

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

34-19

Meeting Date: January 12, 2010

☒ Consent  
☐ Ordinance

☐ Regular  
☐ Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Work Order No. 09-177 with Robling Architecture Construction, Inc. (R2007-1099) in the amount of \$239,000.12 to remove the existing bus shelter and construct a new bus shelter.

**Summary:** On October 8, 2009, the County entered into a License Agreement with the School Board of Palm Beach County for the purpose of creating a transit transfer station for the western communities adjacent to West Tech on State Road 715 in Belle Glade. The work contained in this work order consists of removal of the existing bus shelter and the provision of all design, civil and structural engineering, complete site work and construct a new bus shelter approximately 18' x 17' including two (2) ADA compliant sidewalks. This project is funded from the Federal Transit Administration (FTA) Section 5307 Formula Funds. All applicable Federal certifications and representations are required to meet grant specifications.

This project also has a Davis-Bacon requirement with a Disadvantaged Business Enterprise (DBE) goal of 10%. The DBE participation in this work order is 31%. The total construction duration is 90 days. Robling Architecture Construction, Inc. is a Palm Beach County company. **(FD&O Admin) Countywide/District 6 (JM)**

**Background and Justification:** On October 8, 2009, Palm Beach County entered into a License Agreement with the School Board of Palm Beach County for the purpose of facilitating the construction of a project to be undertaken by the County to construct improvements to the transit transfer station located at 2625 State Road 715, Belle Glade, Florida.

**Attachments:**

1. Location Map
2. Work Order
3. Contractor's Cost Proposal
4. Budget Availability Statement
5. License Agreement

Recommended by:

Army Wray  
Department Director

12/15/09  
Date

Approved by:

[Signature]  
County Administrator

12/29/09  
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Year	2010	2011	2012	2013	2014
Capital Expenditures	\$278,435.13	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	\$278,435.13	0	0	0	0
# Additional FTE Positions (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes x No   

Budget Account No:

1341-542-5507-3401-G302-GY02 (\$94,177.00)  
1341-542-5514-3401-I902-GY04 (\$54,784.00)  
1341-542-5516-3401-L902-GY05 (\$70,389.00)  
1341-542-5517-3401-L902-GY06 (\$59,086.00)

Funds are from the Federal Transit Administration (FTA) Section 5307 Formula Funds

Reporting Category                                   

Recommended Sources of Funds/Summary of Fiscal Impact:

Departmental Fiscal Review:                                   

III. REVIEW COMMENTS

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

                                   12-21-09  
OFMB                                    12/18/09  
                                   12/17/09

                                   12/19/09  
Contract Dev. and Control  
This item complies with current County policies.


A. Legal Sufficiency:                                    12/28/09  
Assistant County Attorney

A. Other Department Review:

                                    
Department Director

2625 State Road 715  
Belle Glade, Florida



October 21, 2009	<b>JOC WORK ORDER</b> Job Order Construction Services	
Loc #: No Location Entered	No Location Entered	
JOC#: 09730	West County Transfer Station	

**Brief Scope:** Remove existing shelter and install replacement shelter; construct two ADA compliant sidewalks; install three wheelchair ramps; install three gates to keep the use of the Transfer Station separate from remainder of the West Tech site.

**Contractor:** Robling Architecture Construction Inc.  
4889 Lake Worth Rd.  
Greenacres, FL 33463

**Contract:** R-2007-1099

**AMOUNT:** \$ 239,000.12

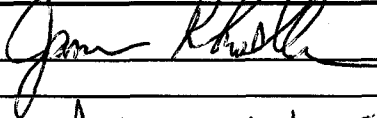
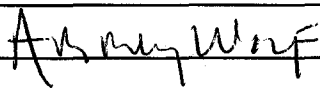
**District:** 6

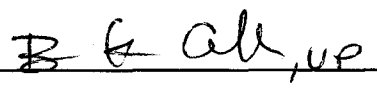
**Funding:**

**JOC Work Order #:** 09-177

**Project Duration:** Liquidated damages will apply

**Approval Signatures**

Jim Rohweller, Project Coordinator	 Date 11-23-09
Audrey Wolf, Director Facilities Development & Operations	 Date 12/15/09
Chair	(NOT REQUIRED FOR PROJECTS <\$100,000 OR >\$200,000)
Contract Review Committee	Date
Approved as to form and legal sufficiency County Attorney	Date
Burt Aaronson, Chair Board of County Commissioners	Date

Damon A. Robling, Contractor Project Manager Robling Architecture Construction Inc.	 Date 10/21/09
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COPY: Project File

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS****PALM TRAN**

This contract or purchase order is funded by a contract between Palm Beach County and the U.S. Department of Transportation, Federal Transit Administration (FTA) and governed by the provisions listed under the Master Grant Agreement FTA MA (15) dated October 1, 2008) and Special Provisions for Projects Financed Under the American Recovery and Reinvestment Act (Recovery Act). Therefore, all activities related to this project are subject to the following conditions, which are outlined in greater detail in U.S. Department of Transportation (USDOT) regular 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; Federal Transit Administration (FTA) Circular 4220.1F, "Third Party Contracting Guidelines," dated November 1, 2008, as may be amended, and other laws and regulations governing procurement activities for Palm Beach County programs and projects.

Master Grant Agreement FTA MA (15) dated October 1, 2008: <http://www.fta.dot.gov/documents/15-Master.pdf>  
Circular 4220.1F, dated November 1, 2008, as amended: [http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_8641.html](http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html)

FTA's Best Practices Procurement Manual (BPPM), offers suggested procedures, methods, and examples on conducting third party procurements to assist in meeting the standards of FTA Circular 4220.1F, BPPM is available at:  
[http://www.fta.dot.gov/funding/thirdpartyprocurement/grants\\_financing\\_6037.html](http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html) References to the Code of Federal Regulations (CFR) website are available at: <http://www.gpoaccess.gov/cfr/index.html>.

## PART A

### GENERAL CONDITIONS - APPLICABLE TO ALL CONTRACTS AND PURCHASE ORDERS

1. **Prohibited Interest.** No employee, officer, or agent of Palm Beach County shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent of Palm Beach County, or any member of his or her immediate family, his or her partner, or an organization which employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award (contractor). No Palm Beach County employee, officer, or agent shall solicit or accept gratuities, favors, or anything of monetary value from any contractor, potential contractor, or parties to subagreements.
2. **Interest of Members of Congress.** No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or purchase order or to any benefit arising there from.
3. **No Government Obligation to Third Parties.** The contractor agrees, absent express written consent of the Federal Government, that the Federal Government shall not be subject to any obligations or liabilities to any third party contractor, or any subrecipient, or any other party pertaining to any matter resulting from this contract or purchase order. The contractor agrees to include a similar provision in each subcontract financed in whole or in part with federal assistance provided by the FTA.
4. **Program Fraud and False or Fraudulent Statements.** The contractor acknowledges the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, et seq., and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with this contract or purchase order. The contractor certifies or affirms the truthfulness and accuracy of any statement it has made, makes, or may make pertaining to this contract. In addition to other penalties that may apply, the contractor further acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government may deem appropriate. The contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with federal assistance authorized for 49 USC §5307, the Federal Government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n) (1) on the contractor, to the extent the Federal Government deems appropriate.
5. **Federal Changes.** The contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Grant Agreement (FTA MA(15) dated October 1, 2008) between Palm Beach County and the FTA, as they may be promulgated or amended from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

6. **Incorporation of Federal Transit Administration (FTA) Terms.** The provisions contained in this document: Federal Certifications and Representations include, in part, standard terms and conditions required by the U.S. Department of Transportation (USDOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any Palm Beach County request which would cause the County to be in violation of the FTA terms and conditions.

7. **Access to Records.**

- a. The contractor agrees to provide Palm Beach County, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Contractor also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or authorized representative (include a PMO contractor) access to contractor's construction sites and records pertaining to a major capital project, defined at 49 USC §5302(a)(1), which is receiving federal financial assistance through the programs described at 49 USC §§5307, 5309, or 5311. The contractor further agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until Palm Beach County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

8. **Civil Rights.** The following requirements apply to this purchase order or contract:

- a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC §6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC §12132, and Federal transit law at 49 USC §5332, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

- b. **Equal Employment Opportunity.** The following equal opportunity requirements apply to this purchase order or contract:

- (1) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, and federal transit laws at 49 USC §5332, the contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, et seq., (which implemented Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any other applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

- (2) **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §623 and federal transit law at 49 USC §5332, the contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, contractor agrees to comply with any implementing requirements FTA may issue.

- (3) **Disabilities.** In accordance with section 202 of the Americans with Disabilities Act, as amended, 42 USC §12112, the contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

- c. The contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only to identify the affected parties.

9. **Disadvantaged Business Enterprise (DBE).**

- a. This contract or purchase order is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs.
- b. The contractor, subrecipient, or subcontractor agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of contract, which may result in the termination of this contract or such other remedy as Palm Beach County may deem appropriate.
- c. The Disadvantaged Business Enterprise (DBE) regulation (49 CFR Part 26) establishes requirements for setting an overall goal for DBE participation in federally-funded contracts. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal the recipient would expect DBEs to achieve in the absence of discrimination.
- d. Since this contract or purchase order is using federal funds, it is the policy of the Palm Beach County to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, are afforded maximum opportunity to receive and participate as subcontractors and suppliers on all contracts awarded by COUNTY; therefore, good-faith efforts must be made to provide DBEs an opportunity to participate in the project in accordance with the DBE Program Plan.
- e. **DBE Goal:**

Palm Beach County fully supports the federal government's Disadvantaged Business Enterprises Program. The DBE goals established for this project is 10 %.

The overall goal setting provisions of 49 CFR Part 26 require that the County, as a recipient of federal funds, set overall goals based on demonstrable evidence of the relative availability of ready, willing and able DBEs in the areas from which the County obtains contractors. In this regard, the County has established **DBE participation goals** and said goals have been established based primarily on the availability of certified DBE firms that are ready, willing, and able to participate in the project. **To be considered responsive, each Bidder must correctly submit with the bid a completed Schedule of DBE Participation Form, executed Letters of Intent, and the DBE Unavailability Report with good faith documentation when applicable with the bid. Palm Tran's DBE Liaison will review all forms to determine their responsiveness:**

1. Letter of Intent to Utilize DBE Subcontractors - Exhibit 1.
2. Schedule of DBE Participation - Exhibit 2.

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS****PALM TRAN**

3. DBE Unavailability Report, *only required if goals were not met* – Exhibit 3.
4. DBE Utilization Report – Exhibit 4.
5. Final DBE Utilization Report – Exhibit 5.

These forms are included herein as Exhibits 1, 2, 3, 4, and 5.

For the purposes of goal achievement, the County requires the successful Bidder to use firms certified as DBEs in accordance with Federal Guidelines. The State of Florida Department of Transportation (FDOT) maintains a directory of certified DBE firms which is available to bidders.

The directory mentioned above is available for use by VENDORS on-line at

<http://www.dot.state.fl.us/equalopportunityoffice/>, click on DBE Directory. Detailed directions on how to access the site, search for DBEs and Download the Directory are included herein as Attachment 1.

**Schedule of DBE Participation:**

BIDDER must list the proposed subcontractors in the Schedule of DBE Participation form indicating the type of work to be performed and a projection of subcontract amount or percentage of fees to be awarded, if selected.

**Letter of Intent:**

Letter of Intent must be executed by the BIDDER and countersigned by all DBE subcontractors listed in the Schedule of DBE Participation form. The information contained in the Letter of Intent and the Schedule of DBE Participation with regard to the proposed level of DBE participation should be the same as to content. Each DBE subcontractor listed on the Schedule of DBE Participation must be certified as DBE prior to bid opening in order to be eligible for award.

For further information, contact Palm Tran's DBE Liaison at (561) 841-4241.

**DBE Unavailability Report:**

BIDDER that submits a DBE Unavailability Report, Exhibit 3, must be able to demonstrate through proper documentation its reasonable good-faith efforts to meet the goal, if BIDDER wishes to remain eligible for award. Reasonable efforts as determined by 49 CFR Part 26 – Appendix A to Part 26 – Guidance Concerning Good Faith Efforts, to meet the DBE Participation goals may include, but are not limited to:

- Attendance at any scheduled pre-bid meeting concerning DBE participation.
- Timely advertisement in general circulation media, trade association publications, and minority-focus media.
- Timely notification of minority business or contractor groups and associations of solicitation for specific sub-bids.
- Proof of written solicitations to DBE firms.
- Efforts to select portions of the work proposed to be performed by DBE in order to increase the likelihood of achieving the stated goal.
- Efforts to provide DBEs that need assistance in obtaining bonding or insurance required by the BIDDER or COUNTY.
- A report submitted by the BIDDER to Palm Tran's DBE Liaison prior to award explaining the Bidder's efforts to obtain DBE participation. The report shall include the following:
  - A detailed statement of the timely efforts made to negotiate with DBEs including, at a minimum, the names, addresses and telephone numbers of DBEs who were invited to bid or otherwise contacted;
  - A description of the information provided to DBE regarding the plans and specifications for portions of the work to be performed; and a detailed statement of the reasons why additional agreements with DBE, if needed to meet the stated goal, were not reached.
  - A detailed statement of the efforts made to select portions of the work proposed to be performed by DBE in order to increase the likelihood of achieving the stated goal.



**FEDERAL CERTIFICATIONS AND REPRESENTATIONS****PALM TRAN**

- As to each DBE that bid on a Subcontract but declared "unqualified" by the BIDDER, a detailed statement of the reasons for the Bidder's conclusion.
  - As to each DBE invited to bid, but the BIDDER considers to be unavailable because of a lack of bid response or submission of a bid which was not the low responsive bid, an Unavailability of DBE Certificate signed by the BIDDER.
- f. CONTRACTOR agrees that throughout the term of this Agreement, the services as provided by the firms listed on Exhibit 1 (Letter of Intent) and Exhibit 2 (Schedule of Participation) shall remain at least at the percentage levels set forth therein.
- g. CONTRACTOR shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the COUNTY for such subcontracted work or supplies. CONTRACTOR agrees that if it withholds an amount as retainage from its subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from COUNTY, or within thirty (30) days after the subcontractor has satisfactorily completed its work, whichever shall first occur.
- h. CONTRACTOR agrees that nonpayment of a subcontractor or supplier shall be a material breach of this Agreement and that COUNTY may, at its option, increase allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such subcontractors or suppliers. CONTRACTOR agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude COUNTY's inquiry into allegations of nonpayment. The foregoing remedies shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier.
- i. CONTRACTOR agrees to submit a monthly report to Palm Tran's DBE Liaison, with copy to the using department project manager, on DBE participation, which should contain a record of payments made to its DBE subcontractors during the current reporting period. CONTRACTOR shall utilize the form attached as Exhibit 4 - DBE Utilization Report. Reports should be submitted by the 10<sup>th</sup> day of each month.
- j. CONTRACTOR agrees to submit a Final DBE Participation Report containing the total amount paid to its DBE subcontractors. This report must be submitted with the CONTRACTOR's request for final payment and release of retainage, if applicable. CONTRACTOR shall utilize the form attached as Exhibit 5 - Final DBE Utilization Report.
- k. CONTRACTOR shall certify to COUNTY the amounts paid to each DBE involved in the project as either a joint venture partner or pursuant to a subcontract with the disadvantaged businesses. All such certifications shall be signed by both CONTRACTOR and DBEs. One of the main purposes of these provisions is to make sure that DBEs actually perform work committed to them at contract award.
- l. CONTRACTOR agrees that failure to provide appropriate certification as to the payment of DBEs and participants in the agreement and provide certification in a form acceptable to COUNTY that disadvantaged business participation requirements of the agreement have been met, notwithstanding any other provisions of this Agreement, shall be cause for COUNTY to withhold further payments under the Agreement until such time as such certification is received and accepted by COUNTY, and shall not entitle CONTRACTOR to terminate the agreement, to cease work to be performed, or to be entitled to any damages or extensions of time, whatsoever, due to such withholding of payment or delay in work associated thereto.

CONTRACTOR's whose performance fell short of original commitments would be subject to the compliance mechanisms the County had made applicable.

**Sanctions for Noncompliance with the County's DBE Program Provisions**

Failure of the Contractor to carry out DBE program provisions shall constitute a breach of the contract for default or such remedy as the County may deem appropriate. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.



**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

- m. CONTRACTOR agrees that it cannot terminate a DBE subcontractor for convenience and then perform the work with its own forces or its affiliate. If a situation arises that a DBE subcontractor needs to be replaced or removed from the team, CONTRACTOR must submit a written request to Palm Tran's DBE Liaison with detailed explanation or justification for the submission of such request. If the request is due to a voluntary cessation of the DBE firm from the team, documentation supporting the voluntary cessation must accompany the request. Requests for substitution or termination of DBE subcontractors will only be approved on a case-by-case basis, provided that reasons cited are properly justified. When a DBE subcontractor is terminated, or fails to complete its work, CONTRACTOR must make good faith efforts to find another DBE subcontractor to substitute for the original DBE.

**10. CONTRACT COMPLIANCE MONITORING**

- a. Compliance monitoring is conducted to determine if CONTRACTOR and/or subcontractors are complying with the requirements of the DBE Program. Failure of the CONTRACTOR to comply with this provision may result in the COUNTY imposing penalties or sanctions pursuant to the provisions of the DBE regulation, 49 CFR Part 26.
- b. Contract compliance will encompass monitoring for contract dollar achievement and DBE contractor utilization. Palm Beach County and Palm Tran staff will have the authority to audit and monitor all contracts and contract-related documents related to Palm Beach County projects covered under this contract. The requirements of the DBE Program are applicable to all CONTRACTORS, general contractors, and subcontractors.
- c. CONTRACTOR shall be responsible for ensuring proper documentation with regard to its utilization and payment of DBE subcontractors.

**11. Energy Conservation.** The contractor agrees to comply with mandatory standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The contractor further agrees to include a similar provision in each subcontract financed in whole or in part with federal assistance provided by FTA.

**12. Full and Open Competition.** FTA Circular 4220.1F imposes a prohibition against procurement actions and situations considered restrictive of full and open competition, examples of which include: (a) unreasonable requirements placed on firms in order for them to qualify to do business; (b) unnecessary experience and excessive bonding requirements; (c) noncompetitive pricing practices between firms or between affiliated companies; (d) noncompetitive awards to any person or firms on retainer contracts; (e) organizational conflicts of interest; (f) specification of brand name product requirements, without listing its salient characteristics or allowing "an equal" product to be provided; (g) any arbitrary action in the procurement process; (h) giving or assigning preference to companies providing domestic partnership or similar benefits; and (i) the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where federal statutes expressly mandate or encourage geographic preference (geographic location may be a selection criterion in procurements for architectural and engineering services provided its application leave an appropriate number of qualified firms, given the nature and size of the project, to complete the project).

**PART B**

**ADDITIONAL REQUIREMENTS – CONDITIONAL**

(Please read each qualifying condition carefully)

**13. Termination for Convenience or Default.** If this purchase order or contract is valued at \$10,000 or greater (with the exception of contracts with nonprofit organizations and institutions of higher education, for which the applicable threshold is \$100,000), Palm Beach County may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the Government's best interest. The contractor shall be paid its costs, including

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to Palm Beach County. If the contractor has any property in its possession belonging to the County, the contractor will account for the same, and dispose of it in the manner the County directs. If the contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the contractor fails to comply with any other provisions of this contract, Palm Beach County may terminate this contract for default. The County shall terminate this contract by default by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the contractor has possession of Palm Beach County-owned goods, the contractor shall, upon direction of the County's contract administrator, protect and preserve the goods until surrendered to Palm Beach County or its agent. The contractor and Palm Beach County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County. Similar provisions apply to purchase orders and contracts for construction and architect/engineering services.

**14. Recycled Products.** The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**15. Government-wide Debarment and Suspension.** If this contract or purchase order has a value of \$25,000 or more, this procurement is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor agrees to comply with, and assures compliance of each third-party contractor and subrecipient at any tier, with 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The contractor further agrees to include a provision requiring such compliance in any lower tier covered transaction it enters into.

**16. Buy America.** If this contract or purchase order exceeds \$100,000, the contractor agrees, to the extent applicable, to comply with 49 USC §5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. Separate requirements for rolling stock are set out at 49 USC §5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. A bidder or offeror must submit to Palm Beach County the appropriate Buy America certification, model formats for which are contained as Exhibit 6, attached, with all bids or proposals on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

**17. Breaches and Dispute Resolution.** FTA Circular 4220.1F imposes the requirements at 49 CFR part 18 upon all contracts in excess of \$100,000, which contain provision of conditions that allow for administrative, contractual, or legal remedies where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. Accordingly, should the provisions of this contract not address a particular subject or issue involving disputes, performance during disputes, claims for damages, remedies, or rights and remedies, the contractor agrees to comply with the provisions contained at 49 CFR Part 18, and further agrees to include a similar provision in all subcontracts over \$100,000.

**18. Lobbying.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by U.S. Department of Transportation regulation, "New Restrictions on Lobbying," 49 CFR Part 20, modified as necessary for 31 USC §1352. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 USC §1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant, or award covered by 31 USC §1352. Such disclosures are forwarded from tier to tier up to the recipient. A certification format is appended as Exhibit 7.

**19. Clean Air.** The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401, et seq. The contractor agrees to report each violation to Palm Beach County and agrees that Palm Beach County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. The contractor further agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

**20. Clean Water.** If this purchase order or contract is valued at \$100,000 or more, the contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The contractor agrees to report each violation to Palm Beach County and agrees that Palm Beach County will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

**21. Bonding Requirements.** For those construction or facility improvement contracts exceeding \$100,000, the contractor agrees to provide a bid guarantee equivalent to five percent (5%) of the bid price, obtain a 100 percent performance bond, and payment bonds equal to 50 percent of the contract price if not more than \$1 million, 40 percent of the contract price if more than \$1 million but less than \$5 million, or \$2.5 million if the contract price is more than \$5 million. The contractor also agrees to comply with any other bonding requirements FTA or Palm Beach County may issue, which may include a requirement for a cash deposit, certified check, other negotiable instrument, or irrevocable letter of credit accepted in lieu of performance and payment bonds.

**22. Davis-Bacon and Copeland Anti-Kickback Acts.** If this purchase order or contract involves a construction project over \$2,000, the contractor agrees to comply with Davis-Bacon and Copeland Act requirements at 40 USC 3141, et seq., and 18 USC 874. The Acts apply to construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government and, for the purposes of the Acts, include "actual construction, alteration and/or repair, including painting and decorating." The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) and are enumerated at 29 CFR 5.5a. In accepting this order or contract, the contractor further agrees to include a similar requirement in all subcontracts financed in whole or in part with federal assistance provided by FTA.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Palm Beach County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be



considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Palm Beach County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Palm Beach County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Form WH-347 is included herein as Attachment 2).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not



registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**23. Contract Work Hours and Safety Standards Act Requirements.** If this purchase order or contract involves a construction project in excess of \$2,000 or a non-construction project to which the Act applies over \$2,500, and is financed at least partly by loans or grants from the Federal Government, the contractor agrees to comply with the Contract Work Hours and Safety Standards Act, codified at 40 USC 3701, et seq. The contractor also agrees to





include a similar requirement in all subcontracts financed in whole or in part with federal assistance provided by FTA.

**Contract Work Hours and Safety Standards**

- A. **Overtime Requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty hours in such work week.
- B. **Violation; Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clauses set forth in subparagraph (b)(1) of 29 CFR Section 5.5, the contractor and any subcontractor responsible therefore, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clauses set forth in subparagraph (b)(1) of 29 CFR Section 5.5 in the sum of \$ 10.00 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5.
- C. **Withholding for Unpaid Wages and Liquidated Damages:** DOT or Palm Beach County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b)(2) of 29 CFR Section 5.5.
- D. **Nonconstruction Grants:** The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, Palm Beach County shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of DOT and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- E. **Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph A. through E. of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs A. through E. of this section.

25. **Fly America.** The contractor agrees to comply with 49 USC 40118 (the "Fly America" Act) in accordance with the General Services Administration regulations at 41 CFR part 301-10, which provide that recipients and subrecipients of federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The contractor shall submit, if a foreign air carrier is used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certification of compliance with the Fly America requirements. The contractor agrees to include this requirement in all subcontracts that may involve international air transportation.

26. **Cargo Preference.** The contractor agrees to use privately-owned U.S. Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent that such vessels are available at fair and reasonable rates for U.S. Flag commercial vessels. The contractor also agrees to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days for shipments originating outside the United States, a legible copy of a rated, "on-board"





## FEDERAL CERTIFICATIONS AND REPRESENTATIONS

commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to Palm Beach County (through the contractor in the case of subcontractor's bill-of-lading). The contractor further agrees to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

27. **Patent and Rights in Data.** If this purchase order or contract involves patent and rights in data requirements for federally-assisted research projects in which FTA finances in whole or in part the development of a product or information, the contractor agrees to be bound by the terms and conditions contained at 49 CFR Part 19, Appendix A, Section 5, and with any other implementing requirements FTA may issue. These patent and rights in data requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development and/or in writing the user's manual.

28. **Seismic Safety.** If this purchase order or contract pertains to the construction of new buildings or additions to existing buildings, the contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with standards outlined in U.S. Department of Transportation Seismic Safety regulations at 49 CFR Part 41 and will certify compliance to the extent required. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## PART C

### Special Provisions for Projects Financed Under the American Recovery and Reinvestment Act (Recovery Act).

This project is funded by the American Recovery and Reinvestment Act of 2009 (ARRA) that is administered by the Federal Transit Administration (FTA) and governed by the provisions listed under the Master Grant Agreement (FTA MA (15) dated October 1, 2008) and Special Provisions for Projects Financed under the American Recovery and Reinvestment Act (Recovery Act).

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

FL-96-X026

### Special Provisions for Projects Financed Under the American Recovery and Reinvestment Act (Recovery Act).

The Contractor agrees that the following provisions apply to American Recovery and Reinvestment Act of 2009 (Recovery Act) funds authorized under Pub. L. 111-5, February 17, 2009, and agrees to comply with the requirements thereof, except to the extent FTA determines otherwise in writing:

a. **Identification of Recovery Act Funding.** A Grant Agreement or Cooperative Agreement financed with Recovery Act funds will indicate that the Recovery Act is the source of funding as follows:

(1) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "49 USC 5307 - Urbanized Area - Economic Recovery," the Project or Projects are financed with Recovery Act funds appropriated for the Transit Capital Assistance for the Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

b. **Identification of Project(s).** The Project or Projects for which Recovery Act funding is provided are set forth in the Recipient's application and reflected in the Approved Project Budget.

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

c. **Federal Requirements.** In addition to applicable Recovery Act statutory and regulatory requirements, the Contractor agrees that applicable requirements of 49 U.S.C. chapter 53 apply to federally assisted transit projects financed with Recovery Act funds and the Recovery Act funding, except that the Federal share of the costs for which any Grant is made under this heading shall be, at the option of the recipient, up to 100 percent.

d. **U.S. OMB Provisions.** The Contractor agrees to comply with applicable provisions of U.S. Office of Management and Budget, "Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards," 2 C.F.R. Part 176, 74 Fed. Reg. 18449 et seq., April 23, 2009. Specifically, the Contractor acknowledges and agrees to comply with the following provisions

(1) **Reporting and Registration Requirements under Section 1512 of the Recovery Act.**

(a) This award requires the Contractor to complete projects or activities which are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be forwarded to the project manager after the award of the contract.

(b) The Contractor agrees to submit the requisite reports no later than seven (7) calendar days after each calendar quarter in which it receives payment from the County for a project financed by Federal assistance funded in whole or in part by the Recovery Act.

(c) The Contractor agrees to maintain, and to require its first-tier subrecipients to maintain, current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during the execution of this project. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration. This project is funded by the American Recovery and Reinvestment Act (ARRA). The successful bidder must be registered at [www.ccr.gov](http://www.ccr.gov) and be able to provide a DUNS number to Palm Beach County prior to execution of an agreement.

(d) The Contractor agrees to report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed. All information will be forwarded to Palm Tran's Grants Coordinator, Claudia Salazar (561)841-4241 - [csalazar@pbcgov.org](mailto:csalazar@pbcgov.org).

(2) **Buy America Requirements under Section 1605 of the Recovery Act.** Statutory provisions of 49 U.S.C. Chapter 53 impose Buy America requirements sufficient for compliance with Section 1605 of the Recovery Act.

(3) **Wage Rate Requirements under Section 1606 of the Recovery Act.** Statutory provisions of 49 U.S.C. Chapter 53 impose Wage Rate requirements involving construction, alteration, maintenance, or repair sufficient for compliance with Section 1606 of the Recovery Act.

**Violations of Law.** The Contractor agrees that it and each of its subrecipients shall report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §§ 3729 et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

**Emblems.** The Contractor agrees to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in any subagreements, leases, third party contracts, or other similar documents used in connection with its Recovery Act Project(s). Contact Palm Tran Grants Coordinator at (561)841-4241 for signage availability.

**Further Requirements.** The Contractor agrees to comply with applicable future Federal requirements that may be imposed on the use of Recovery Act funds.

## EXHIBIT 1

## LETTER OF INTENT

To Utilize a Disadvantaged Business Enterprise (DBE) Subcontractor/Subconsultant

From: Robling Architecture Construction, Inc.  
(Name of Proposer/Bidder)

To: Palm Beach County, Selection Committee

Project Description: Remove existing shelter and install replacement shelter; construct two ADA compliant sidewalks; install three wheelchair ramps; install three gates to keep the use of the Transfer Station separate from remainder of the West Tech site.

In response to Palm Beach County's RLI/Bid No. JOC# 09-177, the undersigned hereby agree to utilize the minority firm listed below, if awarded the contract. The undersigned further certify that the firm has been contacted and properly apprised of the projected work assignment(s) upon execution of the contract with Palm Beach County.

Name of Firm: Pathway Enterprises Inc  
(Proposed DBE Subcontractor/Subconsultant)

Expiration of DBE Certification:

Projected Work Assignment: Enter description of work assignment: Concrete

Projected Percentage of Prime's Contract Fees to be Awarded: (\$74,811.11)

(Signature of Owner or Authorized Rep.)

(Date)

Subscribed and sworn to before me this 16<sup>th</sup> day of November 2009Holly M. Rojas  
(Notary's Signature)NOTARY PUBLIC-STATE OF FLORIDA  
Holly M. Rojas  
Commission #DD757225  
Expires: FEB. 16, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

(Notary Seal)

## (ACKNOWLEDGEMENT BY THE PROPOSED DBE FIRM)

The undersigned intends to perform work in connection with the above Contract as (check one)  
\_\_\_\_\_ an individual \_\_\_\_\_ a partnership ☒ a corporation \_\_\_\_\_ a joint venture. The undersigned agrees with the prime contractor's/consultant's proposal and further certifies that all information provided herein is true and correct.

(Signature of Owner or Authorized Rep.)

(Date)

Subscribed and sworn to before me this 16<sup>th</sup> day of November 2009Holly M. Rojas  
(Notary's Signature)NOTARY PUBLIC-STATE OF FLORIDA  
Holly M. Rojas  
Commission #DD757225  
Expires: FEB. 16, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

(Notary Seal)

**SCHEDULE OF DBE PARTICIPATION****EXHIBIT 2**

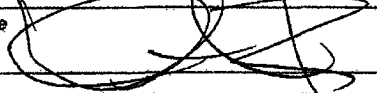
(To be submitted with an executed Letter of Intent from each DBE firm listed in this form)

BID/RLI #: 09-177	PROJECT LOCATION: West County Transfer Station	DATE FORM SUBMITTED:	
PROJECT NAME:	West County Transfer Station	PROJECT START DATE:	
PRIME CONTRACTOR:	Robling Architecture Construction, Inc.	ADDRESS:	4889 Lake Worth Rd # 103, Greenacres, FL 33463
CONTACT PERSON:	Damon A Robling	TELEPHONE #: (561) 649-6705	FAX#: (561) 649-6748

DBE Subcontractor	Expiration of Certification	Address	Phone	Type of Work To Be Performed		Sub-Contract Amount (Agreed Price or Percentage (%) ( )
Pathway Enterprises Inc		7256 Westport Place Ste B, WPB, FL 33413	561-478-4822	Concrete	\$	(\$74,811.11)
					\$	( )
					\$	( )
					\$	( )
Total DBE Participation (Total amount allocated to DBEs divided by Total Contract Amount) Total Contract Amount DBE Subcontractor Participation Percentage					\$	(74,811.11 ) / (239,000.12 ) 31%

The listing of an DBE shall constitute a representation by the bidder/responder to Palm Beach County that such DBE has been contacted and properly apprised of the upcoming County project. Bidders/Responders are advised that the information contained herein subject to verification by Palm Tran's DBE Liaison, and that submission of said information is an assertion of its accuracy, per the requirements of the DBE Program.

I certify that the above information is true to the best of my knowledge:

Signature 	Title President	Date 11-16-09
THIS DOCUMENT MUST BE PROVIDED WITH THE SUBMITTAL AND SIGNED BY THE PERSON SIGNING THE SUBMITTAL		

DBE  
UNAVAILABILITY REPORT

## EXHIBIT 3

RLI/BID NO. 09-177Robling Architecture Construction, Inc. 4889 Lake Worth Rd # 103, Greenacres, FL 33463 T:561-649-6705

(NAME OF PRIME CONTRACTOR)

(ADDRESS)

(TELEPHONE NO.)

The undersigned representative of the prime contractor, personally appeared before the undersigned officer, authorized to administer oaths who, after being duly sworn, states that the undersigned has contacted the DBEs listed below and that said DBEs are unavailable to perform or to submit a bid which was not the low acceptable bid set forth, and that the following information regarding DBE subcontractors is true and correct to the best of his/her knowledge:

1. The following DBE contractors were invited to bid subcontract work, but were not available to work. (Attach list if necessary.)

Name

N/A

2. The following DBE contractors were invited to bid subcontract work, but did not respond to the invitation. (Attach list if necessary.)

Name

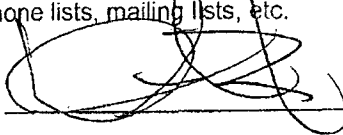
N/A

3. The following DBE contractors submitted bids which were not the low acceptable bids. (Attach list if necessary.)

Name

N/A

If you did not get any responses to your solicitation of DBE contractors, please detail your efforts to recruit eligible firms, i.e., advertising, personal calls, mailing lists, etc. Information provided will be verified. Attach all supporting documents such as newspaper ads, phone lists, mailing lists, etc.

Signature: Title: Damon A Robling, PresidentDate: 11-16-09

## FEDERAL CERTIFICATIONS AND REPRESENTATIONS

Palm Beach County Board of County Commissioners  
PALM TRAN

## DBE UTILIZATION REPORT

## EXHIBIT 4

Report No. \_\_\_\_\_

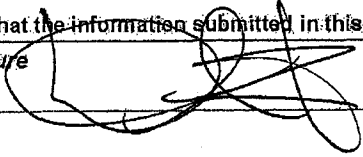
CONTRACT#:09-177 CONTRACT AMOUNT: \$239,000.12		DATE FORM SUBMITTED:	
PROJECT DESCRIPTION: Remove & Replace Shelter		PROJECT COMPLETION DATE:	
PRIME CONTRACTOR: Robling Architecture Construction, Inc.		PERIOD ENDING:	
CONTACT PERSON: Damon A Robling		TELEPHONE #: (561) 649-6705	FAX # (561) 649-6748

## SUBCONTRACTING INFORMATION

## TO BE SUBMITTED MONTHLY TO PALM TRAN'S DBE LIAISON

DBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of Work Completed To Date	Amount Paid This Period	Amount Paid To Date	Gender		Ethnic Category					
								M	F	B	H	A	NA	W	
Pathway Enterprises Inc	7256 Westport Place Place Ste B, West Palm Beach, FL 33413	Concrete	74,811.11	74,811.11											

I attest that the information submitted in this report is in fact true and correct to the best of my knowledge.

Signature 	Title President	Date 11-16-09
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Note: The information provided herein is subject to verification by Palm Tran's DBE Liaison.

## FINAL DBE UTILIZATION REPORT

EXHIBIT 5

(To be submitted with the final invoice)

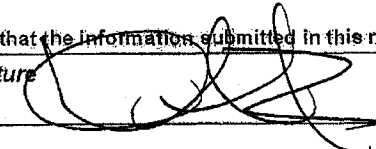
CONTRACT #: 09-177	CONTRACT AMOUNT: \$239,000.12	DATE FORM SUBMITTED:	
PROJECT DESCRIPTION:	Remove & Replace Shelter	PROJECT COMPLETION DATE:	
PRIME CONTRACTOR:	Robling Architecture Construction, Inc.	PERIOD ENDING:	
CONTACT PERSON:	Damon A Robling	TELEPHONE #: (561) 649-6705	FAX # (561-649-6748)

## SUBCONTRACTING INFORMATION

All payments made to DBE subcontractors must be reported on this form.

DBE Subcontractor	Description of Work	Original Amount (Agreed to Price)	Final Subcontract Amount (Inc. Chg. Ord/Amend.)	Total Amt Paid	Gender		Ethnic Category					
					M	F	B	H	A	NA	V	
Pathway Enterprises Inc	7256 Westport Place Place Ste B, West Palm Beach, FL 33413	Concrete	74,811.11									
	TOTALS:		74,811.11									

I attest that the information submitted in this report is in fact true and correct to the best of my knowledge

Signature 	Title President	Date 11-16-09
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Note: The information provided herein is subject to verification by Palm Tran's DBE Liaison

**EXHIBIT 6**  
**BUY AMERICA CERTIFICATION****FOR PROCUREMENTS OF STEEL, IRON, AND MANUFACTURED PRODUCTS  
(INCLUDING ROLLING STOCK) OVER \$100,000**

If this contract or purchase order is valued in excess of \$100,000 and involves the procurement of steel, iron, or manufactured products, the bidder or offeror hereby certifies that it:

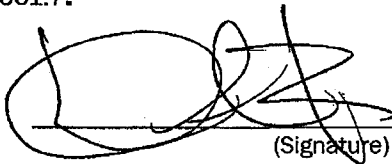
- ☒ Will meet the requirements of 49 USC 5323(j)(1) and the applicable regulations in 49 CFR part 661.5.
- ☐ Cannot meet the requirements of 49 USC 5323(j)(1) and 49 CFR part 661.5, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

If this contract or purchase order is valued in excess of \$100,000 and involves the procurement of buses, other rolling stock, and associated equipment, the bidder or offeror certifies that it:

- ☒ Will comply with the requirements of 49 USC 5323(j)(2)(C) and the regulations at 49 CFR part 661.11.
- ☐ Cannot comply with the requirements of 49 USC 5323(j)(2)(C) and 49 CFR 661.11, but may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

11-16-09

(Date)

  
(Signature)Robling Architecture Construction, Inc.  
(Company)President  
(Title)

**Note:** This Buy America certification must be submitted to Palm Beach County with all bids or offers on FTA-funded contracts involving construction or the acquisition of goods or rolling stock, except those subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.



**EXHIBIT 7**  
**RESTRICTIONS ON LOBBYING CERTIFICATION**

**FOR ALL PROCUREMENTS OVER \$100,000 INVOLVING CONSTRUCTION/ARCHITECTURAL AND  
ENGINEERING/ACQUISITION OF ROLLING STOCK/PROFESSIONAL SERVICE  
CONTRACTS/OPERATIONAL SERVICE CONTRACTS/ TURNKEY CONTRACTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph 2 herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 USC 1601, et seq.)]

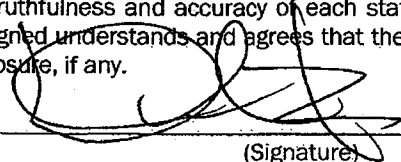
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 USC A3801, et seq., apply to this certification and disclosure, if any.

11-16-09

(Date)

  
(Signature)

Robling Architecture Construction, Inc.

(Company)

President

(Title)

**Note:** This certification must accompany each bid or offer exceeding \$100,000. Pursuant to 31 USC §3801(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

**EXHIBIT 8**  
**FEDERAL REPRESENTATIONS AND CERTIFICATIONS****THIS ATTACHMENT MUST BE COMPLETED AND RETURNED****BLOCK REPRESENTATIONS AND CERTIFICATIONS**1. Disadvantaged Business Enterprise (DBE)

The Offeror/Bidder represents as part of its offer that it (Mark one with an "X"): \_\_\_\_ is  
☒ is not a disadvantage business enterprise (DBE).

2. Contingent Fee

A. Except for full-time bona fide employees working solely for the Offeror/Bidder, the Offeror/Bidder represents as part of its offer that it (Mark one with an "X"): \_\_\_\_ has ☒ has not employed or retained any company or persons to solicit or obtain this contract, and (Mark one with an "X"): \_\_\_\_ has ☒ has not paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

B. The Offeror/Bidder agrees to provide information relating to A. above, as requested by the Contracting Officer and, when any item in subparagraph A. is answered affirmatively, to promptly submit to the Contracting Officer a completed Standard Form 119 "Statement of Contingent or Other Fees."

3. Interest of Public Officials

The Offeror/Bidder represents and warrants that no employee, official, or member of the Board of County Commissioners is or will be interested or benefited directly or indirectly in this contract.

4. Covenant Against Gratuities

The Offeror/Bidder represents as part of its offer that neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of the County with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract. See Paragraph 3 above entitled "Interest of Public Officials."

5. Previous Contracts and Compliance Reports

A. The Offeror/Bidder represents as part of its offer that it (Mark one with an "X"): ☒ has \_\_\_\_ has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order Number 10925, or the clause contained in Section 201 of Executive Order Number 11114; and

B. It (Mark one with an "X"): ☒ has \_\_\_\_ has not filed all required compliance reports.

C. Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

6. Affirmative Action Compliance

A. The Offeror/Bidder represents as part of its offer that it has a workforce of (# of employees):

B. It (Mark one with an "X"): ☒ has developed and has on file \_\_\_\_ has not developed and does not have on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or it (Mark one with an "X"): \_\_\_\_ has has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

7. Parent Company and Identifying Data

A. The Offeror/Bidder represents as part of its offer/bid that it (Mark one with an "X"): \_\_\_\_ ☒ is is not owned or controlled by a parent company. A parent company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the bidder. To own the bidding

FEDERAL CERTIFICATIONS AND REPRESENTATIONS

company means that the parent company must own more than 50% of the voting rights in that company. A company may control a bidder as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the Offeror/Bidder through the use of dominant minority voting rights, use of proxy voting, or otherwise.

B. If the Offeror/Bidder is not owned or controlled by a parent company, it shall insert its own Employer's Identification Number:

C. If the Offeror/Bidder is owned or controlled by a parent company, it shall enter below the name and main office address of the parent company, and the parent company's Employer's Identification Number.

Name of Parent Company and Main Office Address (Include Zip and Phone):

Robling Architecture Construction, Inc.

4889 Lake Worth Rd #103, Greenacres, FL 33463 T: 561-649-6705

Parent Company's Employer's Identification #:

65-1263086

8. Certification of Independent Price Determination

A. By submission of this offer, the Offeror/Bidder certifies, and in the case of a joint offer, each party thereto

certifies as to its own organization, that in connection with this procurement:

i. The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror/Bidder or with any competitor.

ii. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Offeror/Bidder and will not knowingly be disclosed by the Offeror/Bidder prior to the opening (in the case of an advertised procurement), directly or indirectly to any other Offeror/Bidder or to any competitor; and

iii. No attempt has been made or will be made by the Offeror/Bidder to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

B. Each person signing this offer certifies that:

i. He is the person in the Offeror/Bidder's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to A.i through A.iii. above; or

ii. He: (i) is not the person in the Offeror/Bidder's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as an agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to A.i. through A.iii. above, and as their agent does hereby so certify; and (ii) has not participated, and will not participate, in any action contrary to A.i. through A.iii. above.

9. Disadvantaged Business Enterprise Goals

If goals have been established, by submission of this offer, the Offeror/Bidder certifies that it will comply with the provisions of this solicitation entitled "Disadvantaged Business Enterprises Program" and will meet such goals as are established in any ensuing contract.

10. Certification of Eligibility

A. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- B. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1)
- C. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

11. Clean Air and Water Certification

Applicable if the offer exceeds \$100,000, or the Contracting Officer believes that orders under an indefinite contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Air Act [42 U.S.C. 7413(c)(1)] or the Water Act [33 U.S.C. 1319(c)] and is listed by the Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt.

By submission of this offer, the Offeror/Bidder certifies that:

- X A. Any facility to be used in the performance of this proposed contract **(Mark one with an "X")**:  
is    is not listed on the EPA List of Violating Facilities;
- B. It will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- C. It will include a certification substantially the same as this certification, including this paragraph C., in every nonexempt subcontract.

12. Certification of Non-Segregated Facilities

- A. By the submission of this offer, the Offeror/Bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.
- B. The Offeror/Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the contract.
- C. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or nation origin, because of habit, local custom or otherwise.
- D. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
- Obtain identical certifications from proposed subcontractors before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity Clause;
  - Retain such certifications in its files; and
  - Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A Certification of Non-Segregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

**Note:** The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

13. Drug-Free Workplace Program Certification

A. By submission of a bid/offer, the bidder/offeror certifies and agrees that, with respect to the bidder/offeror and all employees of the bidder/offeror to be utilized in the performance of any contract resulting from this solicitation, it has or will establish and implement, prior to performance of this contract, a drug-free workplace program that complies with the provisions of 49 CFR Parts 653 and 654.

B. The Bidder/Offeror shall submit for the County's review and approval as part of the County's pre-award responsibility survey their Drug Free Workplace Program. Failure of the bidder/offeror to have the drug-free workplace program complying with 49 CFR Parts 653 and 654 will be deemed a lack of responsibility rendering the bidder/offeror unqualified and ineligible for award.

C. The contractor shall permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, Palm Tran, or Palm Beach County to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before February first of each year and to submit to Palm Tran the Management Information System (MIS) reports before March First of each year. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

D. By Signing this Representations and Certifications, I certify that this firm x has     has not implemented a drug-free workplace program.

14. Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Prime Contract

A. In accordance with provisions of 49 CFR Part 29 and the certification instructions contained therein, the Offeror/Bidder certifies, to the best of its knowledge and belief, that it and/or any of its Principals (Mark one with an "X"):     are X are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any Federal department or agency or by the County (Mark one with an "X"):     have X have not within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) contract or subcontract; violation of Federal State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property (Mark one with an "X"): are X are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with, commission of any of the offenses enumerated in this subparagraph of this certification; and (Mark one with an "X"):     have X have not within a three year period preceding this offer, had one or more public (Federal, State or Local) contracts terminated for cause or default.

B. "Principals," for the purposes of this certification, means: officers, directors, owners, partners, key employee, or other person within the business entity with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over contracts, whether or not employed by the Offeror/Bidder.

C. The Offeror/Bidder shall provide immediate written notice to the Contracting Officer, if, at any time prior to a contract award, the Offeror/Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. Where the Offeror/Bidder is unable to certify positively to any of the statements in this certification, the Offeror/Bidder shall attach an explanation to this offer. A certification that any of the items in subparagraph A. of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror/Bidder's responsibility. Failure of the Offeror/Bidder to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror/Bidder

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

nonresponsive. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by subparagraph A. of this provision. The knowledge and information of an Offeror/Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.

E. The certification in subparagraph A. of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror/Bidder knowingly rendered an erroneous certification, in addition to other remedies available to the County or the Federal Government or any of its departments or agencies, the Contracting Officer may terminate the contract resulting from this solicitation for default.

F. The Offeror/Bidder further agrees by submitting this offer that it will include the following clause, without modification, in all subcontracts and in all solicitations for subcontracts:

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION, SUBCONTRACTS**

i. In accordance with the provisions of 49 CFR Part 29 and the certification instructions contained therein, the prospective subcontractor certifies, by submission of this offer, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by and Federal department or agency or by the County.

ii. Where the prospective subcontractor is unable to certify to any of the statements in this certification, such prospective subcontractor shall attach an explanation to this offer.

**15. Conflict of Interest Certification**

This certification is required to be completed if the solicitation is a Request for Proposal (not required for Invitation for Bids).

By submission of this proposal, I certify that:

A. I have read and understand representations and Certifications **Paragraph 3** above entitled "Interest of Public Officials" that will be incorporated into any contract resulting from this solicitation. I further understand that the pecuniary interest in that clause includes employment relationships.

B. I understand the County has an internal conflict of interest policy for its employees which includes as an actual or possible conflict of interest whether or not a member of the employee's immediate family works for a firm doing, or seeking to do, business with the County.

**C. (Mark one with an "X"):**

☒ To the best of my knowledge and belief, no employee of my firm is related to a County employee; or  
☐ An employee of my firm is related to a County employee and a letter to the Contracting Officer explaining that relationship is attached to this Exhibit.

D. The requirement of this certification has been passed through to all first-tier subcontractors or subconsultants anticipated to be used at the time of the submission of my proposal.

**16. Cargo Preference Certification**

The contractor agrees:

A. To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping by commercial vessel any equipment, materials, or commodities pursuant to this contract, to the extent that such vessels are available at fair and reasonable rates for United States flag commercial vessels. To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading, for shipments originating outside the United States, a legible copy of rated, onboard commercial ocean bill of lading in English for each shipment of cargo described in Paragraph 1 of this

Certificate (through the contractor in the case of subcontractor bills of lading), to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street SW, Washington, D.C., 20590, marked with the appropriate identification of this contract.

B. To insert the substance of the provisions of this Certificate in all subcontracts issued pursuant to this contract.

17. Integrity Certification

As required by U.S. DOT regulations on Government wide Debarment and Suspension at 49 CFR 29.510, the PRESIDENT Certifies to the best of its knowledge and belief, that it and its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by and Federal department or agency;

B. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph B. of this certification; and,

D. Have not within a three (3) year period preceding this contract had one or more public transactions (Federal, state or local) terminated for cause of default.

18. Special Provisions

**Special Provisions for Projects Financed Under the American Recovery and Reinvestment Act (Recovery Act).**  
The Contractor agrees to comply with all the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) funds authorized under Pub. L. 111-5, February 17, 2009, and agrees to comply with the requirements thereof, except to the extent FTA determines otherwise in writing:

**SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS**

Name of Bidder And Address (Include Zip &amp; Phone):

Robling Architecture Construction, Inc4889 Lake Worth Rd # 103Greenacres, FL 33463T: 561-649-6705; F: 561-649-6748

Signature of Authorized Representative for Bidder:

Print Name of Authorized Representative for Bidder:

Damon A Robling, PresidentDate: 11/16/09


**Offeror/Bidder MUST SET FORTH FULL, ACCURATE AND COMPLETE INFORMATION AS REQUIRED BY THIS SOLICITATION (INCLUDING THIS EXHIBIT). FAILURE TO DO SO SHALL RENDER THIS BID/OFFER NONRESPONSIVE OR UNACCEPTABLE. A FALSE STATEMENT IN ANY BID OR PROPOSAL SUBMITTED TO THE COUNTY MAY BE A CRIMINAL OFFENSE IN VIOLATION OF APPLICABLE FEDERAL AND/OR STATE LAWS.**

This contract or purchase order is funded by a contract between Palm Beach County and the U.S. Department of Transportation, Federal Transit Administration (FTA) and governed by the provisions listed under the Master Grant Agreement FTA MA (15) dated October 1, 2008) and Special Provisions for Projects Financed Under the American Recovery and Reinvestment Act (Recovery Act). Therefore, all activities related to this project are subject to the following conditions, which are outlined in greater detail in U.S. Department of Transportation (USDOT) regular 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; Federal Transit Administration (FTA) Circular 4220.1F, "Third Party Contracting Guidelines," dated November 1, 2008, as may be amended, and other laws and regulations governing procurement activities for Palm Beach County programs and projects.

Master Grant Agreement FTA MA (15) dated October 1, 2008: <http://www.fta.dot.gov/documents/15-Master.pdf>  
Circular 4220.1F, dated November 1, 2008, as amended: [http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_8641.html](http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html)

FTA's Best Practices Procurement Manual (BPPM), offers suggested procedures, methods, and examples on conducting third party procurements to assist in meeting the standards of FTA Circular 4220.1F, BPPM is available at: [http://www.fta.dot.gov/funding/thirdpartyprocurement/grants\\_financing\\_6037.html](http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html) References to the Code of Federal Regulations (CFR) website are available at: <http://www.gpoaccess.gov/cfr/index.html>.



December 14, 2009	<b>Contractors Price Proposal Detail - Category</b> <b>Job Order Construction Services</b>		
Loc #: No Location Entered	No Location Entered		
JOC#: 09730	West County Transfer Station		

**Contract Number:** R-2007-1099  
**Contractor:** Robling Architecture Construction Inc.  
**Proposal Value:** \$ 239,000.12  
**Proposal Name:** 09730 West County Transfer Station

Record	CSI Number	Modifier	UOM	Description	Line Total		
Category - No Category Input							
1	01 00 00 00 0022			Architectural Construction Documents	\$4,400.00		
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	4,000.00 x	1.1000 =	\$4,400.00
				Construction Documents			
2	01 00 00 00 0023			Earthwork			\$162,139.09
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	147,399.17 x	1.1000 =	\$162,139.09
3	01 00 00 00 0024			Bond - General Contractor			\$5,214.00
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	4,740.00 x	1.1000 =	\$5,214.00
4	01 00 00 00 0025			Surveying			\$11,880.00
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	10,800.00 x	1.1000 =	\$11,880.00
5	01 00 00 00 0026			Civil Engineering			\$5,060.00
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	4,600.00 x	1.1000 =	\$5,060.00
6	01 00 00 00 0027			Structural Engineering			\$935.00
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	850.00 x	1.1000 =	\$935.00
7	01 00 00 00 0028			Geotechnical Engineering			\$2,569.60
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	2,336.00 x	1.1000 =	\$2,569.60
8	01 00 00 00 0029			Bus Shelter			\$19,992.50
		NPP Task		Quantity	Unit Price	Factor	Total
			Installation	1.00 x	18,175.00 x	1.1000 =	\$19,992.50
9	01510	2017	EA	40 CY Dumpster (13 Ton Capacity) "Construction Debris" Note: Price Includes Service To Deliver And Pick-up Of Dumpster, Hauling Of Debris, Rental Of Dumpster And Disposal Fee.			\$6,307.20
				Quantity	Unit Price	Factor	Total
			Installation	8.00 x	675.00 x	1.1680 =	\$6,307.20
10	01560	7330	MO	Temporary Traffic Sign (Up To 3'x3')			\$105.12
				Quantity	Unit Price	Factor	Total
			Installation	2.00 x	45.00 x	1.1680 =	\$105.12
11	01590	4106	MO	60" Wide, 1/3 CY Bobcat, With Full-Time Operator			\$13,665.48
				Quantity	Unit Price	Factor	Total
			Installation	2.00 x	5,849.95 x	1.1680 =	\$13,665.48
12	01590	4116	MO	Forklift Attachment			\$584.89
				Quantity	Unit Price	Factor	Total
			Installation	2.00 x	250.38 x	1.1680 =	\$584.89

ATTACHMENT # 3

Contractors Price Proposal Detail - Category Continues...

Job Order Number: 09730  
Job Order Title: West County Transfer Station

Record	CSI Number	Modifier	UOM	Description	Line Total
Category - No Category Input					
13	01590	4123	MO	Backhoe Attachment	\$1,784.94
			Installation	Quantity 2.00 x Unit Price 764.10 x Factor 1.1680 = Total \$1,784.94	
14	01590	4126	MO	Broom Attachment	\$2,181.15
			Installation	Quantity 2.00 x Unit Price 933.71 x Factor 1.1680 = Total \$2,181.15	
15	01590	4133	MO	9", 12", Or 16" Auger Attachment	\$2,181.15
			Installation	Quantity 2.00 x Unit Price 933.71 x Factor 1.1680 = Total \$2,181.15	
Subtotal for Category - No Category Input:					\$239,000.12
Proposal Total					\$239,000.12

This proposal total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding of the line totals and sub-totals.

The Percentage of NPP on this Proposal: 88.78%

## Budget Availability Statement

REQUEST DATE: September 17, 2009

REQUESTED BY: *Jm Rohweller*

PHONE#: (561) 233-2050

PROJECT TITLE: West County Transfer Station

Project No: 09730

LOCATION #:

LOCATION DESCRIPTION:

ORIGINAL CONTRACT/ANNUAL AMOUNT:

BCC RESOLUTION # / DATE:

R-2007-1099 dated 06/17/2009

CSA/LOA/CHANGE ORDER AMOUNT:

CSA/LOA/CHANGE ORDER NUMBER: Work Order #: 09-177

CONTRACTOR/CONSULTANT NAME: Robling Architecture Construction Inc.

PROVIDE A BRIEF STATEMENT OF THE SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT/CONTRACTOR:

Remove existing shelter and install replacement shelter; construct two ADA compliant sidewalks; install three wheelchair ramps; install three gates to keep the use of the Transfer Station separate from remainder of the West Tech site.

WILL THIS AMENDMENT CHANGE THE ESTIMATED COST OF THE PROJECT? Yes

IF YES, PROVIDE ESTIMATES OF THE NEW COSTS:

CONSTRUCTION	239,000.12	
ARCHITECT/ENGINEER	3,585.00	1.5% WORK ORDER AMOUNT FOR TOG FEE
*STAFF COSTS	11,950.00	
EQUIPMENT/OTHER	0.00	
CONTINGENCY	23,900.01	
TOTAL:		\$278,435.13

\* By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.\*

BUDGET ACCOUNT NUMBERS (IDENTIFY ALL SOURCES): FUNDING SOURCE (CHECK ALL THAT APPLY)

\$94,177 1341-542-5507-3401-G302-GY02  
\$54,784 1341-542-5514-3401-I902-GY04  
\$70,389 1341-542-5516-3401-L902-GY05  
\$59,086 1341-542-5517-3401-L902-GY06

☒ FEDERAL/DAVIS BACON

☐ AD VALOREM

☐ OTHER

☒ DBE *6%* 10%.

ANTICIPATED DATE OF APPROVAL: ASAP

BAS APPROVED BY:

*Lorraine Lyons*

DATE:

*10/20/09*

ENCUMBRANCE NUMBER:

ATTACHMENT # 4

## LICENSE AGREEMENT

THIS IS A LICENSE AGREEMENT (the "Agreement") made October 8, 2009, and granted by the SCHOOL BOARD OF PALM BEACH COUNTY, a corporate body politic of the State of Florida, hereinafter referred to as "School Board", in favor of PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County".

### RECITALS

WHEREAS, School Board owns certain real property known as West Technical Education Center located at 2625 State Road 715, Belle Glade, FL 33430 (the "School Board Property");

WHEREAS, County has requested a license from School Board to give County certain rights as described hereinafter to utilize the School Board Property (or a portion thereof) to facilitate the construction of a project to be undertaken by the County and its authorized contractors to construct improvements to the transit transfer station (the "Transfer Station") located on the School Board Property (hereinafter referred to as the "Project");

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

1. The foregoing recitals are true and correct and incorporated herein.
2. The School Board hereby grants to County and its authorized contractors a non-exclusive license in and to the portion of the School Board Property located west of the school buildings as depicted on the Site Map shown on Exhibit "A" attached hereto by reference (the "License Property"). County shall be entitled to utilize the License Property during construction of the Project for the following purpose: (i) removal of the existing shelter (approximately 4'7" x 11'11") and installation of a replacement shelter (approximately 17'7" and 6'7"); (ii) construction of an ADA compliant sidewalk approximately 8' wide x 350' long; (iii) construction of an ADA compliant sidewalk approximately 5' wide x 167' long; (iv) installation of three (3) wheelchairs ramps in the locations designated on the Site Map; and (v) installation of three (3) gates designed to keep the use of the Transfer Station separate from the use of the remainder of the West Technical Education Center improvements on the School Board Property, pursuant to the plans and specifications prepared by the County (the "Plans and Specifications"). The County shall deliver to the School Board a copy of the Plans and Specifications prior to commencement of Project construction. The County shall coordinate with

the School Board in the event material changes are made to the Plans and Specifications. The County shall obtain, or cause to be obtained, permits from all applicable regulatory agencies prior to commencement of Project construction. The County shall diligently pursue the Project to completion. This Agreement shall automatically terminate upon the earlier of completion of the Project or nine (9) months from the date of commencement of Project construction. County shall provide School Board written notice of the date construction of the Project commences. Notwithstanding the foregoing, the County shall promptly deliver to the School Board a release of Agreement if so requested by School Board at any time after automatic termination hereof as aforesaid.

3. Prior to exercising the rights conferred hereunder, County shall locate any utility facilities within the License Property and shall contact and coordinate with all utilities providers that have facilities within the License Property. The County shall be solely responsible for and shall, at its sole cost and expense, promptly repair any damage arising out of County's exercise of the rights granted hereby and restore any improvements or landscaping now existing or constructed or installed hereinafter to the condition it was in prior to such damage, using materials of like kind and quality.
4. The County shall ensure that pedestrians, including students, teachers and parents, and vehicles, including school buses, shall have open and uninterrupted access to and from the School Board Property during school hours. The school hours shall mean during the times of day beginning when the early morning commute to school occurs continuing through when the afternoon commute from school occurs. Additionally, because of special events, athletics and extracurricular activities, any Project activities that may cause an interruption to such access outside of the aforementioned school hours shall be coordinated with the Principal of the impacted School by providing written notice at least three (3) working days prior to the start of the proposed activities. Notice of any emergency involving the County's exercise of the rights granted hereby shall be given to the Principal as soon as practicable. The County shall make its best efforts to conduct the Project activities that affect the West Technical Education Center driveway during the portion of the year when Palm Beach County schools are not in session.
5. The County acknowledges and agrees that the rights granted by this Agreement are and shall be strictly limited to those specifically granted herein and that the County may not utilize the License Property for any purpose not specifically permitted hereby. The County further agrees to exercise the rights granted hereunder in a manner which minimizes the impact upon the School Board's use and enjoyment of the School Board Property. The County's exercise of the rights granted by this Agreement is at the County's sole risk.


6. School Board hereby retains all rights relating to the License Property not specifically granted by this Agreement including the right to use the License Property and any improvements now existing or constructed hereinafter therein. School Board also retains the right to grant to third parties additional rights in the License Property or the right to use the improvements therein, so long as the grant of such additional rights will not interfere with the rights granted to County hereunder.
7. The School Board's interest in the School Board Property shall not be subject to liens arising from County's use of the License Property, or exercise of the rights granted hereunder. The County shall promptly cause any lien imposed against the School Board Property relating to the Project to be discharged or transferred to bond. Nothing herein shall be construed as granting to County a real property interest in the School Board Property.
8. School Board and County acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. School Board and County agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.
9. The County shall require its contractors and subcontractors to maintain and keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Recreation Field, Operations, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. In addition, County shall require its contractors and subcontractors to maintain Business Automobile Liability at a limit of liability not less than One Million Dollars (\$1,000,000) Each Occurrence for all owned, non-owned and hired automobiles. In the event the County's contractors or subcontractors do not own any automobiles, they shall maintain Hired & Non-Owned Auto Liability in such amount. Coverage shall be provided on a primary basis. Except for Workers

Compensation and Automobile Liability, all insurance policies shall name the School Board as Additional Insured. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by the School Board. A Certificate of Insurance evidencing such insurance coverage shall be provided to the School Board prior to the commencement of any work by the County's contractors and subcontractors pursuant to this Agreement. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of the County's contractors and subcontractors under this Agreement.

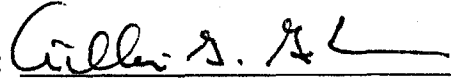
10. County hereby accepts the License Property "As Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the License Property, and all easements, restrictions, conditions, encumbrances and other matters of record.
11. This Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.
12. The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, sexual orientation, or gender identity or expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.
13. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
14. This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter hereof. No amendment shall be effective unless the same is in writing and signed by all parties.
15. No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document so as to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.
16. This Agreement shall become effective when signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth hereinabove.

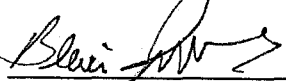
ATTEST:

By:   
Arthur C. Johnson, PhD.,  
Superintendent

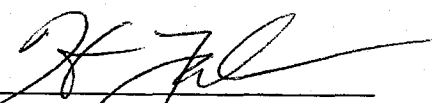
SCHOOL BOARD OF PALM BEACH  
COUNTY, FLORIDA

By:   
William G. Graham, Chairman

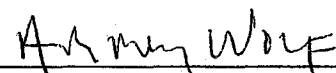
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:  10/9/09  
School Board Attorney

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
County Attorney

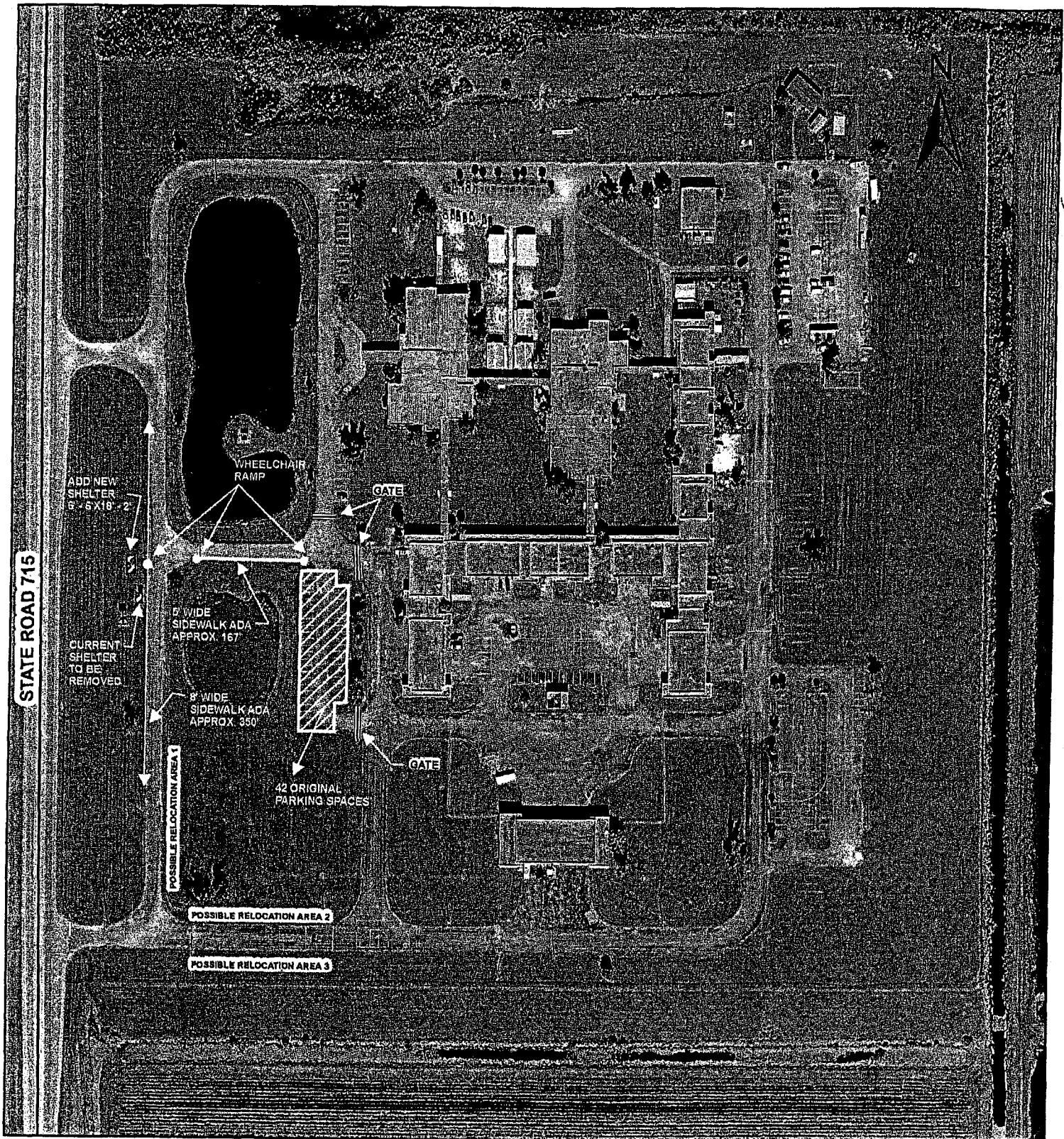
PALM BEACH COUNTY, a political  
subdivision of the State of Florida, by its  
Director of Facilities Development &  
Operations

By:   
Audrey Wolf, Director



West Tech Educational Center

EXHIBIT "A"



Major Roadways



8/12/2009 - Sandra Gilles  
West\_Tech\_Ed\_Ctr\_A.mxd

This map was created by  
Palm Beach County School District  
Planning - GIS  
For Real Estate Department



3300 Forest Hill Blvd  
West Palm Beach, FL 33406