

**CONTRACTUAL SERVICE AGREEMENT
JOB ORDER CONTRACTING CONSULTING SERVICES**

This AGREEMENT is made and entered into according to the last date of execution below (the "Effective Date") between WHATCOM TRANSPORTATION AUTHORITY ("WTA"), a Washington Public Transportation Benefit Area, and THE GORDIAN GROUP, INC ("CONTRACTOR"), a Georgia corporation licensed to do business in the State of Washington. WTA wishes to engage CONTRACTOR to provide Job Order Contracting ("JOC") Consulting Services for an initial term of two (2) years pursuant to the terms and conditions of this Agreement. WTA reserves the right to extend this contract for one (1) additional term of one (1) year.

WHEREAS, WTA is authorized by Revised Code of Washington (RCW) 39.10.420 for the use of Job Order Contracting Consulting Services; and

WHEREAS, WTA has entered into an Interlocal Agreement with the Port of Everett as authorized by RCW Chapter 39.34 to utilize no more than \$500,000.00 of the Port's Job order Contracting Agreement # AD-GN-201-01 with Burton Construction, Inc. ("JOC CONTRACTOR"); and

WHEREAS, CONTRACTOR's proprietary JOC system and services are required for the access and use of the CONTRACTOR's JOC system in accordance with the terms and conditions set forth herein; and

WHEREAS, WTA desires, through this Agreement, to procure certain services set forth in accordance with the pricing and other terms set forth herein, to facilitate WTA's procurement of construction services through the JOC system; and

WHEREAS, WTA staff have approved this Agreement through its Sole Source process.

WTA and CONTRACTOR agree as follows:

1. The terms and conditions of this Agreement are set forth in the following documents, which are listed in order of precedence and hereby incorporated by reference:
 - This Agreement
 - WTA General Contract Terms & Conditions ("WTA Terms") (Exhibit A)
 - Federal Transportation Administration Contract Terms & Conditions ("FTA Terms") (Exhibit B)
 - Individual JOC Work Orders
2. CONTRACTOR shall provide to WTA the following services:
 - A. **JOC System**: CONTRACTOR will provide a limited license ("JOC System License") to enable WTA to procure construction services through the JOC program with other third party contractors ("JOC CONTRACTORS") supported by CONTRACTOR's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information"). The JOC System License terms are set forth Below.

- B. **Job Order Development Services**: CONTRACTOR will be responsible for providing WTA with Job Order Development services for each Job Order procured by WTA as described below:
- i. In the event multiple JOC CONTRACTORS become available, CONTRACTOR will assist WTA in identifying the appropriate JOC CONTRACTOR for the project based on the type of work involved and the location of the project.
 - ii. CONTRACTOR will schedule a Joint Scope Meeting at the project site to help WTA and JOC CONTRACTOR agree on the details of the work that JOC CONTRACTOR will perform.
 - iii. CONTRACTOR will assist in preparing a Detailed Scope of Work that describes the work JOC CONTRACTOR will perform. CONTRACTOR will also assist with resolving issues when project plans and actual conditions vary.
 - iv. After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, CONTRACTOR will send the Detailed Scope of Work and a Request for Proposal to JOC CONTRACTOR.
 - v. CONTRACTOR will review the Price Proposal to make sure JOC CONTRACTOR has selected the appropriate tasks and quantities and will ask JOC CONTRACTOR to make any required changes. CONTRACTOR will also obtain and review any WTA required information submitted by JOC CONTRACTOR such as a construction schedule and a list of proposed subcontractors. Then CONTRACTOR will submit the Price Proposal and related documents to WTA.
 - vi. Once WTA approves of the Price Proposal and related documents, WTA is then responsible for the issuance of a purchase order to JOC CONTRACTOR.
 - vii. During construction, WTA's project managers will follow WTA's standard internal policies and procedures, as well as any other state or Federal regulations for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or WTA desires to change the Detailed Scope of Work, a Supplemental Job Order will be developed in the same manner as the original Job Order.
3. The term of this Agreement shall commence on the last date of the signatures below and terminate two (2) years thereafter, unless terminated or extended as provided for herein. WTA reserves the right to extend the Agreement for on (1) additional term of one (1) year subject to bilateral modification.
4. WTA shall pay CONTRACTOR the following fees for the Consulting Services payable in U.S. funds at Net 30 day Terms to the address set forth below:
- A. **JOC System License Fee**: One and Ninety-Five Hundreths Percent (1.95%) of the value of the work ordered.
 - B. **Job Order Development Fee**: Three and Five Hundreths Percent (3.05%) of the value of the work ordered.

The fees invoiced on a monthly basis in a format acceptable to WTA and shall a list of all Job Orders or supplemental Job Order

5. CONTRACTOR hereby grants WTA, a non-exclusive right, privilege and license to CONTRACOR's Job Order Contracting System and other related proprietary materials ("PROPRIETARY INFORMATION") to be used for the sole purpose of procuring construction services through the JOC Contracts for the term of this Agreement and any optional extensions. The parties hereby agree that PROPRIETARY INFORMATION shall include, but is not limited to, Construction Task Catalog® (also commonly referred to as a unit price book), construction cost data, training materials and other proprietary materials provided by CONTRACTOR. In the event this Agreement expires or terminates as provided herein, this JOC System License shall terminate and WTA shall return to CONTRACTOR all PROPRIETARY INFORMATION in WTA's possession subject to WTA's requirements under RCW Chapter 42.56.

WTA acknowledges that the disclosure of PROPRIETARY INFORMATION that may be required of WTA under RCW Chapter 42.56 could result in irreparable harm to CONTRACTOR. Therefore, WTA agrees that it will give CONTRACTOR notice prior to responding to any properly submitted public records request under RCW Chapter 42.56, and allow CONTRACTOR a reasonable time to seek injunctive relief in the appropriate venue. WTA further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of CONTRACTOR 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 WTA, subject to its obligations under RCW Chapter 42.56.

Upon expiration or termination of this Agreement as provided herein, CONTRACTOR shall provide to WTA all project data generated by CONTRACTOR in a form accessible by a standard database program.

CONTRACTOR agrees each contractor that holds a JOC Contract shall have the right to access and use the PROPRIETARY INFORMATION for the purpose of providing construction services to WTA, provided the JOC CONTRACTOR agrees to pay CONTRACTOR's contractor license fee in effect when WTA utilizes the JOC Contracts.

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 WTA, this section shall control.

6. WTA's General Manager or designee must approve any change orders to this Agreement in writing. Parts or service provided without WTA's written consent need not be paid for by WTA. WTA reserves the right to add or delete work from Job Orders and will make appropriate adjustments to the contract price for any Job Order.
7. The parties agree that this Agreement and its exhibits is the complete expression of the terms and conditions of their relationship. Any oral representation or understandings not incorporated are excluded. Failure to comply with any of the provisions shall constitute material breach of this Agreement and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. The

forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of all provisions.

8. Throughout the Term and any extension, CONTRACTOR shall maintain and retain its status as an active foreign, for profit corporation in the state of Washington and licensed to do business in the State of Washington.
9. CONTRACTOR shall procure and maintain for the duration of this Agreement and for a period of not less than three (3) years insurance against claims for injuries to persons or damage to property that may out of or in connection with CONTRACTORS own work including the work of CONTRACTOR's agents, representatives, employees, sub-contractors or sub-Consultants.
 - A. Before beginning work on the project described in this Agreement, CONTRACTOR shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum). WTA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and limits carried by or available to CONTRACTOR or (2) the minimum insurance requirements shown in this Agreement, whichever is greater.

1. **Commercial general liability and umbrella and/or excess liability.**

CONTRACTOR shall maintain commercial general liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. If necessary, to obtain the required limits, commercial umbrella or excess liability is permitted. Coverage shall be least as broad as Insurance Services Office (ISO) Occurrence form CG 00 01 including, but is not limited to, contractual liability, products and completed operations, property damage, and employer's liability.

WTA shall be named as an additional insured on the contractor's commercial general liability/umbrella liability for both Ongoing Operations and Completed Operations liability.

Acceptable Additional Insured Endorsements for Ongoing Operations liability are coverage forms at least as broad as the ISO CG 2010 or CG 2026 specifically naming WTA on the endorsement; or the CG 2033 or CG 2038 "Automatic" forms.

Acceptable Additional Insured Endorsements for Completed Operations liability are coverage forms at least as broad as the ISO CG 2037 specifically WTA on the endorsement; or the CG 2039 or CG 2040 "Automatic" forms.

"Automatic" coverage forms CG 2033 for Ongoing Operations and CG 2039 for Completed Operations are not allowed from any subcontractors of the Contractor that do not have a written Contract or Agreement with WTA.

2. **Business auto coverage** for any auto no less than a \$1,000,000 each accident limit at least as broad as Insurance Services Office (ISO) commercial auto form

(CA 00 01, CA 00 05, CA 00 12, CA 00 20). If necessary, to obtain required limits, commercial umbrella or excess liability is permitted.

3. **Professional liability insurance** with no less than \$2,000,000 per occurrence or claims made basis, \$2,000,000 aggregate. See also D below.
 4. **Workers compensation** coverage as required by the State of Washington.
 5. **Employers liability** insurance not less than \$1,000,000 per occurrence.
 6. **Electronic Data Liability Insurance.** CONTRACTOR shall maintain electronic data liability insurance and/or Technology Errors and Omissions coverage applicable to the Agreement and insuring against liability arising out of the loss, loss of use of, damage to, corruption or, inability to access, or inability to manipulate electronic data. This coverage shall be maintained with a limit of liability of not less than \$1,000,000.
- B. Acceptability of Insurers – Insurance is to be placed with insurers authorized to conduct business in the state of Washington with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to WTA.
- C. Claims Made Policies – If any of the Professional Liability or Electronic Data or Technology Errors and Omissions policies provide coverage on a claims-made basis:
1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of the contract work.
 2. Insurance must be maintained, and evidence of insurance must be provided for at least six (6) years after the completion of work.
 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date CONTRACTOR must purchase “extended reporting” coverage for a minimum of five years after completion of contract work.
- D. CONTRACTOR is responsible for the payment of any deductible or self-insured retention (SIR) that is required by any of CONTRACTOR’s insurance. Any SIR must be disclosed to and approved by WTA. If WTA is required to contribute to the deductible under any of the Consultant’s insurance policies, CONTRACTOR shall reimburse WTA the full amount of the deductible. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or WTA.
- E. WTA shall be covered as an additional insured on CONTRACTOR’s commercial general liability policy and business auto liability policy for both ongoing and completed operations on a primary and non-contributory basis.¹ The additional insured endorsement(s) shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in sections B, C, D, and E above (or copies of the applicable policy language effecting coverage required by this clause)

¹ Important if the exposure includes “delivery of goods.” If goods are being delivered is not an exposure in the Agreement, than this line may be shortened to read “The Transit Agency shall be named as an additional insured on the Consultant’s commercial general liability policy ongoing and completed operations on a primary and non-contributory basis.”

and a copy of the Declarations and Endorsement Page of the commercial general liability policy listing all policy endorsements to WTA. WTA reserves the right to receive a certified and complete copy of CONTRACTOR's insurance policies.

- F. It is the intent of this Agreement for the CONTRACTOR's commercial general liability insurance to be considered primary in the event of any loss, damage or suit. WTA's own comprehensive general liability policy shall be considered excess coverage in respect to WTA. Additionally, CONTRACTOR's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation of insureds clause.
- G. CONTRACTOR shall give written notification to WTA for any cancellation, suspension or material change in CONTRACTOR's coverage at within 5 days of receipt of such notice from its insurer(s).
- H. Waiver of Subrogation – CONTRACTOR hereby grants to WTA a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against WTA by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect its waiver of subrogation, but this provision applies regardless of whether WTA has received a waiver of subrogation endorsement from the insurer.
- I. Subcontractors – CONTRACTOR shall require and verify that all subcontractors or subconsultants maintain insurance meeting all the requirements herein, and CONTRACTOR shall ensure that WTA is an additional insured on insurance required from subcontractors and provide proof of such upon request to WTA.

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- 11. Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to the same extent as that of an original signature. Signatures submitted electronically must be fully legible to be valid.

EFFECTIVE as of the last date of the signatures below:

WTA:

Les Reardanz

Signed: Thursday, July 21, 2022

Les Reardanz, General Manager
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226

CONTRACTOR

DocuSigned by:

Daniel Cook

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07/11/2022 | 11:29 AM EDT

Daniel O. Cook, VP/GM, SLED
The Gordian Group, Inc.
30 Patewood Drive, Building 2, Suite 350
Greenville, SC 29615

