

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

3H-2

Meeting Date: July 21, 2009

[X] Consent  
[ ] Ordinance

[ ] Regular  
[ ] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** Amendment No. 4 to Contract with The Gordian Group, Inc. (R2005-1489) for consulting/professional services in conjunction with the Job Ordering Contract (JOC) system extending the contract until August 15, 2010 and increasing the not-to-exceed limit from \$504,000 to \$600,000.

**Summary:** Amendment No. 4 is an extension to the sole source contract with The Gordian Group, Inc. The Gordian Group provides professional services required to implement the JOC system to facilitate renovation, repair, and/or maintenance of improvement projects. Compensation is 1.5% of the dollar value of issued JOC work orders. Staff is bringing forward the amendment at this time based on expiration of the term as well as pending work which would exceed the value assigned to the contract. The Gordian Group's current standard fee for maintenance and support services is 1.95% for the first \$10 Million in construction per year, and 1.5% thereafter. The County has successfully kept its fee at 1.5% for all work since 1997. Due to language in their contracts with other government agencies, The Gordian Group is no longer able to offer new contracts to anyone at less than their standard fee of 1.95%. The Gordian Group is able to offer the County an extension to our existing Contract at the current 1.5% fee for an additional two year period. This Amendment will allow the County to accept the 30% fee discount offered for the maximum one year extension period allowed by the Purchasing Ordinance. All other terms of the original contract remain in effect. (FD&O Admin) Countywide (JM)

**Background and Justification:** On April 20, 1993, the Board authorized the Facilities Department to negotiate a sole source contract with The Gordian Group, Inc. for consulting services. The terms of this contract were for two years with two one-year options. New sole source contracts for the same duration were awarded in 1997, 2001, and 2005. To date, The Gordian Group, the originators of the JOC concept, is the sole provider of this type of services, consistent with the County's needs. The PROGEN software is proprietary to The Gordian Group and has not been duplicated by anyone else. Changing to a different software system is not feasible as there are none equal.

Amendment No. 4 is an extension to the Contract for Consulting/Professional Services which was awarded to The Gordian Group, Inc. on August 16, 2005 for two years and \$175,000 with two options for one year and \$90,000 each. This contract was previously amended on December 5, 2006, again on September 11, 2007, and again on June 3, 2008. The Gordian Group was selected to perform professional services as part of the implementation of the Job Order Contract (JOC) system to facilitate the construction of minor projects. Services include the production of, and update to, the automated software, JOC training for contractors and staff, technical support, and unit price books.

**Attachments:**

1. Amendment No. 4
2. Contract for Consulting/Professional Services

Recommended by:

Army Wolf  
Department Director

6/22/09  
Date

Approved by:

[Signature]  
County Administrator

7/13/09  
Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Year	2009	2010	2011	2012	2013
Capital Expenditures	0	0	0	0	0
Operating Costs	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	*	0	0	0	0
# Additional FTE Positions (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes ☐ No ☐

Budget Account #: Not applicable

Reporting Category \_\_\_\_\_

### Recommended Sources of Funds/Summary of Fiscal Impact:

- \* The funding sources for this amendment will be various capital and maintenance accounts that fund the JOC work orders. The fee for these services will be 1.5% of the value of each work order issued.

### C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Development & Control Comments:

fiscal impact not to exceed \$600,000.  
OFMB [Signature] 7/8/09 WD 7/11/09 [Signature] 7/8/09  
Contract Dev. and Control [Signature] 7/8/09

### A. Legal Sufficiency:

[Signature] 7/13/09  
Assistant County Attorney

This amendment complies with  
our review requirements.

### A. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

#### AMENDMENT #4 TO CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This agreement amends the contract between Palm Beach County (County) and The Gordian Group, Inc., (Consultant) authorized pursuant to Palm Beach County Resolution (R-2005-1489).

The original contract provided that Contractor would provide professional consultant services for the continuation of the Job Order Contracting (JOC) system from August 16, 2005 to August 15, 2007 or until the amount of fees paid total \$175,000, whichever occurred first. That contract also provides that it could be extended for two additional one-year terms, for a maximum of \$90,000 each. The contract was previously amended on December 5, 2006 and again on September 11, 2007 and again on June 3, 2008.

The County is extending the contract until August 15, 2010 and increasing the total dollar value by \$96,000 for a new total dollar value of \$600,000. This will allow the County to maintain the current 1.50% of construction cost license fee which is a 30% discount to their current standard license fee of 1.95% which would apply to any new contract. Pursuant to the provisions of the existing contract, the parties agree that Consultant will continue to provide professional consulting services until August 15, 2010, or until the amount of fees paid total \$600,000, whichever occurs first.

Except as amended herein, all provisions of the existing contract shall remain in full force and effect.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
John F. Koons, Chairman

Witness:

Louise Feldkamp  
Printed Name

[Signature]  
Signature

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

\_\_\_\_\_  
County Attorney

The Gordian Group, Inc.

David L. Mahler  
Signature

Vice President of Finance  
Title

APPROVED AS TO TERMS  
AND CONDITIONS

[Signature]  
Audrey Wolf, Director  
Facilities Development & Operations

**ATTACHMENT # 1**



**THE  
GORDIAN  
GROUP®**

MAY 18 2009

May 15, 2009

Mr. Allan Dupee  
Palm Beach County  
3323 Belvedere Road  
West Palm Beach, FL 33406

Re: Proposal to Provide JOC Consulting Services

Dear Mr. Dupee:

Thank you for the opportunity to submit this proposal to continue providing our products and services to the Palm Beach County (County) Job Order Contracting (JOC) program.

The Gordian Group proposes to provide all of the maintenance and support services you are accustomed to receiving, such as preparing updated Contract Documents, Construction Task Catalogs® and Technical Specifications for each new contractor solicitation; assisting with bidding new contracts; providing access to the PROGEN® information management software and all new releases; preparing and revising PROGEN® reports; providing day-to-day technical support services; and providing all training necessary for the proper utilization of the JOC program by both County and contractor staff. A detailed list of our maintenance and support services is attached for your review.

The Gordian Group commits a considerable amount of time and effort in research and development to ensure that our products and services are the very best. We remain the only firm that provides one-stop shopping for all of the products and services necessary to develop, implement and support JOC programs. Our PROGEN® software, Construction Task Catalogs®, Technical Specifications and supporting materials are prepared by full-time Gordian employees. We do not rely on third parties and we will never place the blame on someone else when you have a problem. We are fully accountable for the performance of the JOC System we provide to our clients.

The Gordian Group's standard license fees to provide maintenance and support services, which apply to each contract year, are as follows:

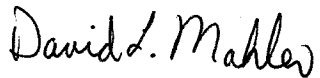
- 1.95% of the first \$10 million of work ordered through JOC, and
- 1.5% of all work ordered through JOC in excess of \$10 million

Like Palm Beach County, the majority of our clients are public facility owners. It is the desire of each of our clients that they do not pay more than other similar clients. Some include "most favored customer" language in their contracts. As a result, we are not able to accept any new contracts for a fee less than 1.95%. However, should the County elect to extend the current contract, rather than issue a new contract, we will agree to renew at the current 1.5% license fee for an additional two year period.

As in the past, the fees The Gordian Group charges generally represent a small portion of the total savings our clients realize by using JOC. Numerous facility owners have told us that they save 8-15% by using JOC. For example a third-party study prepared for the Los Angeles Unified School District determined that JOC saved the District 9.2% of the cost of construction. The District achieved additional savings in the area of procurement by not bidding each and every Job Order as a standalone project. We are confident that Palm Beach County has achieved similar savings through your JOC program and will continue to do so going forward. We are committed to assisting you with achieving that goal.

Thank you for the opportunity to present this proposal. Please contact me at (800) 874-2291 or at [d.mahler@gordian-group.com](mailto:d.mahler@gordian-group.com) if you have any questions or if you need any additional information.

Sincerely,



David L. Mahler  
Vice President of Finance

Enclosure

cc: Ed Snow  
Keith Greene

**Scope of Services  
Maintenance & Support**

**Program Support**

1. Provide strategic guidance to the project team
2. Monitor program performance, as requested
3. Integrate successful experiences from other facility owners using JOC
4. Identify and consult on major program issues
5. Provide guidance and interpretations on procedures
6. Assist with interpretation of the Construction Task Catalog® including:
  - a. Resolve Construction Task Catalog® issues
  - b. Manage revisions to the Construction Task Catalog®
7. Conduct annual on-site reviews of the JOC program, as requested
8. Prepare program evaluations, as requested
9. Provide Construction Cost Index calculations for new JOC contract adjustment factors
10. Assist in the development of critical projects

**Procurement & Document Maintenance Support (On-Site)**

1. Provide assistance with modifications to the Instructions to Bidders
2. Provide assistance with modifications to the General Conditions
3. Conduct research to identify recurring use of non-prepriced tasks
4. Manage and coordinate preparation of updated Construction Task Catalogs®
5. Manage and coordinate preparation of updated Technical Specifications
6. Conduct informational seminars for local groups, as requested
7. Conduct outreach to local contractors making them aware of bidding opportunities
8. Assist with bidding new JOC contracts including:
  - a. Conduct pre-bid meetings with potential contractors
  - b. Assist with bid review and JOC contractor selection, as requested

**Procurement & Document Maintenance Support (Off-Site)**

1. Prepare customized Construction Task Catalogs® including:
  - a. Maintain the integrity of the CSI numbering system
  - b. Improve task descriptions
  - c. Develop new tasks for recurring non-prepriced tasks
  - d. Remove outdated tasks that are no longer used or available
  - e. Monitor local area pricing
  - f. Incorporate current construction practices and materials
  - g. Publish Construction Task Catalogs® for additional solicitations
2. Prepare customized Technical Specifications including:
  - a. Develop new specifications for recurring non-prepriced tasks
  - b. Incorporate current construction practices, standards and materials
  - c. Publish Technical Specifications for additional solicitations

**Scope of Services  
Maintenance & Support**

**Training Support**

1. Update the Training Manual to reflect changes in procedures, if any
2. Conduct refresher training on procedures for current Client and JOC contractor staff
3. Conduct JOC procedures training for new Client and JOC contractor staff
4. Provide hands-on training for new Client and JOC contractor staff in the areas of:
  - a. Project identification and development
  - b. Joint scope meetings
  - c. Project scope development
  - d. Proposal development and preparation
  - e. Proposal review and variance resolution
5. Conduct PROGEN<sup>®</sup> software training including:
  - a. Provide on-site PROGEN<sup>®</sup> assistance for Client staff, as needed or requested
  - b. Provide refresher training for current Client and JOC contractor staff
  - c. Provide on-site/Internet based training for new releases of PROGEN<sup>®</sup>
  - d. Provide on-site/Internet based training for all new Client staff
  - e. Provide Internet based training for current and new JOC contractor staff

**Software Support**

1. Provide access to PROGEN<sup>®</sup> for an unlimited number of Client and JOC contractor users
2. Provide software technical support, including:
  - a. Set-up PROGEN<sup>®</sup> access for new Client and JOC contractor personnel
  - b. Set-up PROGEN<sup>®</sup> access for new JOC contractors
  - c. Provide systems support in connection with PROGEN<sup>®</sup>
3. Provide access to all new releases of PROGEN<sup>®</sup> software
4. Write, test and finalize modifications to existing PROGEN<sup>®</sup> reports, as requested
5. Write, test and finalize new PROGEN<sup>®</sup> reports, as requested
6. Provide toll free 24/7 telephone support for PROGEN<sup>®</sup> software

**CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES**

This Contract is made as of \_\_\_\_\_ by and between **PALM BEACH COUNTY**, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and **THE GORDIAN GROUP**, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. number is 58-1900371.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

**SECTION I – BASIC SERVICES OF CONSULTANT**

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of implementation of a Job Order Contracting (JOC) System, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY's representative/liaison during the performance of this Contract shall be Chauncey Taylor II, Director, Facilities Services, telephone No. (561) 233-0221.

**SECTION 2 – PERIODS OF SERVICE**

The CONSULTANT shall commence services on the effective date of this agreement identified above and extends for a two year period or until the maximum payment identified in Section 3.5 is reached, whichever occurs first. Reports or other deliverables shall be provided by the Consultant per a mutually agreed upon schedule determined on a deliverable by deliverable basis throughout the term of the contract.

**SECTION 3 – PAYMENTS TO CONSULTANT**

- 3.1 The total amount to be paid by the COUNTY under this Contract, for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph 3.3 below) shall be 1.5 percent of the value of work orders awarded under the JOC System. The Consultant will bill the COUNTY on a monthly basis. Where incremental billings for partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.
- 3.2 Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, indicating that services have been rendered in conformity with the CONTRACT and then will be sent to the Finance Department for payment. Invoices will be paid within thirty (30) days following the COUNTY representative's approval, which will not be unreasonably withheld.



- 3.3 No "Out-of-pocket" expenses are eligible for reimbursement under the terms of this Contract. All "out-of-pocket" expenses are the responsibility of the CONSULTANT.
- 3.4 In order for both parties to close their books and records, the CONSULTANT will clearly state "**Final**" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to COUNTY. Since this account will thereupon be closed, any and other further charges, if not properly included on this final invoice, are waived by the CONSULTANT.
- 3.5 At no time during the performance of this Contract shall the total amount of fees payable under this Agreement exceed the \$175,000 limit established for the initial term of two (2) years.

#### **SECTION 4 – RENEWAL AND TERMINATION**

The COUNTY may elect to renew the terms and conditions of this Contract twice, with or without modifications as mutually agreed, for a period of one year duration and a maximum of \$90,000 each. Each renewal period shall commence upon execution of a renewal agreement by the Board of County Commissioners.

This Contract may be canceled by the CONSULTANT upon sixty (60) days prior written notice to the COUNTY in the event of failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. In no event, whether termination is with or without cause, shall the COUNTY be liable for any lost profits, lost opportunity damage, or consequential damages. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- a. Stop work on the date and to the extent specified.
- b. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- c. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- d. Continue and complete all parts of the work that have not been terminated.

The COUNTY agrees to a Licensing Period with the CONSULTANT that is concurrent with the term of this Agreement. If the COUNTY elects not to exercise the renewal options and is unsuccessful in negotiating an alternate agreement, the COUNTY will abandon use of the CONSULTANT's proprietary System.

## **SECTION 5 – TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this "Certificate" within one (1) year following final payment. County has the authority and right to audit CONSULTANT'S records under this provision.

## **SECTION 6 – PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any conflicting relationship with the COUNTY.

All of the services required herein shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel or subconsultants must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY before said change or substitution can become effective.

The CONSULTANT represents that all services shall be performed by skilled and competent personnel to the professional standard of care set forth above.

## **SECTION 7 – SUBCONSULTANTS**

The COUNTY reserves the right to accept the use of a sub-consultant, or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Contract. The CONSULTANT is encouraged to seek small business enterprises for participation in subcontracting opportunities.

If a sub-consultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to the right of the COUNTY to reject the new sub-consultant.

## **Section 8 – NON-DISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, sexual orientation, age or national origin.

## **Section 9 – INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees, sub-consultants and suppliers perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Contract.

The CONSULTANT represents that all sub-consultant agreements entered into shall incorporate by reference the terms and conditions of this Contract, and further warrants that the COUNTY is an intended express third party beneficiary of any such subcontract.

## **Section 10 – CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, fit, or any other consideration contingent upon or resulting from the award of marking of this Contract.

## **Section 11 – AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY upon request.

## **Section 12 – FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall **not** be exempted from paying sales tax to its suppliers for

materials used to fulfill contractual obligations with the COUNTY. The CONSULTANT is **not** authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees payroll, payroll taxes, and benefits with respect to this contract.

### **Section 13 – AVAILABILITY OF FUNDS**

The COUNTY'S performance and obligation to pay under this contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

### **Section 14 – INSURANCE**

CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.

**Commercial General Liability** CONSULTANT shall agree to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.

**Business Automobile Liability** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$1,000,000** Each Occurrence for all owned, non-owned and hired automobiles. In the event CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.

**Worker's Compensation Insurance & Employers Liability** CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.

**Additional Insured** CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.

**Waiver of Subrogation** CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

**Certificate(s) of Insurance** Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. Certificates shall be addressed to Palm Beach County Board of County Commissioners, c/o Capital Improvements Division, 3323 Belvedere Rd., Bldg. 503, West Palm Beach, FL 33406

**Umbrella or Excess Liability** If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**Right to Review** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

## **Section 15 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the COUNTY, for acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, utilized, or purchased under this Contract for a COUNTY

project or at the COUNTY'S expense, except for CONSULTANT'S proprietary information, shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY. The County acknowledges and agrees to respect the copyright, trademarks and other rights of TGG's proprietary information during and after the term of this Agreement and shall at all times maintain complete confidentiality with regard to such proprietary information provided to the County.

The COUNTY and the CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representation made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

#### **Section 16 – REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

The CONSULTANT shall indemnify and save harmless the COUNTY, its officers, agents, servants and employees from and against all claims, liability, damages, losses, and/or cause of action including reasonable attorneys' fees, which may arise from any breach of contract, negligent act, error or omission of the CONSULTANT, its officers, employees, agents, subconsultants or anyone acting under their authority and control in the performance of this Contract. The indemnity obligations of this section shall not apply to damages or injury to the extent caused by the negligence or willful misconduct of COUNTY, or its officers, employees, agents. The CONSULTANT's duty to indemnify the COUNTY, its officers and employees shall continue even if COUNTY is contributorily negligent.

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, each party shall bear its own attorney's fees, court costs and all expenses (including taxes and, without limitation, all such fees, costs, and expenses incident to appeals) incurred in that action or proceeding.

#### **Section 17 – CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes

112.311. The CONSULTANT further represents that no person having any interest shall be employed for said performance.

The CONSULTANT shall promptly notify the COUNTY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

### **Section 18 – EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes beyond the control of the CONSULTANT or its sub-consultants and without their fault or negligence. Such causes may include, under relevant circumstances: acts of God; natural or public health emergencies; strikes not within CONSULTANT'S work force, company or agent's thereof; freight embargoes; and "abnormally severe and unusual" weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if in the opinion of the County the CONSULTANT'S failure to perform was without it or its sub-consultants fault or negligence, the Contract shall be revised accordingly; subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

### **Section 19 – ARREARS**

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

### **Section 20 – MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall promptly, (1) provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date and (3) advise the COUNTY in writing if the contemplated change shall

affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change. If COUNTY elects to make the change, the COUNTY will issue an amendment to the applicable SERVICE AUTHORIZATION and the CONSULTANT shall not commence work on any such change until such written amendment has been issued.

#### **Section 21 – NOTICE**

All notices required in this Contract if sent to the COUNTY shall be mailed to:

Chauncey Taylor II, Director  
PBC Facilities Services Division  
3200 Belvedere Road, Building 1169  
West Palm Beach, FL 33406

with copy to:

Audrey Wolf, Director  
PBC Facilities Development and Operations  
3200 Belvedere Road, Building 1169  
West Palm Beach, FL 33406

and if sent to the CONSULTANT shall be mailed to:

The Gordian Group  
140 Bridges Road, Suite E  
Mauldin, SC 29662  
ATTN: David Mahler, Contracts Administrator

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

#### **Section 22 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.



This Contract includes the following exhibits, which are attached hereto and made a part hereof:

- Exhibit A - Scope of Services
- Exhibit B - Proposal to Provide JOC Consulting Services
- Exhibit C - Insurance Certificates

### **Section 23 – SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

### **Section 24 – PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

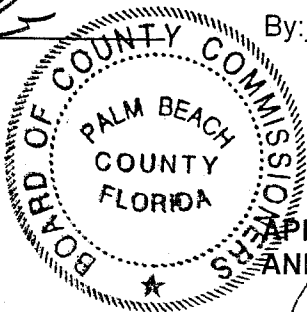
R 2005 1489

ATTEST:  
SHARON R. BOCK, Clerk & Comptroller

PALM BEACH COUNTY AUG 16 2005  
BOARD OF COUNTY COMMISSIONERS

By: *Sue Ellen Calabrese*  
Deputy Clerk

By: *Tony Masiolotti*  
Tony Masiolotti, Chairman



APPROVED AS TO TERMS  
AND CONDITIONS

By: *Anthony Wong*  
Director, FD&O

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: *James C. Murphy*  
County Attorney

CONSULTANT:

WITNESS:

*Mona R. Kramer*  
Signature

*David L. Mahler*  
Signature

Mona R. Kramer  
Name (type or print)

David L. Mahler  
Name (type or print)

Secretary  
Title

**Exhibit A**  
**JOC Maintenance and Support**  
**Scope of Services**

**Program Support**

1. Provide strategic guidance to the Project Team.
2. Monitor program performance, as requested.
3. Integrate successful experiences from other agencies using JOC.
4. Identify and consult on major program issues.
5. Provide guidance and interpretations on procedures.
6. Provide guidance on use of emergency procedures.
7. Assist with interpretation of the Construction Task Catalog® including:
  - a. Resolve Construction Task Catalog® issues.
  - b. Manage revisions to the Construction Task Catalog®.
8. Conduct annual on-site reviews of the JOC Program.
9. Prepare and issue program evaluations, as requested.
10. Provide CCI index calculations for new adjustment factors to the JOC contracts.
11. Assist in the development of critical projects.

**Document Maintenance & Procurement Support (On-Site)**

1. Provide assistance with modifications to the Instructions to Bidders.
2. Provide assistance with modifications to the General Conditions.
3. Conduct research to identify recurring use of non-prepriced tasks.
4. Manage and coordinate preparation of updated Construction Task Catalogs®.
5. Manage and coordinate preparation of updated Technical Specifications.
6. Conduct informational seminars for local groups, as requested.
7. Conduct outreach to local contractors making them aware of JOC bidding opportunities.
8. Assist with bidding new JOC contracts including:
  - a. Conduct pre-bid meetings with potential contractors.
  - b. Assist with bid review and contractor selection, as requested.

**Document Maintenance & Procurement Support (Off-Site)**

1. Develop and enhance the Construction Task Catalog® including:
  - a. Maintain the integrity of the CSI numbering system.
  - b. Improve task descriptions.
  - c. Develop new tasks for recurring non-prepriced tasks.
  - d. Monitor local area pricing.
  - e. Incorporate current construction practices and materials.
  - f. Publish Construction Task Catalogs® for additional solicitations.
2. Develop and enhance the Technical Specifications including:
  - a. Develop new specifications for recurring non-prepriced tasks.
  - b. Incorporate current construction practices, standards and materials.
  - c. Publish Technical Specifications for additional solicitations.

**Exhibit A**  
**JOC Maintenance and Support**  
**Scope of Services**

**Training Support**

1. Conduct refresher training on procedures for current Client and Contractor personnel.
2. Conduct JOC procedures training for new Client and Contractor personnel.
3. Provide hands-on training for new Client and Contractor personnel in the areas of:
  - a. Project identification and development.
  - b. Joint scope meetings.
  - c. Project scope development.
  - d. Proposal development and preparation.
  - e. Proposal review and variance resolution.
4. Conduct PROGEN® software training including:
  - a. Provide on-site PROGEN® assistance to the Client and Contractor.
  - b. Provide training for new releases of PROGEN®.
  - c. Conduct refresher training for current Client and Contractor personnel.
  - d. Provide hands-on training for new Client and Contractor personnel.

**Software Support**

1. Provide on-site technical support, including:
  - a. Set-up PROGEN® access for new Client and Contractor personnel.
  - b. Install new releases of PROGEN® software.
  - c. Provide systems support in connection with PROGEN®.
2. Write, test and finalize modifications to existing PROGEN® reports, as requested.
3. Write, test and finalize new PROGEN® reports, as requested.
4. Provide toll free telephone support for PROGEN® software.



**THE  
GORDIAN  
GROUP®**

June 7, 2005

Mr. Allan Dupee  
Palm Beach County  
3323 Belvedere Road  
West Palm Beach, FL 33406

Re: Proposal to Provide JOC Consulting Services

Dear Mr. Dupee:

The Gordian Group (TGG) is excited about the opportunity to provide continuing consulting services for the Palm Beach County (County) Job Order Contracting (JOC) program. We propose to provide our services for another four year period for a fee of 1.5% of the construction work ordered with our JOC System. This fee remains unchanged from the fee currently paid by the County. The proposed fee represents a significant discount from the standard fee charged to many of our other clients who have recently renewed our contract for maintenance and support services.

TGG's standard fee for maintenance and support services is 1.95%. This fee is based upon the typical level of service that is required to maintain a JOC program in a manner that delivers maximum benefit to the facility owner. Discounts to this fee are generally only provided to clients that exceed \$10 Million in construction per year. This standard fee also includes the costs associated with the research, design, development, maintenance and technical support of our new Internet based software, PROGEN® 5.0. This software was recently provided to the County.

TGG will continue to provide all of the maintenance and support services you are accustomed to receiving, such as preparing updated Contract Documents, Construction Task Catalogs® and Technical Specifications for each new contractor solicitation, assisting with bidding new contracts, continual upgrading of our PROGEN® software, preparing and revising system reports, providing day-to-day technical support services, and providing all training necessary for the proper utilization of the JOC program by both the County and the contractors. A detailed list of our maintenance and support services is attached for your review.

TGG commits a considerable amount of time toward research and development to ensure that our products and services are the very best. We remain the only firm that provides one-stop shopping for all of the services and products necessary to develop, implement and support JOC programs. Our PROGEN® software, Construction Task Catalogs®, Technical Specifications and other related materials are prepared by full-time TGG employees. We do

## Exhibit B

Mr. Allan Dupee  
June 7, 2005  
Page 2

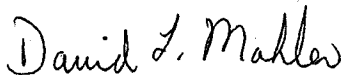
not rely on third parties and we will never place the blame on someone else when you have a problem. We are fully accountable for the performance of the JOC System we provide to our clients.

TGG expends a significant amount of time, effort and cost to market our services and obtain new contracts. A complete procurement cycle from the initial contact to an executed contract can take from one to two years. A sole source award from the County will save this cost. We propose to pass these savings to the County by holding our fee at 1.5%.

As in the past, the fees TGG charges generally represent a small portion of the total savings the County realizes by using JOC. Numerous facility owners have told us that their savings range from 8-15%, resulting in a net savings to the owner. Furthermore, our approach is performance based. If we fail to do our job properly, the County uses our system less, and we earn less. We believe this type of compensation structure places TGG and the County in a non-adversarial relationship, wherein it is in both parties' best interest for TGG to provide all of the services and products necessary for the successful utilization of JOC. Time and again this preferred service/compensation structure has proven to be most successful.

Thank you for the opportunity to present this proposal. Please contact me at (800) 874-2291 if you have any questions or if you need any additional information.

Sincerely,



David L. Mahler  
Contracts Administrator

Enclosure

cc: Keith Greene

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
11/17/2008

<b>PRODUCER</b> Wachovia Insurance Services 666 Third Avenue, 17th Floor New York, NY 10017	<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b>  The Gordian Group, Inc. 140 Bridges Road, Suite E Mauldin, SC 29662	INSURER A: <b>Federal Insurance Company</b>	<b>20281</b>
	INSURER B: <b>Great Northern Insurance Company</b>	<b>20303</b>
	INSURER C:	
	INSURER D:	
	INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	35890276	12/11/08	12/11/09	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$10,000
					PERSONAL & ADV INJURY	\$1,000,000
					GENERAL AGGREGATE	\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$2,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
B	AUTOMOBILE LIABILITY	73550270	12/11/08	12/11/09	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
A	EXCESS/UMBRELLA LIABILITY	79836996	12/11/08	12/11/09	EACH OCCURRENCE	\$10,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$10,000,000
						\$
						\$
						\$
	DEDUCTIBLE					
	RETENTION \$					
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	71736473	12/11/08	12/11/09	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
	E.L. EACH ACCIDENT				\$1,000,000	
	E.L. DISEASE - EA EMPLOYEE				\$1,000,000	
	E.L. DISEASE - POLICY LIMIT				\$1,000,000	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?					
	If yes, describe under SPECIAL PROVISIONS below					
	OTHER					

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents are additional insureds. Policy provides blanket additional insured coverage as required per written contract. Coverage is primary. Waiver of Subrogation is also provided on a blanket basis. Umbrella is a follow form basis policy.

MAR - 6 2009

**CERTIFICATE HOLDER****CANCELLATION**

Palm Beach County Board of County Commissioners c/o Capital Improvements Division 3200 Belvedere Rd., Bld 1169 West Palm Beach, FL 33406	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE
	<i>Joan Duane</i>

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.