

Memorandum of Understanding

This Memorandum of Understanding is made effective the date of execution by and among the State of Ohio, Department of Administrative Services (herein referred to as DAS) having its principal office located at 4200 Surface Road, Columbus, Ohio 43228, the National Joint Powers Alliance[®] (herein referred to as NJPA) having its principal office located at 200 First Street Northeast, Staples, MN 56479, and The Gordian Group, Inc. (herein referred to as TGG) having its principal office located at 140 Bridges Road, Suite E, Mauldin, SC 29662. The above listed entities are individually referred to herein as a "Party" and collectively as the "Parties". This Memorandum of Understanding sets forth certain understandings and agreements with respect to the electronic interface and exchange of data and proprietary materials used in the delivery and execution of the EZIQC[®] construction procurement system (herein referred to as the EZIQC[®] System).

Recitals

WHEREAS ORC 125.022 authorizes DAS to enter into cooperative purchasing agreements with one or more other states, groups of states, the federal government, other purchasing consortia, institutions of higher education, or any political subdivision of this state described in division (B) of section 125.04 of the Revised Code for the purpose of purchasing services or supplies; and

WHEREAS NJPA is a nonprofit cooperative purchasing consortium that can expand the purchasing base for DAS and thereby create leverage and economies of scale DAS cannot create by itself; and

WHEREAS NJPA has entered into a professional services agreement (attached hereto as Exhibit A) with TGG to provide services related to the development and implementation of an Indefinite Quantity Construction Contracting (IQCC) system, otherwise known as the EZIQC[®] System inclusive of licensing certain Proprietary Information (to which TGG retains all rights and ownership) and providing certain data related services required to operate the EZIQC[®] System. In their agreement, NJPA and TGG agreed that Proprietary Information shall include but not be limited to TGG's Construction Task Catalog[®], PROGEN[®] software and support documentation, training materials and other proprietary materials provided by TGG.

WHEREAS DAS has entered into a participation agreement with NJPA (attached hereto as Exhibit B) to purchase products and services offered by NJPA through their vendors, the EZIQC[®] System being one of said services.

NOW THEREFORE the parties agree as follows:

With respect to the EZIQC[®] System, and for the entire duration of term for which DAS utilizes the EZIQC[®] System, NJPA, through its agreement with TGG, agrees to direct TGG, and TGG herein agrees to perform, as follows:

1. PROGEN[®] Software Access by DAS

TGG agrees to:

- a) Provide DAS access to their PROGEN[®] software for the purpose of monitoring the sales volume of construction procured through the EZIQC[®] System within the State of Ohio for all public entities; and
- b) Impose no restrictions to the number of DAS users allowed such access; and

- c) Provide all configuration necessary to format reports displaying data within the PROGEN[®] software in a format and manner required by DAS for monthly sales reporting and other EZIQC[®] System oversight requirements.

2. Entirety of Agreement.

This Memorandum of Understanding constitutes the entire agreement among the Parties, superseding all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealings regarding the subject matter hereof.

This Memorandum of Understanding is in addition to the Participation Agreement between NJPA and DAS (see Exhibit B). In the event of conflict between this Memorandum of Understanding and the Participation Agreement, the Participation Agreement shall prevail.

Except as otherwise provided herein, the provisions of this Memorandum of Understanding may be amended, modified or waived only by written agreement executed by each Party hereto.

3. Governing Law.

This Memorandum of Understanding shall be governed in all respects by, and be construed in accordance with, the laws of the State of Ohio.

4. Duration/Termination.

This Memorandum of Understanding shall remain in force until the earlier of:

- a) expiration or termination of NJPA providing the EZIQC[®] System to DAS under the terms of the Participation Agreement between NJPA and DAS,
- b) the expiration or termination of the Professional Services Agreement between TGG and NJPA, or
- c) termination by the mutual written consent of all of the Parties hereto

Upon expiration or termination of this Memorandum of Understanding, the Parties shall have no further obligations hereunder.

5. Effect of Memorandum of Understanding.

Each Party hereby agrees and acknowledges that the provisions of this Memorandum of Understanding are legally binding upon the Parties and shall inure to the benefit of the Parties, their successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding on the day and year first above written;

Department of Administrative Services

Robert Blair, DAS Director

Print Name

Date

National Joint Powers Alliance®



Authorized Signature

Todd Lyseo

Print Name

4/18/11

Date

The Gordian Group, Inc.



Authorized Signature

David L. Mahler

Print Name

4/15/11

Date

Exhibit A
Professional Service Agreement between NJPA[®] and TGG

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made effective the date of execution by all parties hereto, is executed by and between National Joint Powers Alliance, whose address is 200 First Street NE, Staples, Minnesota 56479, ("NJPA"), and The Gordian Group, Inc., whose address is 140 Bridges Road, Suite E, Mauldin, South Carolina 29662 ("Agent").

WITNESSETH

WHEREAS, NJPA desires to engage Agent to perform services related to the development, implementation and support of a National and International Indefinite Quantity Construction Contracting ("IQCC") program (the "Services") for use by NJPA and NJPA Members ("Property Owners") in accordance with the terms and conditions set forth herein, and

WHEREAS, Agent has the skills required to perform the Services and is willing and able to provide the Services to NJPA.

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

ARTICLE I TERM

NJPA hereby retains Agent as NJPA's IQCC Agent for the term commencing on the date of this Agreement and expiring sixty (60) months after the award of the first IQCC construction contract, unless terminated or extended as provided for herein. This Agreement may be extended for additional one-year periods upon the written mutual agreement of NJPA and Agent.

ARTICLE II IQCC SYSTEM LICENSE

Agent hereby grants to the NJPA, and the NJPA hereby accepts from Agent for the term of this Agreement, a non-exclusive right, privilege and license to Agent's IQCC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of operating NJPA's IQCC program for use by Property Owners. The parties hereby agree that Proprietary Information shall include, but is not limited to, The Gordian Group's Construction Task Catalog[®] (also commonly referred to as CTC, Unit Price Book and UPB), PROGEN[®] software and support documentation, training materials and other proprietary materials provided by Agent. In the event this Agreement expires or terminates as provided herein, this IQCC System License shall terminate and NJPA shall return to Agent all Proprietary Information in NJPA's possession.

NJPA acknowledges that disclosure of Proprietary Information will result in irreparable harm to Agent and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Agent except as required by law. NJPA further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Agent 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 NJPA, subject to federal and state laws related to public records disclosure.

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

In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Agreement, this IQCC System License shall taken precedence.

ARTICLE III AGENT DUTIES AND RESPONSIBILITIES

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

1. Agent will provide experienced staff that will be responsible for the development, implementation and support of the NJPA IQCC program. This staff will report directly to NJPA and will be available to assist NJPA with any IQCC related issues.
2. Agent will be responsible for conducting the activities necessary for establishing the structure of NJPA's IQCC program for the Property Owners' use, initially in Minnesota. Timing on the expansion of the IQCC program beyond Minnesota, both nationally and internationally, shall be mutually agreed upon by Agent and NJPA.
3. Agent will be responsible for the development of IQCC documents including the Construction Task Catalog®, Technical Specifications, Contract and General Conditions, Bid Documents and the actual Execution Procedures that NJPA and NJPA's Members will use in executing the IQCC program.
4. Agent will be responsible for providing access to Agent's IQCC workflow software, PROGEN® for use by NJPA, Agent, and NJPA's Members as necessary.
5. Agent will be responsible for the procurement of the IQCC construction contractors and shall assist NJPA with the award of the IQCC construction contracts.
6. Agent will be responsible for marketing the NJPA IQCC program together with NJPA and the IQCC Contractors to NJPA Members and potential NJPA Members.
7. Agent will be responsible for assisting in the execution of the IQCC contracts by helping Property Owners' develop initial Work Orders. Agent staff will attend and monitor initial site visits, proposal development and proposal review sessions. Agent will provide on-site service as requested by Property Owners to ensure that Property Owners process Work Orders in a manner consistent with established procedures.
8. Agent will be responsible for providing comprehensive IQCC support to NJPA for the term of this Agreement. Agent will monitor the overall program and prepare any status reports required by NJPA.
9. Agent will be responsible for collecting construction funds from Property Owners, for each Work Order to be issued with the NJPA IQCC program, funds equal to the amount of the Work Order approved by the Property Owner. Upon receipt of the funds, Agent will (a) deposit the funds into an escrow account ("Escrow Account") held by Agent, (b) issue a Work Order to the appropriate

IQCC Contractor, (c) distribute to NJPA a fee of one percent (1.0 %) and (d) distribute to Agent the Licensing Fee specified in Article VIII below. The balance of the funds will be held by Agent in the Escrow Account until such time that the Property Owner approves the construction completed by the IQCC Contractor, in whole or in part, at which time the appropriate amount of the Work Order amount will be distributed to the IQCC Contractor. In the event a Property Owner cancels a Work Order, in whole or in part, NJPA and Agent shall return to the Escrow Account the funds received for that portion of the Work Order cancelled and Agent will return the funds to the Property Owner.

ARTICLE IV ADDITIONAL SERVICES

Property Owners may, from time to time, request additional services not covered by the Services to be performed by Agent. Property Owners, for example, may have a need for construction management services related to work ordered with IQCC. Agent shall provide requested services when requested in writing by Property Owners.

ARTICLE V NJPA DUTIES AND RESPONSIBILITIES

NJPA will assume the following duties and responsibilities:

1. NJPA shall review all documentation and requests for information submitted by Agent in a timely manner.
2. NJPA shall designate, in writing, a representative who shall render or obtain decisions pertaining to the IQCC program in a timely manner.
3. NJPA shall provide, for use by Agent's IQCC development team, furnished office space, use of copiers, printers and facsimile machines, and access to local telephone service.
4. NJPA shall provide reproduction services for all draft and final versions of the Construction Task Catalog[®], Technical Specifications, Contract and General Conditions, Instructions to Bidders and Proposal Forms, Execution Procedures and Training Materials if required by NJPA.
5. NJPA will issue all invitations for bids, issue contract awards and hold all resulting contracts.
6. NJPA will work with Agent to market the contracts awarded.

ARTICLE VI INDEMNIFICATION

Each party agrees that it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.

ARTICLE VII INSURANCE

Agent shall maintain general liability insurance coverage of \$1,000,000 per occurrence, automobile liability insurance of \$1,000,000 per occurrence and workers' compensation insurance as required by law during the entire term of this Agreement. Agent shall furnish to NJPA a certificate of insurance evidencing the required coverage, naming NJPA as an additional insured and providing that the insurance will not be cancelled without thirty (30) days written notice to NJPA.

ARTICLE VIII SCHEDULE OF FEES

In consideration of the Services provided pursuant to Article III above, NJPA agrees that Agent shall retain a licensing fee ("Licensing Fee") according to the following schedule from the amount paid by Property Owners:

- For any amounts of work ordered by Property Owners through the IQCC program, Agent shall retain a Licensing Fee equal to five percent (5.0 %) of that amount.

In consideration for Additional Services provided pursuant to Article IV above, Agent shall be compensated an amount equal to (1) 250% of actual direct labor costs plus reimbursement for the actual cost of all non-labor direct expenses incurred by Agent, or (2) a fee mutually agreed upon in writing by Agent and Property Owner, as applicable.

ARTICLE IX FINANCIAL REPORTING

Agent shall submit monthly financial reports to NJPA, which shall include a description of all work ordered by each Property Owner through the IQCC program during the month. Reports shall be prepared in a format acceptable to NJPA.

ARTICLE X TERMINATION

NJPA may terminate this Agreement for convenience at anytime by providing written notice to Agent specifying the termination date, which shall be a minimum of sixty (60) days after the date such notice is given. In the event NJPA exercises such termination right, Agent shall complete the Services and shall be entitled to retain the Licensing Fee for all Work Orders issued prior to the effective date of termination.

NJPA may terminate this Agreement for cause, if Agent shall fail to fulfill its obligation under this Agreement or if Agent shall violate any of the material provisions of this Agreement, by providing written notice to Agent specifying the cause for such termination and the termination date, which shall be a minimum of seven (7) days after the date such notice is given.

Agent may terminate this Agreement for cause, if NJPA shall fail to fulfill its obligation under this Agreement or if NJPA shall violate any of the material provisions of this Agreement, by providing written notice to Agent specifying the cause for such termination and the termination date, which shall be a

minimum of seven (7) days after the date such notice is given. In the event Agent exercises such termination right, Agent shall complete the Services and shall be entitled to retain the Licensing Fee for all Work Orders issued prior to the effective date of termination.

**ARTICLE XI
EQUAL EMPLOYMENT OPPORTUNITY**

Agent 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. Agent has an affirmative action program to ensure that applicants are employed, and employees are treated during employment without regard to race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital/domestic partner status or disability. Such action includes, but is not limited to, hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

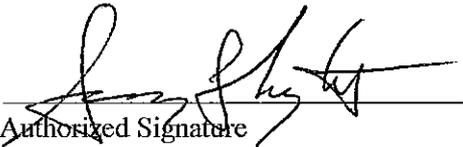
**ARTICLE XII
ENTIRE AGREEMENT**

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

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

National Joint Power Alliance

The Gordian Group, Inc.

By: 
Authorized Signature

By: David L. Mahler
Corporate Officer

Gary L. Nytes
Name printed or typed

David L. Mahler
Name printed or typed

12/10/07
Date

12/7/07
Date

**PROFESSIONAL SERVICES AGREEMENT
AMENDMENT NO. 1**

This Amendment ("Amendment") to the Professional Services Agreement ("Agreement") dated December 10, 2007 by and between National Joint Powers Alliance ("NJPA") and The Gordian Group, Inc. ("Agent") is hereby effective the date it is executed by all parties.

WITNESSETH

WHEREAS, NJPA desires to revise the duties and responsibilities for managing the collection and distribution of "Administrative Fee Payments" and "Advance Construction Payments" received from NJPA Members ("Property Owners") and the IQCC construction contractors ("Contractors"), and

WHEREAS, Agent hereby agrees with revising the duties and responsibilities for managing the collection and distribution of payments received from Property Owners and Contractors.

NOW, THEREFORE, the parties agree as follows:

Article III, Agent Duties and Responsibilities – Item 9 of Article III is hereby deleted in its entirety and replaced with the following:

Agent will be responsible for the following payment related functions:

1. "Administrative Fee Payments" remitted to NJPA by the Contractor

This category applies to Property Owners that remit payments to the Contractors when construction has been completed, in whole or in part, and accepted. In this event, Agent will perform the following duties and responsibilities:

- Invoice the Contractors on behalf of NJPA in an amount equal to six percent (6%) of the value of work completed
- Provide a report to NJPA periodically which separately summarizes and itemizes all of the construction projects in process and the changes in those projects since the most recent reporting period

2. "Advance Construction Payments" remitted to NJPA by the Property Owner

This category applies to Property Owners that elect to pre-pay construction costs in an effort to commit funds within a specific fiscal period. In this event, Agent will perform the following duties and responsibilities:

- Invoice the Property Owner on behalf of NJPA for the amount of the Work Order approved by the Property Owner (each Work Order amount includes the 6% fee payable to NJPA and Agent)
- Provide a report to NJPA periodically which separately summarizes and itemizes all of the construction projects in process and the changes in those projects since the most recent reporting period

- Provide to NJPA, in conjunction with the “Property Owner”, instructions identifying the timing and amount of disbursements of the funds held by NJPA
- In the event a Property Owner cancels a Work Order, in whole or in part, Agent will perform the following duties and responsibilities:
 - Issue a credit invoice to the Property Owner for that portion of the Work Order cancelled
 - Provide a copy of the credit invoice to NJPA

3. Payment Collection

Agent will perform the following payment collection duties and responsibilities:

- Monitor the status of invoice payments received from the Contractors
- Contact the Contractors on behalf of NJPA to request payment of past-due invoices
- Collect appropriate documentation for “Advance Construction Payments” disbursed on behalf of a “Property Owner”

Article V, NJPA Duties and Responsibilities – Item 7 is hereby added to Article V as follows:

NJPA will be responsible for establishing an escrow account (“Escrow Account”) for depositing payments from Property Owners and Contractors, and will be responsible for performing the following payment related functions:

1. “Administrative Fee Payments” remitted to NJPA by the Contractor

Upon receipt of payment from the Contractor, NJPA will perform the following duties and responsibilities:

- Receive and deposit “Administrative Fee Payments” received
- Notify Agent of the “Administrative Fee Payment” received
- Distribute one-sixth of the “Administrative Fee Payments” to NJPA (equals 1% of the value of the work completed)
- Distribute five-sixths of the “Administrative Fee Payments” to Agent (equals 5% of the value of the work completed)

2. “Advance Construction Payments” remitted to NJPA by the Property Owner

Upon receipt of payment from the Property Owner, NJPA will perform the following duties and responsibilities:

- Receive and deposit the “Advance Construction Payments” received
- Notify Agent that the “Advance Construction Payment” has been received
- Retain the payment until notified by both “Property Owner” and Agent that the construction, in whole or in part, has been completed and payment to the Contractor is authorized (“Disbursement Authorization”)

- Upon receipt of such joint "Disbursement Authorization", NJPA shall distribute payments from the amounts held as directed by such "Disbursement Authorization" as follows:
 - Distribute one percent (1%) of the payment to NJPA
 - Distribute five percent (5%) of the payment to Agent
 - Distribute ninety-four percent (94%) of the payment to the Contractor
- In the event a Property Owner cancels a Work Order, in whole in part, NJPA will issue a refund to the Property Owner in an amount equal to the "Advance Construction Payment" received less any amounts previously distributed pursuant to the "Disbursement Authorizations" received to date.

All other terms and conditions of the Agreement shall remain unchanged.

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

National Joint Power Alliance

The Gordian Group, Inc.

By: 
 Authorized Signature

By: David L. Mahler
 Corporate Officer

Gary L. Nyles
 Name printed or typed

David L. Mahler, V. P. of Finance
 Name printed or typed

6/17/08
 Date

June 11, 2008
 Date

Exhibit B
**Participation Agreement between NJPA[®] and The State of Ohio, Department of
Administrative Services**