

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	\$333,272	-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	\$333,272	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No

Budget Account No:

Fund 1341 Dept 542 Unit 5532 Object 3401
 Program Z902 Program Period GY10

Recommended Sources of Funds/Summary of Fiscal Impact:

Palm Tran Grants Fund
 FTA 5307 FY2010

Basic Services	\$230,936.42
Reimbursable Services	\$ 77,842.50
Optional Services	\$ 24,492.74
Total Authorization	\$333,271.66

C. Departmental Fiscal Review: *John Murphy, Finance Manager*

III. REVIEW COMMENTS

A. OFMB-Fiscal and/or Contract Dev. and Control Comments:

[Signature]
 KN ja OFMB
 9/19 am

[Signature] 9523114
 Contract Dev. and Control
 9-23-14 610 header

B. Approved as to Form and Legal Sufficiency:
 Subject to comment noted:

[Signature]
 Assistant County Attorney

Public entities are required to comply with Section 810 of the US DOT ADA Standards for Transportation Facilities. While Section 810.2.2 establishes requirements for bus stop boarding and alighting areas, it also notes that DOT's ADA standards indicate that compliance is required to the extent construction specifications are within a public entity's control. In this regard, FTA has previously determined, in response to a complaint in another state, that there is no responsibility or expectation under the ADA for a transit agency to unilaterally make improvements to sites the agency does not own or control.

C. Other Department Review:

 Department Director

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

REQUEST FOR BUDGET AVAILABILITY STATEMENT
FOR A
NEW PROJECT CONTRACT

TO: **Claudia Salazar**
Grants Coordinator, Palm Tran

REQUEST DATE: July 14, 2014

PROJECT TITLE/LIMITS: Palm Tran Bus Stop Improvement Program

PROJECT NUMBER: 2013603

CONTRACT TYPE CODE: PSC

COMMISSION DISTRICT: Countywide

CONSULTANT NAME: Last Devenport, Inc.

██████████ contract to be approved by the Board of County Commissioners at the September 9, 2014 Board date.

AUTHORIZATION AMOUNT: ██████████
Basic Services (Lump Sum):

\$230,936.42 (Field Reconnaissance, Preliminary Findings Report, Plans, Address Comments, Permitting, Meetings, Final Submittal).

Reimbursable Services (Not to Exceed): \$ 77,842.50 (Survey Services, Prints).

Optional Services (Not to Exceed): \$ 24,492.74 (Relocation of Existing Bus Stop, Construction Coordination, Permit Closeout).

Please Provide A Brief Statement Of The Scope Of Services To Be Provided By The Consultant. Consultant Services Authorization to provide engineering services required in connection with the proposed Palm Tran Bus Stop Improvement Program for the CR NA2 bus stops on county jurisdictional roadways. The scope of service will include 75 of the 257 bus stop locations not in conformance, as specified by Palm Tran. Basic Services tasks include: field reconnaissance; field survey; plan preparation; permitting with Palm Beach County Land Development Division for Right-of-Way construction; meetings with Palm Beach County Engineering and Palm Tran and final submittal of plans. Optional Services tasks include: plan preparation for relocation of existing bus stop location; construction and certification phase and surveying services.

ESTIMATED ADDITIONAL PROJECT SUPPORT COSTS RELATED TO THIS SUPPLEMENT:

STAFF COSTS (BY DIVISION)	
ROADWAY PRODUCTION	<u>\$0.00</u>
RIGHT OF WAY	<u>\$0.00</u>
SURVEY	<u>\$0.00</u>
TRAFFIC	<u>\$0.00</u>

BUDGET ACCOUNT NUMBER (IF KNOWN):

FUND	DEPT	UNIT	OBJECT
<u>1341</u>	<u>542</u>	<u>5532</u>	<u>3401 - 2902 - 5Y10</u>

BAS REQUESTED BY: David L. Young / JaeAnn Dean / Roadway Production Division

CONSULTANT SERVICES AUTHORIZATION TO BE APPROVED BY: Board of County Commissioners

ANTICIPATED DATE OF APPROVAL: September 9, 2014

**STANDARD FORM OF CONTRACT
BETWEEN
PALM BEACH COUNTY AND CONSULTANT
FOR
PROFESSIONAL SERVICES**

This is a Contract made as of _____, 2014 between **Palm Beach County (COUNTY)**, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, and **Last Devenport, Inc. (CONSULTANT)**, an engineering firm having an office and a place of business at 1860 Old Okeechobee Road, Suite 504, West Palm Beach, Florida 33409, and having Federal Tax I.D. #83-0373570. The **COUNTY** intends to improve Palm Tran bus stops for compliance with the Americans with Disabilities Act (ADA) for **Project No. 2013603, Palm Tran Bus Stop Improvement Program** (hereinafter called the **PROJECT**).

The **COUNTY** and **CONSULTANT** in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by **CONSULTANT** and the payment for those services by **COUNTY** as set forth below.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 General

1.1.1 The **CONSULTANT** shall perform professional study/design services in connection with the **PROJECT** as hereinafter stated which shall include normal civil engineering services, more particularly described in Exhibit "A" (Scope of Services).

1.1.2 The **CONSULTANT** shall prepare all plans in accordance with Palm Beach County Thoroughfare Design Procedures, current standards adopted by AASHTO, and the Florida Department of Transportation Manual of Uniform Minimum Standards, and all other applicable professional and technical standards. Plans shall be based on the North American Datum of 1983 (NAD 83) 1990 Adjustment and the North American Vertical Datum of 1988 (NAVD 88). They shall be accurate, legible, complete in design, drawn to scale, and shall be suitable for bidding purposes, unless otherwise stated in Exhibit "A".

1.1.3 The **CONSULTANT** has, during the selection and negotiation process which has preceded this Contract, represented to the **COUNTY** that the **CONSULTANT** is possessed of that level of skill, knowledge, experience and expertise that is commensurate with engineering firms of national repute in the areas of practice required for this project. The **CONSULTANT** acknowledges that the **COUNTY** has relied on the **CONSULTANT'S** representations of skill, knowledge, experience and expertise. By executing this contract, the **CONSULTANT** agrees that the **CONSULTANT** will exercise that degree of care, knowledge, skill and ability as other engineering firms possessing the degree of skill, knowledge, experience and expertise which the **CONSULTANT** has claimed. The **CONSULTANT** shall perform such duties as may be assigned without neglect. The **CONSULTANT** covenants with the **COUNTY** to cooperate with the **COUNTY** and to utilize the **CONSULTANT'S** skill, efforts and judgment commensurate with engineering firms of national repute in the areas of practice required for this project. The **CONSULTANT** agrees to perform each assignment in an efficient and economical manner consistent with the **COUNTY'S** interests and consistent with the **COUNTY'S** stated objectives and recognized professional engineering standards.

The **CONSULTANT** further contracts with the **COUNTY** to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Contract first written. It is specifically understood that the

Accessibility provisions of the Americans With Disabilities Act (ADA) shall be complied with and incorporated into the project.

1.1.4 Prior to commencement of study/design, the **CONSULTANT** shall become familiar with the needs of **COUNTY** Microstation standards, obtain any seed or Microstation files, CADD standards, and standard sheets so that Microstation deliverables can be utilized by the **COUNTY**. **CONSULTANT** shall submit electronic files (in Microstation compatible format and Adobe PDF format) of the study/design, survey, and any related data used for the project, with the final document(s) submittal, or when otherwise directed by **COUNTY**.

1.1.5 The **CONSULTANT** shall provide to the **COUNTY** all cost summaries/estimates and "Summary of Pay Items" on disk and/or electronic file (as requested). The **CONSULTANT** shall apply descriptions to the pay items as called out in the **COUNTY'S** "Standard Nomenclature" listing, which is available from Roadway Production.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 Services Requiring Authorization in Advance

If authorized in writing by the **COUNTY'S** authorized representative, the **CONSULTANT** shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.9 inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in the Fee Summary, Exhibit "B". These will be paid for by the **COUNTY**, only when specifically authorized and in accordance with Section 5.

2.1.1. Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the **PROJECT**.

2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the **COUNTY**.

2.1.3. Services resulting from significant changes in the general scope, extent or character of the **PROJECT** or its design including, but not limited to, changes in size, complexity, the **COUNTY'S** schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond the **CONSULTANT'S** control.

2.1.4. Preparing documents for alternate bids requested by the **COUNTY** for contractor(s) work which is not executed or documents for out-of-sequence work.

2.1.5. Furnishing the services of special consultants for other than the services included in Exhibit "A".

2.1.6. Services during out-of-town travel required of the **CONSULTANT** other than visits to the site or the **COUNTY'S** office as required by Section 1.

2.1.7. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.

2.1.8. Preparing to serve or serving as a consultant or witness for the **COUNTY** in any litigation or other legal proceeding involving the **PROJECT**.

2.1.9. Additional services in connection with the **PROJECT**, including services which are to be furnished by the **COUNTY** in accordance with Article 3, and services not otherwise provided for in this Contract.

SECTION 3 - COUNTY'S RESPONSIBILITY

The **COUNTY** shall do the following in a timely manner so as not to delay the services of the **CONSULTANT**.

- 3.1. Designate in writing a person to act as the **COUNTY'S** representative with respect to the services to be rendered under this Contract. Such person shall have complete authority to transmit instructions, receive information, interpret and define the **COUNTY** policies and decisions with respect to the **CONSULTANT'S** services for the **PROJECT**.
- 3.2. Provide all criteria and full information as to the **COUNTY'S** requirements for the **PROJECT**, including study/design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which the **COUNTY** will require to be included in the drawings and specifications.
- 3.3. Assist the **CONSULTANT** by placing at the **CONSULTANT'S** disposal all available information pertinent to the **PROJECT** including previous reports and any other data relative to study/design or construction of the **PROJECT**.
- 3.4. Furnish to the **CONSULTANT** the items listed in Exhibit "A".
- 3.5. Arrange for access to and make all provisions for the **CONSULTANT** to enter upon public and private property as reasonably required for the **CONSULTANT** to perform services under this Contract.
- 3.6. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the **CONSULTANT**, obtain advice of an attorney, insurance counselor and other consultants as the **COUNTY** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the **CONSULTANT**.
- 3.7. Furnish approvals and permits from all governmental authorities having jurisdiction over the **PROJECT** and such approvals and consents from others as may be necessary for completion of the **PROJECT**.
- 3.8. Providing such legal, accounting, independent cost estimating and insurance counseling services as may be required for the **PROJECT**, and such auditing service as **COUNTY** may require to ascertain how or for what purpose any contractor has used the monies paid to him.
- 3.9. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- 3.10. Give prompt written notice to the **CONSULTANT** whenever the **COUNTY** observes or otherwise becomes aware of any development that affects the scope or timing of the **CONSULTANT'S** services, or any defect or non-conformance in the work of any contractor.
- 3.11. Furnish, or direct the **CONSULTANT** to provide, Additional Services as stipulated in paragraph 2.1 of this Contract or other services as required.
- 3.12. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIODS OF SERVICE

4.1. The COUNTY will issue a written "NOTICE TO PROCEED" to the CONSULTANT within sixty (60) days of contract execution by the COUNTY. The CONSULTANT will immediately commence work on the PROJECT and all schedule dates shall be determined from the date of the "NOTICE TO PROCEED". Final completion of all work under this Contract shall be in accordance with the schedule, or as otherwise approved in writing by the COUNTY.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1. **Methods of Payment for Services and Expenses of the CONSULTANT.**

5.1.1. **Basic Services:** The COUNTY will pay the CONSULTANT the lump sum of \$230,936.41 for completion of the Basic Services set forth in Exhibits "A" and "B".

5.1.2. **Additional Services:** To the extent that additional services under Section 2 hereof are specifically authorized in writing by the COUNTY'S representative, the COUNTY will pay for such additional services in accordance with the following:

5.1.2.1. Actual Salary costs times a factor of {INSERT} for services rendered by principals and employees assigned to the PROJECT plus all reimbursable expenses.

5.1.2.2. For services rendered by the CONSULTANT'S principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding in accordance with Paragraph 2.1.8. at the rate of \$800.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in Paragraph 5.1.2.1).

5.1.3. **Reimbursable Expenses:** The COUNTY will pay the CONSULTANT the actual costs of all reimbursable expenses incurred in the provision of these services when authorized in writing by the COUNTY. These expenses will not exceed \$77,842.50 without additional authorization from the COUNTY.

5.1.4 **Optional Services:** The COUNTY will pay the CONSULTANT for completion of the Optional Services set forth in Exhibits "A" and "B" when the provision of each service is specifically authorized in writing by the COUNTY. These expenses will not exceed \$24,492.74 without additional authorization from the COUNTY.

5.1.5. The terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in Paragraph 5.4.

5.1.6. Additional services and reimbursable expenses authorizations shall be issued in accordance with Board policy per Resolution Number R-89-633 adopted April 4, 1989.

5.2. **Payments**

5.2.1. Progress payments to the CONSULTANT shall be due and payable monthly in proportion to the percentage of engineering services approved and accepted by the COUNTY based on said lump sum fee until 90% of the project is completed. There will be no additional payments for Basic Services until all services are completed and accepted by the COUNTY (including permits).

5.2.2. Final payment shall be due and payable to the CONSULTANT upon satisfactory completion of the services described in this Contract and approval and acceptance of the plans by the COUNTY.

5.3. **Other Provisions Concerning Payments**

5.3.1. If this Contract is terminated prior to its completion other than due to default on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for Basic Services called for under Section 1 an amount equal to the percentage complete at the time of termination, times the lump sum fee stated in Section 5. Further, the **CONSULTANT** shall be paid for the completed portion of additional services authorized under Section 2, in accordance with Paragraph 5.1.2.

5.3.2. Records of the **CONSULTANT'S** Salary Costs pertinent to the **CONSULTANT'S** compensation under this Contract will be kept in accordance with generally accepted accounting practices. Copies will be made available to the **COUNTY** on request prior to final payment for the **CONSULTANT'S** services.

5.4. **Definitions**

5.4.1. The Salary Costs used as a basis for payment shall mean the actual salaries and wages paid to principals and employees engaged on the **PROJECT**. Time spent on this **PROJECT** by stenographers, typists and clerk skills shall not be charged to the **PROJECT** nor shall any fringe benefits such as social security contributions, unemployment, excise and payroll taxes, workman's compensation, etc., be included in the Salary Costs.

5.4.2. Reimbursable Expenses shall mean the actual expenses of soils testing, printing and similar **PROJECT** related items when authorized by the **COUNTY**.

SECTION 6 - CONSTRUCTION COST AND OPINIONS OF COST

6.1. **Opinions of Cost**

Since **CONSULTANT** has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the **CONSULTANT'S** opinions of probable construction cost provided for herein are to be made on the basis of the **CONSULTANT'S** experience and qualifications and represent the **CONSULTANT'S** best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the **CONSULTANT** cannot and does not guarantee that proposals, bids or actual construction costs will not vary from opinions of probable cost prepared by the **CONSULTANT**. If prior to the Bidding or Negotiating Phase, the **COUNTY** wishes greater assurance as to construction costs, the **COUNTY** shall employ an independent cost estimator.

SECTION 7 - GENERAL CONSIDERATION

7.1. **Termination**

This Contract may be canceled by the **CONSULTANT** upon thirty (30) days prior written notice to the **COUNTY** if, through no fault of the **CONSULTANT**, the **COUNTY** fails to cure any material default by the **COUNTY** in its performance of the terms of this Contract. This Contract may also be terminated, in whole or in part, by the **COUNTY**, with or without cause, immediately upon written notice to the **CONSULTANT**. Unless the **CONSULTANT** is in breach of this Contract, the **CONSULTANT** shall be paid for services rendered to the **COUNTY'S** satisfaction through the date of cancellation or termination. In the event of cancellation by the **CONSULTANT** or termination by the **COUNTY**, **CONSULTANT** agrees to waive and make no claim for lost profits or other consequential damages. After receipt of a Termination Notice and except as otherwise directed by the **COUNTY**, the **CONSULTANT** shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

Should a termination for breach later be declared wrongful, said termination shall be considered and treated as a termination without cause.

7.2. **DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

7.2.1. Upon completion and acceptance of the final work, the CONSULTANT shall furnish to the COUNTY the original drawings, field notes and all documents and materials prepared by and for the COUNTY under this Contract. The CONSULTANT may keep a reproducible set of the original drawings and shall keep all other data collected during the provision of the services. The COUNTY may, at its expense, obtain copies of any data which the CONSULTANT has accumulated in the process of providing the services on this project tasks. Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the COUNTY'S sole risk and without liability or legal exposure to the CONSULTANT.

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

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

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

7.3 **Reuse of Documents**

Notwithstanding any breach of this Contract by either party nor the status of payment to the CONSULTANT, nor the COUNTY'S exercise of its rights of termination, it is hereby agreed between the parties that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books, manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to this Project which have been created as a part of the CONSULTANT'S services, or authorized by the COUNTY as a reimbursable expense, whether generated directly by the CONSULTANT, or by or in conjunction or consultation with any other party whether or not a party to this Contract, whether or not in privity of contract with the COUNTY or CONSULTANT, and wherever located shall be the property of the COUNTY.

7.4. **Insurance**

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

7.4.1 **Commercial General Liability**

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

7.4.2. **Business Automobile Liability**

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

7.4.3. **Worker's Compensation Insurance & Employers Liability**

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

7.4.4. **Professional Liability**

CONSULTANT shall maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$40,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONSULTANT shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, CONSULTANT shall purchase a SERP with a minimum reporting period not less than 3 years. CONSULTANT shall provide this coverage on a primary basis.

7.4.5. **Additional Insured**

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

7.4.6. **Waiver of Subrogation**

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

7.4.7. **Certificate(s) of Insurance**

Prior to execution of this Contract, **CONSULTANT** shall deliver to the **COUNTY** a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. In addition, **CONSULTANT** agrees to notify **COUNTY** of any cancellation, non-renewal or material change taking place during the life of this Contract. The certificate of insurance shall be issued to

Palm Beach County
c/o Department of Engineering & Public Works
2300 N. Jog Road, 3rd Floor
West Palm Beach, FL 33411-2745

7.4.8 **Umbrella or Excess Liability**

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

7.4.9 **Right to Review**

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

7.5. **Indemnification**

CONSULTANT shall indemnify and hold harmless the **COUNTY**, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the **CONSULTANT** and other persons employed or utilized by the **CONSULTANT** in the performance of the contract.

7.6. **Controlling Law and Venue**

This Contract is to be governed by the laws of the State of Florida. The parties agree that venue for any action which in any way arises out of this Contract shall only be in a state court of competent jurisdiction located in Palm Beach County, Florida.

7.7. **Successors and Assigns**

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

7.7.2. Neither the **COUNTY** nor the **CONSULTANT** shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Contract without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract. Nothing contained in this paragraph shall prevent the **CONSULTANT** from employing such independent professional associates and consultants as the **CONSULTANT** may deem appropriate to assist in the performance of services hereunder.

7.7.3. Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the **COUNTY** and the **CONSULTANT**, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the **COUNTY** and the **CONSULTANT** and not for the benefit of any other party.

7.8 **Subcontracting**

The **COUNTY** reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The **CONSULTANT** is encouraged to seek small business enterprises for participation in subcontracting opportunities. If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the **CONSULTANT** shall promptly do so, subject to acceptance of the new subcontractor by the **COUNTY**.

A 15 % DBE goal was established for this **PROJECT**. **CONSULTANT** affirms that it proposed and agrees to the DBE participation level set forth in Exhibits 1 and 2 to Exhibit E of the Contract.

The **CONSULTANT** has provided Exhibit "D" (Participation for SBE Consultants) attached hereto indicating the specific participation.

The **CONSULTANT** understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the contract goal.

The **CONSULTANT** understands that it is the responsibility of the County Department letting the contract and the SBE Office to monitor compliance with the SBE Ordinance requirements. In that regard, the **CONSULTANT** agrees to furnish progress payment reports, with each billing, to both parties on the progress of the SBE participation for this Contract.

The **CONSULTANT** further agrees to provide the SBE Office with a copy of the **CONSULTANT'S** contract with the SBE subcontractor or any other related documentation upon request.

The **CONSULTANT** understands that he/she is prohibited from making any contracts with the SBE in which the SBE promises not to provide subconsultant quotations to other bidders or potential bidders.

The **CONSULTANT** agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the **COUNTY** to inspect such records.

The **CONSULTANT** shall certify in writing that all subcontractors, subconsultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the **CONSULTANT** prior to receipt of any further progress payments. During the term of the contract and upon completion of the contract, the **COUNTY** may request documentation to certify payment to subcontractors, subconsultants or suppliers. This provision in no way creates any contractual relationship between any subcontractor, subconsultant, or supplier and the

The **CONSULTANT** agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the **COUNTY** to inspect such records.

The **CONSULTANT** shall certify in writing that all subcontractors, subconsultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the **CONSULTANT** prior to receipt of any further progress payments. During the term of the contract and upon completion of the contract, the **COUNTY** may request documentation to certify payment to subcontractors, subconsultants or suppliers. This provision in no way creates any contractual relationship between any subcontractor, subconsultant, or supplier and the **COUNTY** or any liability on the **COUNTY** for the **CONSULTANT'S** failure to make timely payment to the subcontractor, subconsultant or supplier.

7.9. **Personnel**

The **CONSULTANT** represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract.

Such personnel shall not be employees of or have any contractual relationship with the **COUNTY**. All of the services required herein shall be performed by the **CONSULTANT** or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The **CONSULTANT** warrants that all services shall be performed by competent personnel in accordance with all applicable national, federal, state, and local professional and technical standards.

7.10. **Availability of Funds**

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

7.11. **Conflict of Interest**

The **CONSULTANT** represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The **CONSULTANT** further represents that no person having any interest shall be employed for said performance of services.

The **CONSULTANT** shall promptly notify the **COUNTY'S** representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the **CONSULTANT'S** judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the **CONSULTANT** may undertake and request an opinion of the **COUNTY** as to whether the association, interest or circumstance would, in the opinion of the **COUNTY**, constitute a conflict of interest if entered into by the **CONSULTANT**. The **COUNTY** agrees to notify the **CONSULTANT** of its opinion by certified mail within thirty (30) days of receipt of notification by the **CONSULTANT**. If, in the opinion of the **COUNTY**, the prospective business association, interest or circumstance would not constitute a conflict of interest by the **CONSULTANT**, the **COUNTY** shall so state in the notification and the **CONSULTANT** shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the **COUNTY** by the **CONSULTANT** under the terms of this Contract.

7.12. **Independent Contractor Relationship**

The **CONSULTANT** and subconsultants are, and shall be, in the performance of all work services and activities under this Contract, Independent Contractors, and not employees, agents, or servants of the **COUNTY**. The **CONSULTANT** does not have the power or authority to bind the **COUNTY** in any promise, agreement or representation other than specifically provided for in this Contract. The **CONSULTANT** shall be responsible to the **COUNTY** for all the work or services performed by the **CONSULTANT** or any person or firm engaged as a subcontractor to perform work in fulfillment of this Contract.

7.13. **Access and Audits**

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

7.14 **Severability**

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

7.15 **Entirety of Contractual Agreement**

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

During the term of this Contract, the **COUNTY** may require professional services that are the same or similar to those described in this Contract. The **COUNTY** may, at its sole discretion, obtain said services in accordance with the State of Florida Consultants Competitive Negotiation Act. If the **COUNTY** so elects, it is mutually understood that the relationship between the **CONSULTANT** and the **COUNTY** under this Contract shall be considered as neither barring the **CONSULTANT** from, nor granting special consideration to the **CONSULTANT**, in participating in the selection process for a consultant to provide such additional services.

7.16 **Office of the Inspector General**

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

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

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

8.1 Federal & State Tax

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

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

8.2. The following Exhibits are attached to and made a part of this Contract.

8.2.1. Exhibit A: Scope of Services

8.2.2. Exhibit B: Fee Summary

8.2.3. Exhibit C: Truth in Negotiation, Prohibition Against Contingent Fees & Public Entity Crimes Statements, Conflict of Interest Disclosure Form, Disclosure of Ownership Interests Form (if applicable).

8.2.4. Exhibit D: Participation for SBE Consultants.

8.2.5. Exhibit E: Federal Certifications and Representations.

8.3. This Contract (consisting of pages 1 to 15, inclusive), together with the Exhibits and Schedules identified above constitute the entire agreement between the COUNTY and the CONSULTANT and supersedes all prior written or oral understandings. This Contract and said Exhibits may only be amended, supplemented, modified or canceled by a duly executed written instrument.

SECTION 9 - CRIMINAL HISTORY RECORDS CHECK

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

SECTION 10 - REGULATIONS; LICENSING REQUIREMENTS

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

SECTION 11 - ARREARS

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

SECTION 12 - NONDISCRIMINATION

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

SECTION 13 - AUTHORITY TO PRACTICE

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

SECTION 14 - TRUTH-IN-NEGOTIATION CERTIFICATE

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

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this section within three (3) years following final payment.

SECTION 15 - REMEDIES

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

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

SECTION 16 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

SECTION 17 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the

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

SECTION 18 - PUBLIC ENTITY CRIMES

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

SECTION 19 - MODIFICATIONS OF WORK

The **COUNTY** reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the **CONSULTANT** of the **COUNTY'S** notification of a contemplated change, the **CONSULTANT** shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the **COUNTY** of any estimated change in the completion date, and (3) advise the **COUNTY** if the contemplated change shall affect the **CONSULTANT'S** ability to meet the completion dates or schedules of this Contract.

If the **COUNTY** so instructs in writing, the **CONSULTANT** shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the **COUNTY'S** decision to proceed with the change.

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

SECTION 20 - SCRUTINIZED COMPANIES (when contract value is greater than \$1 million)

As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the **CONSULTANT** certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473.

If the **COUNTY** determines, using credible information available to the public, that a false certification has been submitted by **CONSULTANT**, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135.

IN WITNESS WHEREOF, the parties have made and executed this Contract as of the day and year first above written.

OWNER:
Palm Beach County, a Political Subdivision
of the State of Florida, by and through its
Board of County Commissioners:

CONSULTANT:
Last Devenport, Inc.

BY: _____
Priscilla A. Taylor, Mayor

BY: _____
Ronald W. Last, P.E., President

S E A L

C O R P O R A T E S E A L

ATTEST:
Sharon R. Bock, Clerk & Comptroller
Circuit Court

ATTEST WITNESS:

BY: _____
(Deputy Clerk)

BY: _____
(Print Name)

(Signature)

APPROVED AS TO TERMS
AND CONDITIONS:

BY: _____
(Print Name)

BY: _____

(Signature)

APPROVED AS TO FORM &
LEGAL SUFFICIENCY:

BY: _____
Assistant County Attorney

LDi Last Devenport, Inc.
PROFESSIONAL CONSULTING SERVICES

Scope & Fee OK.
DJY

November 5, 2013
Rev. May 6, 2014

David L. Young, P.E.
Palm Beach County Engineering Department
Roadway Production Division
2300 North Jog Road
West Palm Beach, FL 33411

RE: PALM TRAN BUS STOP IMPROVEMENT PROGRAM
PBC Proj No. 2013603
LDi PROJECT NO. 13-020

Dear Mr. Young:

Please accept the attached proposal including the scope of services and the fees for the Palm Tran Bus Stop Improvement Program. It is our understanding the project will split the work evenly between the two consultants, resulting in a total of 129 bus stop locations for LDi.

The attached proposal is for the first 75 locations in order to stay within the present budget, as outlined by Palm Tran at our previous meeting. The 75 locations will be split into 5 groups of 15 each for production at a time. Upon completion of the first 15 bus stop location designs and permitting, an additional 15 locations will be assigned. We have attached a schedule for the design and permitting of the first 15 bus stop locations.

Optional services are included should a bus stop be required to be relocated. Also, optional services are included for construction observation, as-built surveying and certification of the improvement necessary for the of the required Land Development Division Right-of-Way permit.

Should you have any questions or require any additional information, I can be reached at (561) 615-6567.

Sincerely,

Last Devenport, Inc.


Ronald W. Last, P.E.

Palm Tran Bus Stop Improvement Program

PBC Project No. 2013603

LDi Proj. No. 13-020

SCOPE OF SERVICES

A. General

Last Devenport, Inc. proposes to provide professional engineering services required in connection with the proposed Palm Tran bus stop improvement program for the CR NA2 bus stops on county jurisdictional roadways. The scope of service will include 75 of the 257 bus stop locations not in conformance, as specified by Palm Tran.

Plans will be prepared in accordance with the latest standards of Palm Beach County as described in the Thoroughfare Roadway Design Procedures dated February 2006 as amended for this assignment, and the Florida Department of Transportation Accessing Transit Design Handbook 2013, edition and FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, 2007 (Florida Greenbook.) All plans will be on 11"x17" paper. We shall meet all requirements of the Federal Certifications and Representations, as required by the Request for Qualifications dated January 24, 2013.

Last Devenport, Inc. will provide design and permitting services for a Right-of-Way construction permit from the Palm Beach County Engineering Department - Land Development Division.

Last Devenport, Inc will provide the following basic and optional services using Brown and Phillips, Inc. for surveying services subject to approval by Palm Beach County:

A. Basic Services

1. Field Reconnaissance

Site visit for field review of existing conditions at all specified bus stop locations. Identify specific issues of concern and coordinate with surveyor for specific requirements at each area. Prepare a report of findings for review by Palm Tran and Palm Beach County Engineering Department.

2. Field Survey

See attached scope and fees from Brown & Philips, Inc.

3. Plan Preparation

Prepare plans to improve the existing bus stop location to be in conformance with ADA standards. Plans shall include review of minimum requirements and for conformance with the Florida Department of Transportation Accessing Transit Handbook 2013, edition. Plans shall include a plan view with sufficient elevations and detail to ensure compliance with the applicable standards. Plans shall include details, notes and specifications sufficient for the construction of the proposed improvements. A Quantity Estimate and an Engineer's Opinion of Probable Cost will be included for each location.

4. Permitting (Palm Beach County Land Development Division for Right-of-Way Construction)

Prepare permit applications, plans and any additional permit package information and submit to Palm Beach County Engineering Department – Land Development Division through the e-permitting process for a Right-of-Way construction permit. Coordinate review through the issuance of the permit. One Right-of-Way permit to be issued for each assigned task of 15 bus stop locations.

5. Meetings

As necessary with Palm Beach County Engineering Department and Palm Tran.

6. Final Submittal

Revise plans per comments from Palm Beach County Engineering Department and Palm Tran. Submit final plans in electronic format and three (3) signed and sealed copies.

B. Optional Services

Last Devenport, Inc. will provide the specified Optional Services, if directed by Palm Beach County Engineering Department.

1. Plan Preparation for relocation of existing bus stop location

In locations specified in A.1 above, where bus stop relocation is warranted, LDi will review the existing location and prepare plans for the relocation of the bus stop to a new location in compliance with the applicable standards. The proposed fees are in addition to the fees for a basic stop.

2. Construction and certification phase

Pursuant to the Right-of-Way permit issued by the Palm Beach County Engineering Department - Land Development Division, LDi will perform the required construction related observations required to certify the permit. LDi will prepare and submit the required final engineering certification to the Palm Beach County Engineering Department - Land Development Division for permit closeout.

3. Surveying Services

See attached scope and fees from Brown and Phillips, Inc. for the additional topography required for the relocated bus stop locations. Optional services are also provided for the as-built of the bus stop location for the permit closeout Record Drawings.

ESTIMATE OF WORK EFFORT AND COST - PRIME CONSULTANT						
Name of Project	Palm Tran Bus Stop Improvements			Consultant Name	LDi	
County	Palm Beach			Consultant No.	13-020	
PBC Proj No.	2013603			Date	8/7/2013	
Staff Classification	Project Manager	Project Engineer	CADD Technician	SH By Activity	Salary Cost By Activity	Average Rate Per Task
	\$46.20	\$34.65	\$23.50			
1. Field Reconnaissance	1	1		2	\$80.85	\$ 40.43
2. Preliminary Findings Report	1	2		3	\$115.50	\$ 38.50
3. Plan Preparation	2	4	8	14	\$419.00	\$ 29.93
4. Address review comments	1	1	4	6	\$174.85	\$ 29.14
5. Land Development Permitting		1		1	\$34.65	\$ 34.65
6. Meetings	1			1	\$46.20	\$ 46.20
7. Final Submittal	1	2	2	5	\$162.50	\$ 32.50
Staff Hours	7	11	14	32		
Staff Cost	\$323.40	\$381.15	\$329.00		\$1,033.55	\$ 41.89
Total Stops				75	\$ 77,516.25	

SALARY RELATED COSTS:		\$77,516.25
OVERHEAD:	166.00%	\$128,676.98
SUBTOTAL:		\$206,193.23
OPERATING MARGIN:	12.00%	\$24,743.19
TOTAL LAST DEVENPORT FEE		\$230,936.41

BASIC SERVICES

LDi	\$230,936.41
Total Basic Services	\$230,936.41

Optional Services

LDi	\$13,787.74
Brown & Phillips	\$10,705.00
Total Optional Services	\$24,492.74

Reimbursables

LDi	\$180.00
Brown & Phillips	\$77,662.50
Total Reimbursable Services	\$77,842.50

GRAND TOTAL

\$333,271.65

OPTIONAL SERVICE - DESIGN AND POST DESIGN SERVICES						
Name of Project	Palm Tran Bus Stop Improvement			Consultant Name	LDi	
County	Palm Beach			Consultant No.	13-020	
PBC Proj No.	2013603			Date	8/7/2013	
Staff Classification	Sr Project Manager	Project Engineer	CADD Technician	SH By Activity	Salary Cost By Activity	Average Rate Per Task
	\$46.20	\$34.65	\$23.50			
1. Relocation of Existing Bus Stop	1	2	1	4	\$139.00	\$ 34.75
2. Construction Coordination & Permit Closeout	1	4	0	5	\$184.80	\$ 36.96
Total Staff Hours	2	6	1	9		
Total Staff Cost	\$92.40	\$207.90	\$23.50		\$184.80	\$ 35.86
Total Stops				20	\$ 4,628.00	

SALARY RELATED COSTS:		\$4,628.00
OVERHEAD:	166.00%	\$7,682.48
SUBTOTAL:		\$12,310.48
OPERATING MARGIN:	12.00%	\$1,477.26
TOTAL LAST DEVENPORT FEE		\$13,787.74

OPTIONAL SERVICES

LDi		\$13,787.74
Brown & Phillips, Inc.	\$	10,705.00
Total Optional Services	\$	24,492.74

Notes:

- Item No.1 is anticipated at 20 stop locations.
- Item No.2 is anticipated at 10 locations for initial construction.



May 7, 2014

Mr. Ronald Last, P.E.
Last Devenport, Inc.
1860 Old Okeechobee Road
Suite 504
West Palm Beach, FL 33409

Re: Palm Tran Bus Stop Improvements Topographic Surveys

Dear Mr. Last:

Thank you for the opportunity to provide you with the following services for the subject site. This proposal is based on documentation and information provided by your office. The scope of services is as follows:

BASIC SCOPE OF SERVICES

I. HORIZONTAL PROJECT NETWORK CONTROL

A traverse will be run through the site and all found monumentation will be tied in. The survey will be oriented to State Plane Coordinates and the right-of-way will be shown at each location per Palm Beach County Property Appraiser's Public Access (PAPA) and County GIS Shape file. This will be the extent of the right-of-way research being done at this time. Right-of-way recording references will be shown if known. We will obtain the sectional and geodetic control information from the Palm Beach County Survey Department. We will show latitude/longitude to six (6) decimal places at each bus stop.

II. VERTICAL PROJECT NETWORK CONTROL

Benchmarks will be established onsite using GPS RTK derived elevations accurate to $\pm 0.1'$. At least two benchmarks will be set onsite.

III. TOPOGRAPHY AND CROSS SECTIONS

We will perform the following topographic services at each Bus Stop Landing Pad:

1. Seven (7) cross sections per Bus Stop Landing Pad as shown on Attachment 'B'.
2. Locate all above ground features including, but not limited to power poles, utility/light poles, all sign posts including bus stop sign posts, bus shelters and pads including roof overhang (horizontal and vertical clearances), benches, bicycle racks, trash receptacles, newsstands, telephone booth, fire hydrants, backflow preventers, check, valves, guardrails, gates, fences, walls, electric and cable boxes, etc.; all within 25' upstream and downstream of bus stops/pads (edge of pavement to R/W).

1860 Old Okeechobee Road • Suite 509 • West Palm Beach, Florida 33409
(561) 615-3988 • Fax (561) 615-3991

3. Locate all trees and shrubs (width and height of shrubs), all landscape features including irrigation system and sprinkler heads, etc.; all within 25' upstream and downstream of bus stops/pads (edge of pavement to R/W).
4. Locate all visible or flagged (by others) underground utilities including, but not limited to water/sewer valves, gas valves, manholes on sidewalk, drainage inlets and pipes, mitered end sections, etc.; all within 25' upstream and downstream of bus stops/pads (edge of pavement to R/W). No asbuilts are proposed.
5. Locate all driveways and drop curbs within 50' upstream and downstream of bus stops/pads.
6. Locate all side streets curb returns and ramps within 50' upstream and downstream of bus stops/pads.
7. Locate all curb returns and ramps at major intersection within 100' upstream and downstream of bus stops/pads.
8. Locate all railroad crossings within 500' upstream and downstream of bus stops/pads.
9. The location of the 75 different Bus Stop Landings are to be determined at a later date.

IV. SCHEDULE

The bus stops will be surveyed in groups of fifteen (15). The proposed completion schedule for fifteen (15) bus stops is eight (8) weeks from Notice to Proceed.

OPTIONAL SCOPE OF SERVICES

V. ADDITIONAL TOPOGRAPHY FOR RELOCATED BUS STOPS (OPTIONAL)

In the event that a bus stop landing pad has to be relocated, we will provide two (2) cross sections at the new location for a fee of \$275.00 per site for up to twenty (20) locations for a total fee of up to \$5,500.00.

VI. POST DESIGN SERVICES - ASBUILT PLAN FOR BUS PADS (OPTIONAL)

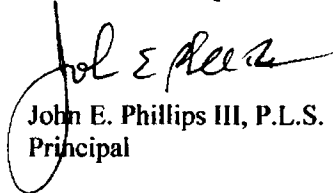
As an optional service, we will obtain asbuilt data for ten (10) bus stop pads. We will produce a drawing which will show the constructed improvements as an overlay on the proposed positions, using the digital plans to be supplied by you. We will provide an asbuilt plan for a fee of \$520.50 per site for up to ten (10) locations for a total fee of up to \$5,205.00.

Last
May 7, 2014
Page 3

VII. CLOSURE

A drawing will be produced which will show all the features located. We propose to provide Last Devenport, Inc. with six (6) hard copies and an AutoCAD file in the version requested. Any additional work will be done on an hourly basis as approved by you. We will perform the basic scope of services for a **lump sum fee of \$77,662.50** (75 Bus Stop Landing Pads at different locations for \$1,035.50 each, see Attachment 'A' for an hourly breakdown) **plus \$10,705.00 for optional services** (20 relocated sites at \$275.00 each and 10 asbuilt plans for bus pads at \$520.50 each) for a **total fee of \$88,367.50**. Please do not hesitate to call me with any questions you might have regarding this proposal. We look forward to working with you on this project.

Brown & Phillips, Inc.



John E. Phillips III, P.L.S.
Principal

Attachment

JEP/mb

This Proposal accepted this ____ day of _____, 2014

By: _____
Last Devenport, Inc.

Print Name: _____

Title: _____



BROWN & PHILLIPS, Inc.
PROFESSIONAL SURVEYING SERVICES

ATTACHMENT 'A'

Palm Tran Bus Stop Improvements - Average Site

Type of Survey: Topographic

Size:

Date: May 7, 2014

TASK	2 MAN CREW	CADD TECH	SURVEY TECH	PLS	COMMENTS
Meetings and Coordination					
Horizontal Project Network Control	2		2	1	Set traverse points and find control
Tie In Improvements	1				Locate above ground features
Cross Sections	1				10' & 5' cross sections & spot elevation shots
Drawing		4	1	0.5	Prepare topographic survey
Total Hours:	4	4	3	1.5	
Rate/Hour	\$98.00	\$66.00	\$70.00	\$113.00	
Subtotal:	\$392.00	\$264.00	\$210.00	\$169.50	
Total Labor Cost:					\$1,035.50

Other Direct Costs:	quantity	unit	cost/unit	total
Legal Description & Sketch		each	\$500.00	\$0.00
Prints		sheet	\$1.50	\$0.00
Shipping		cost x markup	1.20	\$0.00
Total Other Direct Costs:				\$0.00

TOTAL PRICE PER BUS STOP LANDING PAD: \$1,035.50



BROWN & PHILLIPS, Inc.
PROFESSIONAL SURVEYING SERVICES

ATTACHMENT 'A'

Palm Tran Bus Stop Improvements - Post Design Services

Type of Survey: Bus Pad Asbuilt

Size:

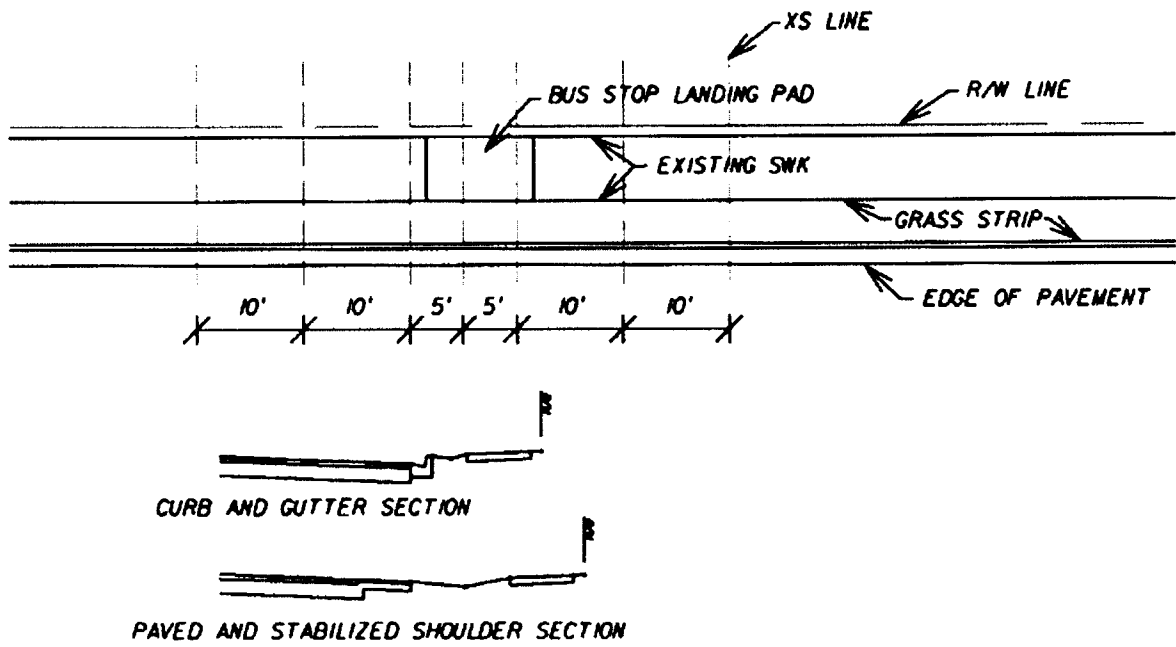
Date: May 7, 2014

TASK	2 MAN CREW	CADD TECH	SURVEY TECH	PLS	COMMENTS
Meetings and Coordination					
Horizontal Project Network Control					Set traverse points and find control
Obtain asbuilt data	2				
Drawing		3	1	0.5	Prepare asbuilt survey
Total Hours:	2	3	1	0.5	
Rate/Hour	\$98.00	\$66.00	\$70.00	\$113.00	
Subtotal:	\$196.00	\$198.00	\$70.00	\$56.50	
Total Labor Cost:					\$520.50

<u>Other Direct Costs:</u>	<u>quantity</u>	<u>unit</u>	<u>cost/unit</u>	<u>total</u>
Legal Description & Sketch		each	\$500.00	\$0.00
Prints		sheet	\$1.50	\$0.00
Shipping		cost x markup	1.20	\$0.00
Total Other Direct Costs:				\$0.00

TOTAL PRICE PER BUS STOP LANDING PAD: \$520.50

Typical Bus Stop Landing Pad Cross Section Layout





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 (18), dated October 1, 2011. 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) regulations at 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, Rev. April 14, 2009, as it may be amended from time to time, and other laws and regulations governing procurement activities for Palm Beach County's programs and projects.

Master Grant Agreement FTA MA (18) dated October 1, 2011: <http://www.fta.dot.gov/documents/18-Master.pdf>
Circular 4220.1F, dated November 1, 2008, Rev. April 14, 2009: 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. The BPPM is available at: http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html The Code of Federal Regulations (CFR) website is 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, third party contract, or subcontract, in a manner that presents a real or apparent personal or 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. No Palm Beach County employee, officer, or agent shall solicit or accept gratuities, favors, or anything of monetary value from any present or potential consultant, subconsultant, 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 consultant agrees, absent express written consent of the Federal Government, that the Federal Government is not a party to the contract and shall not be subject to any obligations or liabilities to any third party, or any subrecipient, or any other party pertaining to any matter resulting from this contract or purchase order. The consultant 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 consultant acknowledges that 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. Upon execution of the underlying contract, the consultant certifies and affirms the truthfulness and accuracy of any statement it has made, causes to be made, makes, or may make pertaining to the contract or the underlying FTA assisted project for which this contract or purchases order is being performed. In addition to other penalties that may apply, the consultant further acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the consultant to the extent the Federal Government may deem appropriate. The consultant also acknowledges that if it makes or causes to be made, 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 consultant, to the extent the Federal Government deems appropriate. The consultant agrees to include the above stated provisions in each subcontract financed in whole or in part with federal assistance provided by the FTA. Consultant shall not modify the above stated provisions except to identify the subconsultant who will be subject to the provision,
- 5. Federal Changes.** The consultant 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 Master Grant Agreement (FTA

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

PALM TRAN

MA(18) dated October 1, 2011) between Palm Beach County and the FTA, as they may be promulgated or amended from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract. The consultant agrees to include the above stated provision in each subcontract financed in whole or in part with federal assistance provided by the FTA.

6. Incorporation of Federal Transit Administration (FTA) Terms. This contract, agreement or purchase order shall be deemed to include and does hereby incorporate by reference all standard terms and conditions required by the U.S. DOT and FTA, regardless of whether expressly set forth in this attachment or in the contract and include, but are not limited to, all of the duties, obligations, terms and conditions applicable to the Project or contract as described in FTA Circular 4220.1F, dated November 1, 2008, Rev. April 14, 2009, and the FTA's Master Grant Agreement with Palm Beach County (FTA MA(18) dated October 1, 2011), as each may be amended from time to time. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with any other provisions contained in the contract, agreement or purchase order. The consultant shall not perform any act, fail to perform any act, or refuse to comply with any requirement which would cause the County to be in violation of its Agreement with FTA, or County to be in violation of any FTA terms and conditions applicable to this Project of any grant the County may have with FTA. The consultant agrees to include the above stated provision in each subcontract financed in whole or in part with federal assistance provided by the FTA.

7. Access to Records.

- a. The consultant 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 consultant which are directly pertinent to this contract for the purposes of making audits, inspections, examinations, excerpts, transcriptions, and reports. Consultant further agrees to provide Palm Beach County, the FTA Administration or their authorized representatives or agents access to consultant's records and construction sites pertaining to a major capital project as defined at 49 USC 5302(a)1 which is receiving federal financial assistance through any program described at 49 USC 5307, 5309 or 5311. The consultant shall require its subconsultants to provide access to their books, documents, papers and records to the representatives identified above for the purposes described herein.
- b. The consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as may be reasonably requested.
- c. Consultant also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or authorized representative (including a Project Management Oversight (PMO contractor) access to consultant'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.
- d. The consultant further agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than three (3) 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 consultant 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. See also 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, as amended, 42 USC §12132, and Federal transit law at 49 USC §5332, as each may be amended from time to time, the consultant 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 consultant agrees to comply with all applicable federal implementing regulations and any 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 consultant 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 implement 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 consultant 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 apprenticeship. In addition, the consultant 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 consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, consultant agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, the consultant 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 consultant agrees to comply with any implementing requirements FTA may issue.

c. The consultant 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 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs and Palm Beach County Resolution No. 99-1617 setting forth Palm Beach County's Disadvantaged Business Enterprise Program.
- b. The consultant, subrecipient, or subconsultant agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the consultant to carry out these requirements is a material breach of contract, which may result in the termination of this consultant or such other remedy as with the concurrence of Palm Beach County, deems appropriate. Each subcontract that the consultant enters into must include the assurance of non-discrimination set forth in this paragraph.
- 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. This contract or purchase order is being funded, in whole or in part with Federal financial assistance. Accordingly, it is the policy of Palm Beach County, to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, are afforded the maximum opportunity to receive and participate as subconsultants and suppliers on all contracts funded 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.



FEDERAL CERTIFICATIONS AND REPRESENTATIONS

e. DBE Goal:

Palm Beach County fully supports the federal government's Disadvantaged Business Enterprises Program. **The DBE goal established for this project is 15 %.**

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 consultants are obtained. 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 Consultant must correctly submit with the proposal a completed Schedule of DBE Participation Form, executed Letters of Intent, and the DBE Unavailability Report with good faith documentation when applicable with the proposal. Palm Beach County will review all forms to determine their responsiveness:

1. Letter of Intent to Utilize DBE Subconsultants – **Exhibit 1. TO BE SUBMITTED WITH PROPOSAL**
2. Schedule of DBE Participation – **Exhibit 2. TO BE SUBMITTED WITH PROPOSAL**
3. DBE Unavailability Report, **TO BE SUBMITTED WITH PROPOSAL *only required if goals were not met* – Exhibit 3.**
4. DBE Utilization Report – **Exhibit 4. TO BE SUBMITTED WITH PAY APPLICATIONS**
5. Final DBE Utilization Report – **Exhibit 5. TO BE SUBMITTED WITH FINAL PAY APPLICATION**

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

For the purposes of goal achievement, the County requires the successful Consultant 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 consultants.

The directory mentioned above is available for use by VENDORS online 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:

CONSULTANT must list the proposed subconsultants 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:

A Letter of Intent must be executed by the CONSULTANT and countersigned by all DBE subconsultants 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 subconsultant listed on the Schedule of DBE Participation must be certified as DBE prior to proposal opening in order to be eligible for award.

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

DBE Unavailability Report:

CONSULTANT 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 CONSULTANT 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-proposal meeting concerning DBE participation.
- Timely advertisement in general circulation media, trade association publications, and minority-focus media.
- Timely notification of minority business or consultant groups and associations of solicitation for specific subconsultants.
- Proof of written solicitations to DBE firms.



FEDERAL CERTIFICATIONS AND REPRESENTATIONS

- 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 CONSULTANT or COUNTY.
 - A report submitted by the CONSULTANT to County, prior to award explaining the Consultant'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 submit 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.
 - As to each DBE that submitted on a Subcontract but declared "unqualified" by the CONSULTANT, a detailed statement of the reasons for the Consultant's conclusion.
 - As to each DBE invited to submit, but the CONSULTANT considers to be unavailable because of a lack of response, an Unavailability of DBE Certificate signed by the CONSULTANT.
- f. CONSULTANT 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. CONSULTANT shall pay its subconsultants and suppliers within thirty (30) days following receipt of payment from the COUNTY, for such subcontracted work or supplies. CONSULTANT agrees that if it withholds an amount as retainage from its subconsultants 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 subconsultant has satisfactorily completed its work, whichever shall first occur.
- h. CONSULTANT agrees that nonpayment of a subconsultant 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 CONSULTANT demonstrates timely payments of sums due to such subconsultants or suppliers. CONSULTANT 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 CONSULTANT demonstrates that failure to pay results from a bona fide dispute with its subconsultant or supplier.
- i. CONSULTANT agrees to submit a monthly report to County's contract representative (with a copy to Palm Tran's DBE Liaison), on DBE participation, which should contain a record of payments made to its DBE subconsultants during the current reporting period. CONSULTANT shall utilize the form attached as **Exhibit 4 - DBE Utilization Report**. Reports should be submitted by the 10th day of each month.
- j. CONSULTANT agrees to submit a Final DBE Participation Report containing the total amount paid to its DBE subconsultants to County. This report must be submitted with the CONSULTANT's request for final payment and release of retainage, if applicable. CONSULTANT shall utilize the form attached as **Exhibit 5 - Final DBE Utilization Report**.
- k. CONSULTANT 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 CONSULTANT 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.



FEDERAL CERTIFICATIONS AND REPRESENTATIONS

- I. CONSULTANT 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 the 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 CONSULTANT 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.

A CONSULTANT whose performance falls short of its original commitments shall be subject to the compliance mechanisms the County had made applicable.

Sanctions for Noncompliance with DBE Program Provisions. Failure of the Consultant 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.

- m. CONSULTANT agrees that it cannot terminate a DBE subconsultant for convenience and then perform the work with its own forces or its affiliate. If a situation arises that a DBE subconsultant needs to be replaced or removed from the team, CONSULTANT must submit a written request to County's contract representative, with a copy to Palm Tran's BDE 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 subconsultants will only be approved on a case-by-case basis provided that reasons cited are properly justified. When a DBE subconsultant is terminated or fails to complete its work, CONSULTANT must make good faith efforts to find another DBE subconsultant to substitute for the original DBE.

10. CONTRACT COMPLIANCE MONITORING

- a. Compliance monitoring is conducted to determine if CONSULTANT and/or subconsultants are complying with the requirements of the DBE Program. Failure of the CONSULTANT to comply with this provision may result in the COUNTY imposing penalties or sanctions pursuant to the provisions of the DBE regulations at 49 CFR Part 26.
- b. Contract compliance will encompass monitoring for contract dollar achievement and DBE consultant utilization. Palm Beach County and Palm Tran staff each shall have the authority to audit and monitor all contracts and contract related documents pertaining to activities under this contract. The requirements of the DBE Program are applicable to the consultant and its subconsultants and suppliers.
- c. Consultant shall be responsible for ensuring that proper documentation with regard to its utilization and payment of DBE subconsultants is maintained at all times and provided to COUNTY as required in section 9 e.

11. Energy Conservation. The consultant 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 consultant 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. In accordance with 49 CFR Part 18 (the Common Grant Rules), the consultant shall maintain a contract administration system that ensures that it and all subconsultants comply with the terms conditions and specifications of their contracts or purchase orders and all applicable Federal, State and local laws, rules, regulations and requirements. In addition, 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



FEDERAL CERTIFICATIONS AND REPRESENTATIONS

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. Palm Beach County may terminate this contract, in whole or in part, at any time by written notice to the consultant when it is in the County's, as the recipient of FTA grant funds that support the Project, best interests. The consultant shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The consultant shall not have a claim for and shall not be paid any lost profits or damages if terminated for cause (default) or convenience. Consultant hereby waives and releases the COUNTY from any claims for damages or lost profits as a result of a termination for default or convenience of the government, and acknowledges and agrees that it shall have no such claims against the County. The consultant shall promptly submit its termination claim to COUNTY. If the consultant has any property in its possession belonging to the COUNTY, the consultant will account for the same, and dispose of it in the manner the COUNTY directs, with the concurrence of the County. If the consultant fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the consultant fails to comply with any other provisions of this contract, the COUNTY may terminate this contract for default. The COUNTY may terminate this contract for default by delivering to the consultant a Notice of Termination specifying the nature of the default. The consultant 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 consultant has possession of COUNTY owned goods, the consultant shall, upon direction of the COUNTY's contract administrator with the consent of the County if any of the goods are owned by or have been paid for by County, protect and preserve the goods until surrendered to COUNTY or its agent. The consultant and COUNTY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved in accordance with the contract or purchase order, applicable law and the Breaches and Disputes Resolution clause set forth below. If, after termination for failure to fulfill contract obligations, it is determined that the consultant 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. 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 consultant is required to verify that neither the consultant or 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 consultant agrees to comply with and assures compliance of each subconsultant and subrecipient at any tier, with 49 CFR 29, Subpart C, while its proposal, offer or bid is pending and throughout the period that any contract arising out of such offer, proposal or bid is in effect. The consultant further agrees to include a provision requiring such compliance in its subcontracts or any lower tier covered transaction it enters into.

15. Seismic Safety. If this purchase order or contract pertains to the construction of new buildings or additions to existing buildings, the consultant 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 by the regulations. The consultant also agrees to ensure that all work performed under this contract or purchase order, including work performed by a subconsultant, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

PALM TRAN BUS STOP IMPROVEMENTS PROGRAM

PBC PROJ. NO. 2013603

ACTIVITY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
NTP																												
SURVEY	█	█	█	█	█																							
PLAN PREPARATION						█	█	█	█	█	█	█	█	█	█													
PBC REVIEW																█	█											
PLAN REVISIONS																			█	█								
PERMITTING																					█	█	█	█	█	█	█	█
FINAL PLAN SUBMITTAL																												█

Note: Schedule to begin upon Notice to Proceed from Palm Beach County Engineering Department - Roadway Production Division and anticipated to last 28 weeks until completion of the first assigned 25 bus stop locations.

Attachment 3