

342

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: September 13, 2016       Consent       Regular  
    Ordinance       Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** Contract with The Gordian Group, Inc. for consulting/professional services for the administration and maintenance of the Job Order Contracting (JOC) system.


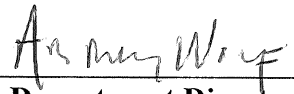
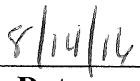
**Summary:** This Contract provides the terms and conditions under which The Gordian Group, Inc. will provide professional consulting services to the County for the continuation of the Job Order Contracting system. Payment for services rendered will be made based on work awarded in the amount of 1.95% of the value or work ordered utilizing the JOC system with a not to exceed limit of \$400,000 for the two year period. There is no minimum guarantee in the contract, and the consultants' compensation is directly related to the success of the JOC program. The scope of services to be provided includes JOC document development and maintenance, JOC training for contractors and staff, implementation and technical support, software customization and project management services. The Gordian Group developed and is the sole provider of the PROGEN Software system which is the basis of implementation of the JOC process. Based on research conducted by Facilities Development & Operations Department staff, The Gordian Group is the only firm that can provide the County with an owner specific and owner focused JOC procurement system customized for the County's specific requirements. Duration of the contract is for a two (2) year period with three (3) - one (1) year options for renewal. The Gordian Group is based in South Carolina. (Capital Improvements Division) Countywide (LDC)


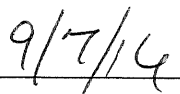
**Background and Justification:** On April 20, 1993, the Board authorized the Facilities Development & Operations Department to negotiate a sole source contract with The Gordian Group, Inc. for consulting services. The terms of this initial contract were for two years with two one-year options. New sole source contracts for the same duration were awarded in 1997, 2001, 2005, and 2011. 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 Gordian Group is the only firm in the nation that provides the full range of products and services necessary to develop, implement and support Job Order Contracting (JOC) programs for public facility and infrastructure owners like Palm Beach County. The Gordian JOC Solution™ is a highly specialized and proprietary solution.

(Continued on Page 3)

Attachments:

- 1. Contract
- 2. Disclosure of Ownership Interests

|                 |   |  |   |
|-----------------|---|--|---|
| Recommended by: |  | <br>Department Director | <br>Date |
|-----------------|---|--|---|

|              |   |   |
|--------------|---|---|
| Approved by: |  | <br>Date |
|              | County Administrator  |   |

**II. FISCAL IMPACT ANALYSIS**

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

| Fiscal Year                             | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|------|------|------|------|------|
| 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    | 0    |
| # Additional FTE Positions (Cumulative) | 0    | 0    | 0    | 0    | 0    |

Is Item Included in Current Budget? Yes \_\_\_ No \_\_\_

Budget Account No: **Not applicable**

Reporting Category

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:**

\* This item does not authorize any expenditures. Payment to The Gordian Group will be made from the project budget capital account for each project as work orders are approved and work prosecuted.

*[Handwritten signature]* 8-16-16

**III. REVIEW COMMENTS:**

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

*[Handwritten signature]*  
 OFMB 2/28/24 \* 8/24

*[Handwritten signature]* 9/16/16  
 Contract Administrator 9/16/16

**B. Legal Sufficiency:**

*[Handwritten signature]* 9/8/16  
 Assistant County Attorney

**C. Other Department Review:**

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

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

**Background and Justification Continued:**

A primary feature of the Gordian JOC solution is the proprietary, web-based eGordian JOC information management system. eGordian JOC applications have the functionality to completely manage the JOC process, from the contractor's preparation of a Price Proposal, to the owner's review of the Price Proposal, to issuing the Job Order, to tracking SBE participation. eGordian was developed solely for JOC. More important than the software is the Construction Task Catalog that Gordian provides to their clients. The Construction Task Catalog is the only unit price book available that is developed and maintained specifically for JOC users. The Construction Task Catalog is customized for each client from Gordian's Construction Cost Database of more than 260,000 construction and maintenance related tasks. In addition the Construction Task Catalog, Gordian also prepares technical specifications for each client, which describes the work the JOC contractor is obligated to perform and the quality of workmanship and materials required for each construction task.

## 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, Inc.** authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT.

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

### ARTICLE 1 - SERVICES

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 is Mr. John Chesher.

The CONSULTANT's representative/liaison during the performance of this contract is Ms. Joie Serra.

### ARTICLE 2 – PERIOD OF SERVICE

The CONSULTANT shall commence services on the effective date of this Contract and extend for a two year period or until a maximum payment of \$400,000 is reached, whichever occurs first. There are three renewal options at the sole discretion of the COUNTY, each renewal for a term of one year with a maximum payment of \$200,000 per year.

### ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the COUNTY under this Contract for all services shall not exceed a total contract amount of four hundred thousand Dollars (\$400,000) unless extended by Amendment. The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, or at such other frequency as otherwise agreed, at the amounts set forth in Exhibit "A" for services rendered.
- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. "Out-of-pocket" expenses are not allowed.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" 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 Palm Beach County.

Any other charges not properly included on this final invoice are waived by the CONSULTANT.

#### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other 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 noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial 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. 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.

#### **ARTICLE 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 contractual relationship with the COUNTY.

All of the services required hereinunder 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, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative and written approval must be granted by

the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors), while on County premises, will comply with all COUNTY requirements governing conduct, safety and security.

#### **ARTICLE 7 – NOT USED**

#### **ARTICLE 8 - 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, nor is the CONSULTANT 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.

#### **ARTICLE 9 - AVAILABILITY OF FUNDS**

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

#### **ARTICLE 10 - INSURANCE**

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. 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.
- B. **Commercial General Liability** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** 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.
- C. **Business Automobile Liability** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident 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.

- D. **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.

- E. **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 to the policy, 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 specifically prohibits such an endorsement, or which voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

- F. **Certificate(s) of Insurance** Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY and Insurance Tracking Services (ITS) 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 ten (10) day endeavor to notify due to cancellation or non-renewal of coverage.

Certificates for the COUNTY shall be addressed to:

Palm Beach County Board of County Commissioners,  
c/o Capital Improvements Division,  
2633 Vista Parkway,  
West Palm Beach, FL 33411-5604,

and for ITS:

Palm Beach County  
c/o Insurance Tracking Services, Inc. (ITS)  
P.O. Box 20270  
Long Beach, CA 90801

email: [pbci@instracking.com](mailto:pbci@instracking.com) or facsimile: (562) 435-2999

Renewal Policies - The CONSULTANT shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be

delivered to ITS not less than five (5) business days before the expiration date of any policy.

- G. **Umbrella or Excess Liability** If necessary, CONSULTANT may satisfy the minimum limits required above for 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.
- H. **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.

#### **ARTICLE 11 - INDEMNIFICATION**

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, servants, employees and elected officials, harmless from and against all claims, liability, expense, losses, cost, damages and/or causes of action of every kind or character, including reasonable attorney's fees and costs, whether at trial or appellate levels or otherwise, arising from any breach of contract, negligent act, error or omission of CONSULTANT, its officers, employees, agents and employees or anyone acting under their authority and control in the performance of this Contract. This indemnity obligation does not apply to damages or injury to the extent caused by the negligence or willful misconduct of COUNTY, its officers, employees or agents. The CONSULTANT's duty to indemnify shall continue even if COUNTY is contributory negligent.

If any legal action or 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 their own attorneys fees, costs and expenses (including taxes and, without limitation, all such fees and costs incident to appeal) incurred in connection with that action or proceeding.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party 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 prior written consent of the other.

#### **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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, 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.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

#### **ARTICLE 14 - 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 Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgement 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. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification 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.

#### **ARTICLE 15 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, 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 the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this 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.

#### **ARTICLE 16 - ARREARS**

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or

surety for any contract, debt, obligation, judgement, 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.

#### **ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the COUNTY's representative for approval and 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.

To the extent allowed by Chapter 119, Florida Statutes, 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 court order. Excluding the Proprietary Information as set forth in the JOC System License contained in Exhibit A, all drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations 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.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

#### **ARTICLE 18 - 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 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.

#### **ARTICLE 19 - 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,

gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

#### **ARTICLE 20 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

#### **ARTICLE 21 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

CONSULTANT has submitted to COUNTY a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the CONSULTANT does not have a written non-discrimination policy or one that conforms to the COUNTY's policy, it has acknowledged through a signed statement provided to COUNTY that CONSULTANT will conform to the COUNTY's non-discrimination policy as provided in R-2014-1421, as amended.

#### **ARTICLE 22 - 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's representative upon request.

#### **ARTICLE 23 - SEVERABILITY**

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, the 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.

**ARTICLE 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).

**ARTICLE 25 - MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in Scope of 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, in writing: (1) provide a detailed 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 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 Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

**ARTICLE 26 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Mr. John Chesher, Director,  
Capital Improvements Division  
2633 Vista Parkway  
West Palm Beach, FL 33411

With copy to:

Ms. Audrey Wolf, Director  
Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411

If sent to the CONSULTANT, notices shall be addressed to:

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The Gordian Group  
30 Patewood Drive, Suite 350  
Greenville, South Carolina 29615  
Attn: Mr. Ammon T. Leshner

**ARTICLE 27 - 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 in accordance with Article 25- Modifications of Work.

**ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK**

If CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility," or "cji facility" as identified in Resolution R-2003-1274, the CONSULTANT shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" or "cji facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

**ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS**

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

**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.

ATTEST:  
SHARON R. BOCK  
CLERK AND COMPTROLLER

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mary Lou Berger, Mayor

WITNESS:  
Deborah E. Bates  
Signature

CONSULTANT:  
\_\_\_\_\_  
The Gordian Group, Inc.

Deborah E. Bates  
Name (type or print)

Ammon T. Leshner  
Signature

Cynthia A. Thackston  
Signature

Ammon T. Leshner  
Typed Name

Cynthia A. Thackston  
Name (type or print)

Vice President, Legal Affairs  
Title

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
By: [Signature]  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS  
By: [Signature]  
Department Director

**EXHIBIT "A"**  
**SCOPE OF WORK**



July 21, 2016

Mr. John Chesher  
Director of Capital Improvements  
Palm Beach County  
2633 Vista Parkway  
West Palm Beach, FL 33411

Dear John:

The Gordian Group ("Gordian") has appreciated the opportunity to provide our Job Order Contracting ("JOC") solutions to Palm Beach County ("County") since 1993. We are confident that our relationship has been a mutually rewarding experience for both parties. Pursuant to your discussions with Bill Linde, this proposal describes the products, services and pricing we can provide to the County under a new contract.

Gordian is the only firm in the nation that provides JOC solutions with single point responsibility for all of the products and services necessary for a client controlled, JOC program. As you know, our comprehensive JOC solutions are provided with in-house staff and include the proprietary data, technology, processes and staff resources necessary for our clients to achieve successful JOC programs. We do not "private label" the products from other companies, nor do we rely on third parties or independent vendors or subcontractors. We are 100% responsible for all of the products and services necessary for your JOC program. Gordian refers to the JOC solution we implemented for the County as the Gordian JOC Solution. With this solution, we developed, implemented and currently support the County's JOC program. These services include, but are not limited to, updating the contract documents, Construction Task Catalog® and Technical Specifications for each new JOC contractor solicitation, assisting with bidding new JOC contracts, providing access for all updates to Gordian's JOC applications, preparing and revising management reports, providing day-to-day technical support services to both County and contractor staff, and providing refresher training as needed. A detailed list of our standard JOC Program Maintenance and Support Services is included with this proposal as **Attachment No. 1**. We propose incorporating this scope of services into any new contract with the County.

Gordian now offers three different JOC solutions, each providing a different level of service, which can be tailored to provide clients with the flexibility to optimize their JOC program. From time-to-time, many of our clients request assistance with developing Job Orders or managing construction. Some request assistance due to staff shortages or vacancies, and others due to temporary excess workload or new staffing directives. Gordian offers two options for these situations, which we call the JOC Complete Solution® and JOC Complete Solution *Plus*™. **We propose to continue providing Gordian JOC Solution services for the County, with the option to select the JOC Complete Solution or JOC Complete Solution *Plus* level of services on a project-by-project basis.** This approach will allow the County to assign individual projects to Gordian when your staff needs additional help with their workload. For each project assigned, our account managers will perform the Job Order Development tasks and Construction Management tasks specified in the JOC Complete Solution and JOC Complete Solution *Plus* descriptions below.



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## Gordian JOC Solution

The Gordian JOC Solution includes the products and services we are currently providing to the County, including the following:



- **Experienced Account Managers** – Gordian will provide experienced account managers that are responsible for the implementation and support of the County's JOC program. This staff will report directly to the County and will be available to assist the client with any JOC related issues.
- **Establish JOC Program Guidelines** – Gordian will be responsible for conducting the activities necessary for establishing the structure of the County's JOC program. Responsibilities include preparing client specific Execution Procedures that will be used to execute the JOC program.
- **JOC Program Documents** – Gordian will be responsible for preparing the JOC program Contract and General Conditions, Bid Documents and Technical Specifications and for providing a customized Construction Task Catalog®.
- **JOC Management Applications** – Gordian will be responsible for providing a license for an unlimited number of County staff to access Gordian's web-based JOC System, which includes the eGordian® information management software and Construction Task Catalog®. The JOC System will be capable of generating the JOC documents including independent cost estimates, contractor Price Proposals, Job Orders, and management reports and forms. The client's standard reports and forms will be incorporated as requested.
- **Marketing** – Gordian will be responsible for marketing the JOC program by informing internal County staff about JOC, conducting pre-bid seminars for the JOC construction contractors, and assisting with procurement of the JOC contracts.
- **Training** – Gordian will be responsible for developing and conducting a comprehensive JOC training program for the County and JOC construction contractor staff, which will include different course modules that will provide specialized training to each element of County and JOC construction contractor staff.
- **On-going Support and Maintenance** – Gordian will be responsible for providing comprehensive JOC follow-on support to the County for the administration of its JOC program. Gordian will monitor the overall program and prepare any status reports required by the County. Support services will include, but are not limited to, unlimited toll-free eGordian® software support, access to all eGordian® software updates and additional functionality, updating for each new JOC construction contract the Construction Task Catalog®, Technical Specifications, Contract and General Conditions and Bid Documents, providing procurement assistance for new JOC contracts, providing training for new County and JOC contractor staff, and preparing customized forms and reports requested by the County.

## Gordian JOC Solution License Fee

The License Fees for the Gordian JOC Solution consist of the County License Fee as provided below:

County License Fee: One and ninety five hundredths percent (1.95%) of the value of work ordered through the JOC program.

Gordian JOC Solution License Fees are payable when a Job Order is issued to the JOC contractor.



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## JOC Complete Solution®

The JOC Complete Solution is a turnkey procurement approach that tailors Job Order Contracting components to form a unique, comprehensive and high-performing "complete" JOC program. The JOC Complete Solution includes all of the products and services provided by the Gordian JOC Solution and, **in addition, Gordian will provide account managers to assist with developing Job Orders from project identification to issuing the Job Order.**

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**JOC SOLUTIONS**  
**COMPLETE**

Developing the Job Order is the most critical step in the JOC process for controlling costs because this is the step where it is determined that the County is paying for the correct quantity at the correct competitively bid price for each project. It is very important that experienced, qualified project managers develop each and every Job Order. Many of our clients have determined that they desire help with developing Job Orders and have selected our JOC Complete Solution option. Some have chosen it because they lack staff capacity and others because they recognize the significant value of using Gordian's experienced, qualified, third party account managers to develop Job Orders, which includes reviewing each and every Price Proposal submitted by the JOC contractors. Whatever the reason, we are confident that the JOC Complete Solution will bring the most economic benefit to the County with long term cost savings. A detailed list of the tasks Gordian performs to develop Job Orders is as follows:

- **Project Identification** – When a project is identified, Gordian's account managers will work with the County and assist with determining whether the project is appropriate for JOC.
- **Contractor Identification** – In the event the County has multiple JOC contractors, we will assist the County with identifying the appropriate JOC contractor for the project based on the type of work involved, location of the project, and other factors such as remaining contract capacity, work on hand, and contractor performance.
- **Joint Scope Meeting** – After identification of the JOC Contractor a Gordian account manager will promptly schedule a Joint Scope Meeting at the project site to help the County and the JOC contractor agree on the details of the work that the JOC contractor will perform. The scoping process allows the JOC contractor to inspect the site and ask questions before submitting a Price Proposal. This upfront open communication eliminates the misunderstandings and mistakes that lead to most change orders and often results in more cost-effective collaborative solutions.
- **Develop Detailed Scope of Work** – Next, the Gordian account manager will assist in preparing a Detailed Scope of Work that describes the work the JOC contractor will perform. We will also assist with resolving issues when project plans and actual conditions vary.
- **Request for Price Proposal** – After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, the Gordian account manager will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.
- **Prepare the Price Proposal** – Next, the JOC contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Construction Task Catalog. Gordian's JOC software will automatically calculate the total cost for each line item by multiplying the unit price of the task by the required quantities and the JOC contractor's competitively bid Adjustment Factor. The JOC contractor will also prepare additional County required information (e.g., construction schedule, list of proposed local subcontractors, etc.).



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- **Price Proposal Review** – Then, the Gordian account manager will review the Price Proposal to make sure the JOC contractor has selected the appropriate tasks and quantities and will ask the JOC contractor to make any required changes. We will also obtain and review any County required information submitted by the JOC contractor such as a construction schedule and list of proposed subcontractors. Then the Gordian account manager will submit the Price Proposal and related documents to the County.
- **Issue Job Order** – Once the County is 100% satisfied with the Price Proposal and related documents, and decides to move forward with the project, the County simply issues a purchase order to the contractor.
- **Construction Management** – During construction, the County will follow its standard internal policies and procedures for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or the County desires to change the Detailed Scope of Work, a supplemental Job Order is developed in the same manner as the original Job Order. With JOC, changes to the work are pre-priced.

### **JOC Complete Solution® Fees**

The License Fees for the JOC Complete Solution consist of the County License Fee and Job Order Development Fee as set forth below:

|                                   |  |
|-----------------------------------|--|
| <u>County License Fee:</u>        | One and ninety five hundredths percent (1.95%) of the value of work ordered through the JOC program; and |
| <u>Job Order Development Fee:</u> | Three and five hundredths percent (3.05%) of the value of the work ordered.                              |

JOC Complete Solution Fees are payable when a Job Order is issued to the JOC contractor. The Job Order development services described above can be provided on all JOC projects executed by the County, or can be selected on a project-by-project basis, and the Job Order Development Fee will only apply when JOC Complete Solution services are requested by the County.

### **JOC Complete Solution *Plus*™**

In addition to the JOC Solutions and JOC Complete Solution services described above, Gordian proposes providing our JOC Complete Solution *Plus*™ services on a project-by-project basis. The JOC Complete Solution *Plus* option includes **project management services to manage Job Orders from Job Order issuance to Job Order close-out**. Whether due to peak volumes, staff shortages, or new strategic staff directives, our JOC Complete Solution *Plus* services can provide on-site project management experts, using our proven methods, to carry out day-to-day JOC operations and relieve the County's project workload burden. Our staff becomes the County's staff. A detailed list of Gordian's standard construction management services, which we modify as necessary to meet the needs of each client, is as follows:

**GORDIAN**  
**JOC SOLUTIONS**  
**COMPLETE +**

- **Preconstruction** – First, a Gordian project manager will conduct a pre-construction meeting with the County representative(s), the JOC contractor and, if applicable, the architect or engineer. The project manager will coordinate and share any preconstruction information with the County, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.



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- **Site Visit** – During construction, the Gordian project manager will monitor the JOC contractor's work in-progress, manage the JOC contractor's compliance with the approved safety plan and complete a report for each site visit.
- **Communicate** – The Gordian project manager will provide weekly construction status reports to the County, conduct project progress meetings with all JOC contractors and staff on a periodic basis, and coordinate any required technical and code inspections.
- **Supplemental Job Orders** – In the event there are unforeseen conditions or the County requests changes to the scope after the work has begun, the Gordian project manager will analyze and process a supplemental Job Order by utilizing the procedures used to develop the initial Job Order.
- **Approvals** – The Gordian project manager will review and approve, or direct necessary revisions to, the JOC contractor's applications for payment and obtain the County's approval of the work. Final acceptance of the work will be the responsibility of the County. Technical and code inspections will be the responsibility of the appropriate inspection agencies.
- **Project Close-out** – As the final step in the process, the Gordian project manager will enter all Job Order related information into the eGordian® information management system and collect any required as-builts, warranties, etc., from the JOC contractor.

### **JOC Complete Solution *Plus*™ Fees**

Gordian's fee to provide the JOC Complete Solution *Plus* level of services consists of a Construction Management Fee that is assessed in addition to the County License Fee and, if applicable, the Job Order Development Fee set forth above. The Construction Management fee is:

Construction Management Fee: Five and ninety-five hundredths percent (5.95%) of the value of the work ordered.

The Construction Management Fee is payable when construction of the Job Order has been completed and accepted by the County, and will only apply when the JOC Complete Solution *Plus* services are requested by the County on a project-by-project basis.

### **Contractor License Fee**

In addition to the JOC solution fees provided above, Gordian will charge each JOC contractor a contractor license fee ("Contractor License Fee") of one percent (1.00%) of the value of each Job Order, Purchase Order, or similar purchasing document issued to the JOC contractor by the County. The Contractor License Fee is assessed to the JOC contractor in return for their access to our proprietary construction data and JOC applications, and is not a direct cost to the County. Gordian is responsible for all administrative duties related to the invoicing and collections of the Contractor License Fee. The Contractor License Fee is payable by the JOC contractor when a Job Order is issued by the County, and will be assessed to the JOC contractor for all work ordered by the County using the JOC program. The Contractor License Fee will not apply to any JOC contracts currently in place, and will only be assessed on contracts issued or awarded on or after the date of this letter.



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## JOC System License

All of Gordian's JOC solutions are subject to our standard JOC System License. A copy of the JOC System License is provided with this proposal as Attachment No.2 and shall be incorporated by reference into the County contract as part of the Scope of Work of the contract.

The Gordian Group appreciates the opportunity to submit this proposal to provide our JOC products and services to Palm Beach County. Please contact me at A.Lesher@TheGordianGroup.com or (800) 874-2291 if you have any questions or if you need any additional information.

Sincerely,



Ammon T. Lesher  
Vice President of Legal Affairs

Attachments

cc: Joie Serra  
Bill Linde



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## **Attachment No. 1**

### **JOC Program Maintenance & Support Scope of Services**

#### **Program Support**

- Provide strategic guidance to the project team
- Monitor program performance, as requested
- Integrate successful experiences from other agencies using JOC
- Identify and consult on major program issues
- Provide guidance and interpretations on procedures
- Assist with interpretation of the Construction Task Catalog® including:
  - Resolve Construction Task Catalog® issues
  - Manage revisions to the Construction Task Catalog®
- Conduct annual on-site reviews of the JOC program, as requested
- Prepare program evaluations, as requested

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

- Provide assistance with modifications to the Contract and General Conditions
- Provide assistance with modifications to the Instructions to Bidders
- Conduct research to identify recurring use of non-prepriced tasks
- Coordinate preparation of updated Construction Task Catalogs®
- Coordinate preparation of updated Technical Specifications
- Conduct informational seminars for local groups, as requested
- Assist with bidding new JOC contracts including:
  - Conduct pre-bid meetings with potential contractors
  - Assist with bid review and JOC contractor selection, as requested

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

- Update and enhance the customized Construction Task Catalog® including:
    - Maintain the integrity of the CSI numbering system
    - Improve task descriptions
    - Develop new tasks for recurring non-prepriced tasks
    - Remove outdated tasks that are no longer used or available
    - Monitor local area pricing
    - Incorporate current construction practices and materials
    - Publish a new Construction Task Catalog® for each additional solicitation
  - Update and enhance customized Technical Specifications including:
    - Develop new specifications for recurring non-prepriced tasks
    - Incorporate current construction practices, standards and materials
    - Publish new Technical Specifications for each additional solicitation
-

## **Training Support**

- Update the Training Manual to reflect any changes in procedures
- Conduct JOC procedures refresher training for staff, as requested
- Conduct JOC procedures training for new staff
- Provide hands-on training for new staff in the areas of:
  - Project identification and development
  - Joint scope meetings
  - Project scope development
  - Proposal development and preparation
  - Proposal review and variance resolution
- Conduct eGordian<sup>®</sup> software training including:
  - Provide on-site software assistance, as needed or requested
  - Provide refresher training for current staff
  - Provide on-site/Internet based training for new releases of the software
  - Provide on-site/ Internet based training for all new staff
  - Provide Internet based training for current and new staff

## **Software Support**

- Provide access to the eGordian<sup>®</sup> software.
  - Provide software technical support, including:
    - Maintain software access for staff
    - Set-up software access for new staff
    - Provide systems support in connection with the software
  - Provide access to new releases of the software
  - Write, test and finalize modifications to existing reports, as requested
  - Write, test and finalize new reports, as requested
  - Provide toll free software telephone support during business hours
-

## **Attachment No. 2**

### **JOC SYSTEM LICENSE**

The Gordian Group, Inc. ("Gordian") hereby grants to Palm Beach County (the "County"), and the County hereby accepts from Gordian for the term of this Agreement, a non-exclusive, non-transferable right, privilege and license to Gordian's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of operating the County's Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to, Gordian's eGordian<sup>®</sup> applications and support documentation, Construction Task Catalog<sup>®</sup> (also commonly referred to as a unit price book), construction cost data, training materials and other proprietary materials provided by Gordian. In the event this Agreement expires or terminates as provided herein, this JOC System License shall terminate and the County shall return to Gordian all Proprietary Information in the County's possession.

The County acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The County further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the County, subject to federal and state laws related to public records disclosure.

Upon expiration or termination of this Agreement as provided herein, Gordian shall provide all data generated by the County in a form accessible by a standard database program, such as Microsoft<sup>®</sup> Access<sup>®</sup>.

Gordian agrees to grant a license to each contractor that is awarded a JOC contract by the County, provided the JOC contractor agrees to pay Gordian's contractor license fee in effect when the County awards the contract and provided the County includes licensing language in the JOC contract similar in form to this JOC System License.

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 the County, this JOC System License shall take precedence.

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DISCLOSURE OF OWNERSHIP INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER,  
OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Ammon T. Leshner, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant appears herein as:

an individual *or*

the Vice President of Legal Affairs of The Gordian Group, Inc.

*[position—e.g., sole proprietor, president, partner, etc.] [name & type of entity—e.g., ABC Corp., XYZ Ltd. Partnership, etc.].* The Affiant or the entity the Affiant represents herein seeks to do business with Palm Beach County through its Board of County Commissioners.

2. Affiant's address is: 30 Patewood Drive, Bldg. 2, Suite 350, Greenville, SC 29615.

3. Attached hereto as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater interest in the Affiant's corporation, partnership, or other principal. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County and the Board of County Commissioners. Affiant further acknowledges that he or she is authorized to execute this document on behalf of the entity identified in paragraph one, if any.

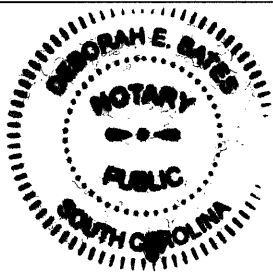
5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Ammon T. Leshner  
Ammon T. Leshner, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 29th day of July, 2016, by Ammon T. Leshner,  who is personally known to me or  who has produced \_\_\_\_\_ as identification and who did take an oath.



Deborah E. Bates  
Notary Public  
Deborah E. Bates  
(Print Notary Name)  
State of Florida at Large  
My Commission Expires: July 27, 2017

