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.).
 - vii. **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.
 - viii. **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.
 - ix. **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.

- g) **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.
2. **Optional Project Management Services:** On a project-by-project basis, Gordian shall provide project management services (“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.
3. **Additional Services:** Owner may, at its sole discretion, elect to receive any of the services set forth in the Underlying Contract at the pricing and terms set forth therein. Gordian shall not provide any additional services except as set forth in this Agreement unless such additional services are authorized by Owner through the issuance of a purchase order or similar written authorization issued to Gordian by Owner.

EXHIBIT C

FEES AND PAYMENT

1. **Fees for Required Services:** In consideration of the Required Services set forth Exhibit B of this Agreement and the JOC System License granted to Owner, Gordian shall be paid Fees according to the following schedule.
 - a) **JOC System License Fee:** Owner shall pay Gordian a JOC System License Fee equal to 1.95% of the value of the work ordered. The JOC System License Fee shall be payable when a Job Order is issued to the JOC Contractor.
 - b) **Job Order Development Fee:** Owner shall pay Gordian a Job Order Development Fee of 3.05% of the value of work ordered. The Job Order Development Fee shall be payable when a Job Order is issued to the JOC Contractor.
 - c) **Discounted JOC System License Fee:** In the event Owner exceeds the procurement of 8,000,000 in construction volume through the JOC program, Owner shall be entitled to a discount on the JOC System License Fee during any subsequent contract year following the attainment of the \$8,000,000 threshold. The discount shall be determined by calculating the volume of construction procured by Owner during the contract year in which the \$8,000,000 threshold is attained and applying the annual volume discount for the subsequent contract year as determined by the table below. The applicable discount may vary for each contract year, and the discount to be applied during any contract year subsequent to the attainment of the \$8,000,000 threshold shall be calculated by determining the construction volume procured during the immediately preceding contract year and applying the discount as determined by the Volume Discount Table.

VOLUME DISCOUNT TABLE

Annual Volume	Discount	Discounted Rate
\$0 - \$5MM	0%	1.95%
>\$5MM - \$7MM	10%	1.76%
>\$7MM - \$10MM	11%	1.74%
>\$10MM - \$13MM	13%	1.70%
>\$13MM - \$16MM	15%	1.66%
>\$16MM - \$20MM	16%	1.64%
>\$20MM - \$25MM	17%	1.62%
>\$25MM - \$30MM	18%	1.60%
>\$30MM - \$35MM	19%	1.58%
>\$35MM - \$40MM	20%	1.56%
>\$40MM - \$50MM	21%	1.54%
>\$50MM - \$60MM	22%	1.52%
>\$60MM - \$70MM	23%	1.50%
>\$70MM	24%	1.48%

2. **Fees for Optional Services:** In consideration of the optional Project Management Services or Additional Services set forth set forth in Exhibit B of this Agreement, Gordian shall, in addition to the applicable fees for the Required Services, be paid fees according to the following schedule:
 - a) **Project Management Fee:** Owner shall pay Gordian a Project Management Fee equal to 5.95% of the value of work ordered for requested Project Management Services. 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 60 days to complete may be invoiced monthly on a percentage of completion basis.

- b) **Additional Services Fee:** Owner shall pay Gordian fees for Additional Services at the rates set forth in the Underlying Contract.
3. **Invoicing and 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 30 calendar days from the date of receipt of an invoice by the Owner's authorized representative. Any invoice not disputed by Owner in writing within 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 30 days of the receipt date of the original invoice by the Owner.
 4. **Contractor License Fee:** 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.

EXHIBIT D

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, the JOC Information Management System (as defined below) applications 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 the Contractor agrees to abide by the terms and conditions of the JOC System License Agreement presented as part of their use of the software. No other third-parties may access the Proprietary Information without Gordian's Consent.

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.

EXHIBIT E

INSURANCE

Gordian, at its sole cost and expense, shall obtain and maintain the following insurance during the term of this Agreement:

1. **Commercial General Liability:** A policy of commercial general liability insurance in the amount of \$2,000,000 per occurrence and \$5,000,000 in the aggregate.
2. **Commercial Automobile Liability:** A policy of commercial automobile liability insurance with coverage and a combined single limit of no less than \$3,000,000 per accident.
3. **Professional Liability Insurance:** A policy of professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
4. **Workers' Compensation:** A policy of worker's compensation insurance with coverage in amounts as required as required by applicable law.