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PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 5, 2006

Consent Regular
 Ordinance Public Hearing

Department: Palm Tran

Submitted By: Palm Tran

Submitted for: Palm Tran

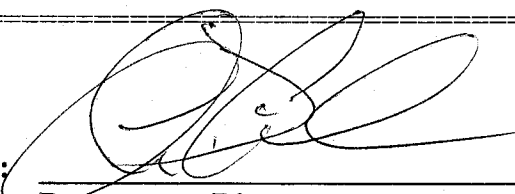
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: (A) an Assignment of Interest from the Palm Beach Metropolitan Planning Organization (MPO) in a \$2.3 Million Joint Participation Agreement (JPA) (No. 23689319401) with State of Florida Department of Transportation (FDOT) for the development of the Intermodal site which approval is conditioned upon County's receipt of the fully executed amendment to the JPA revising the project purpose and description; and, (B) a Budget Amendment of \$2,300,000 in Palm Tran's operating budget to recognize the JPA funds.

Summary: Palm Beach Metropolitan Planning Organization (MPO) applied for and received an FDOT JPA in the amount of \$2,300,000. The JPA is to be used for the Intermodal Facility construction in downtown West Palm Beach. Because Palm Tran is responsible for the property and has been actively working with Palm Beach County Facilities Management on the design of the Intermodal Facility, the MPO feels that it would be more appropriate for the JPA to be administered by Palm Tran. Countywide (DR)

Background and Policy Issues: In 1992, with the assistance of Federal Transit Administration (FTA) Grants, Palm Tran acquired the property on which the intermodal facility is to be built. During this same period of time, the MPO applied to FDOT for funds to plan, design and construct the intermodal facility. Initially the MPO, Tri-Rail and Palm Beach County, had considered transferring the property to Tri-Rail for the construction of the site. It has been determined to be in the best interest of the County that the County retain ownership and develop the property. The assignment of the JPA will provide a significant amount of the funding required to complete this project, the Board's approval of this assignment is conditioned upon County's receipt of the full executed amendment to the JPA revising the project purpose and description. Upon County's receipt of this amendment it shall be attached to and become Exhibit 3 of the assignment. Additional construction funding will be made available through a transfer of Federal funds from the Federal Highway Administration (FHWA) to the FTA. These funds are being made available by transferring Congestion, Mitigation and Air Quality (CMAQ) funds originally awarded to the MPO. Palm Tran will complete an application for these funds as soon as Federal Certifications and Assurances are published for Fiscal Year 2007.

- Attachments:**
1. Assignment of Interest
 2. Budget Amendment

Recommended By: 
Department Director

11-28-06
Date

Approved By: 
Assistant County Administrator

12/4/06
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	200-	200-	200-	200-
Capital Expenditures	2,300,000				
Operating Costs					
External Revenues	2,300,000				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				

Is Item Included In Current Budget? Yes ___ No XX
 Budget Account No.: Fund ___ Dep't. ___ Unit ___ Object ___
 Program ___

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

C. Departmental Fiscal Review:

John Murphy, Finance Mgr.

III. REVIEW COMMENTS

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

Elizabeth Blaser 11/30/06
 OFMB
11-30-06

John J. Jacoby 12/1/06
 Contract Dev. and Control
 11/30/06 This assignment complies with our review requirements.

B. Legal Sufficiency:

[Signature] 12/1/06
 Assistant County Attorney
 The assignment becomes effective upon the County's receipt of Exhibit 3 to the JPA, and amendment revising the Project's purpose & scope.

C. Other Department Review:

 Department Director

**Palm Beach Metropolitan Planning Organization's Assignment of Interest in
Public Transportation Joint Participation Agreement (No. 23689319401)
with State of Florida Department of Transportation
and
Palm Beach County Board of County Commissioners' Acceptance of Assignment
and
State of Florida Department of Transportation's Consent to Assignment**

This Assignment is made and entered into this ___ day of _____, 2006, by and between the Palm Beach Metropolitan Planning Organization, an entity created pursuant to the provisions of Chapters 163 and 339, F.S., (referred to herein as "Assignor"), and the Board of County Commissioners of Palm Beach County, Florida, a political subdivision of the State of Florida (referred to herein as "Assignee"), with the consent of the State of Florida Department of Transportation (referred to herein as "FDOT").

Preliminary Statement:

Whereas, the Assignor entered into that certain Public Transportation Joint Participation Agreement (Project No. 23689319401) with FDOT dated April 19, 2002, a copy of which is attached hereto as "Exhibit 1"; and

Whereas, the Assignor and FDOT have previously agreed to extend the original term of the Public Transportation Joint Participation Agreement to June 30, 2007, a copy of which extension is attached hereto as "Exhibit 2", and have further agreed to amend the Project's purpose and description as described in the Public Transportation Joint Participation Agreement, a copy of which amendment is attached hereto as "Exhibit 3"; and

Whereas, the Assignor desires to assign the Public Transportation Joint Participation Agreement, as extended and amended (collectively referred to herein as the "JPA"), to the Assignee with the understanding that the Assignee will perform the duties and obligations of the Assignor assumed by it under the JPA and this Assignment, that FDOT will consent to the Assignment, and that the Assignee will perform the JPA so as to facilitate the development of an intermodal transfer facility as contemplated by the Assignor and Assignee; and

Now, therefore, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein and other good and valuable consideration, the Assignor does hereby transfer, convey and assign to the Assignee all of its rights, duties, obligations, title and interest in the JPA, subject to the terms and conditions stated herein, and FDOT consents to said assignment as provided herein.

1. The parties agree that the statements set forth above in the Preliminary Statement are true and correct and incorporated into and made a part of this Assignment.

2. In making this Assignment, the Assignor warrants to the Assignee that:

A. There is no known, threatened or pending litigation arising out of Assignor's performance of or failure to perform the JPA.

B. There is no pending or threatened litigation against Assignor which would preclude, interfere with or delay this transfer or assignment.

C. There are no liens, encumbrances, restrictions, problems or impediments to this Assignment known to Assignor.

D. Assignor has not commenced performance of any of its duties or obligations under the JPA, has charged no costs to the Project under the JPA, and has no pending claims for reimbursement or payment for costs incurred pertaining to the Project.

E. The JPA attached hereto as "Exhibit 1," as extended by "Exhibit 2," and amended by "Exhibit 3", represents the entire and complete agreement between the Assignor and FDOT.

F. Assignor's governing board has duly approved the transfer, conveyance and assignment of its interest in the JPA to Assignee and the execution and performance of this Assignment.

G. Neither FDOT nor Assignor is in default under the terms of the JPA.

3. In obtaining Assignor's agreement to assign the JPA and FDOT's consent thereto, the Assignee warrants that:

A. There is no pending or threatened litigation against Assignee which would preclude, interfere with or delay this transfer or assignment.

B. There are no liens, encumbrances, restrictions, problems or impediments to this Assignment known to Assignee.

4. Assignee does hereby assume all rights, duties, obligations, title and interest of the Assignor under the JPA as of the effective date of this Assignment. Assignee assumes and agrees to perform all of the terms, conditions and covenants of the Assignor under the JPA.

5. To the extent permitted by law, Assignee shall and does hereby indemnify, defend and hold harmless the Assignor from and against any and all liabilities, damages, losses, costs and expenses, including attorney fees and costs, suffered, incurred or sustained by Assignor as a result of the Assignee's failure to perform any of Assignor's duties and obligations under the JPA from and after the effective date of this Assignment. Assignee further waives and releases Assignor from all obligations arising under the JPA from the effective date of this Assignment.

6. Assignor and Assignee hereby request that FDOT consent to the assignment of the JPA to Assignee subject to the conditions set forth in this Assignment and FDOT hereby consents to the assignment subject to said conditions. FDOT's consent shall not constitute a waiver of any general prohibition against assignment contained in the JPA as to further assignments.

7. FDOT does hereby release the Assignor from all responsibilities, duties or obligations under the JPA. Neither the Assignee nor the FDOT will be responsible for reimbursement of or payment for any services performed by the Assignor prior to the effective date of this Assignment.

8. This Assignment shall be binding upon and shall inure to the benefit of the parties and to their successors, and shall be construed in accordance with the laws of the State of Florida. Venue over the enforcement of this Assignment shall reside in the 15th Judicial Circuit in and for Palm Beach County.

9. This Agreement does not confer any rights on any other person or entity, except as expressly set forth herein, and it shall not be construed to otherwise impair any rights that FDOT may have under the JPA.

10. This Assignment shall become effective upon its approval by the Assignee and Assignor and FDOT's consent thereto.

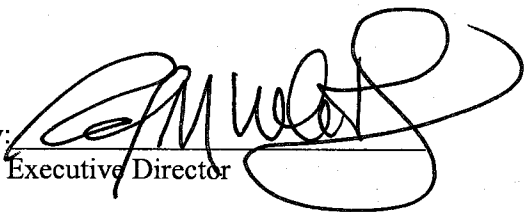
11. If federal funds are obtained for the purposes of this JPA (*i.e.*, the project is "federalized"), Assignee acknowledges that it must comply with all applicable federal requirements and regulations.

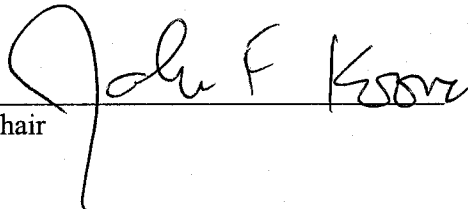
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In Witness Whereof, the Assignor has duly executed this Assignment this ___ day of _____, 2006.

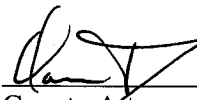
Attest:

Palm Beach Metropolitan Planning Organization
by its Governing Board

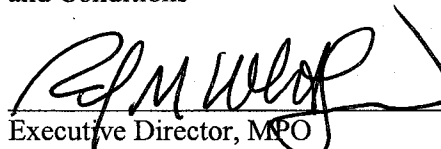
By: 
Executive Director

By: 
Chair

Approved as to Form
and Legal Sufficiency


County Attorney

Approved as to Terms
and Conditions


Executive Director, MPO

State of Florida Department of Transportation's Consent to Assignment

In Witness Whereof, the Florida Department of Transportation by and through its District Secretary, has duly consented to the Palm Beach Metropolitan Planning Organization's Assignment of its Public Transportation Joint Participation Agreement (No. 23689319401), as extended and amended, this ___ day of _____, 2006.

By: _____

Approved: _____

Title: _____
District Secretary

Title: _____
Office of Modal Development

Approved: _____
Legal

Palm Beach County Board of County Commissioners' Acceptance of Assignment

The undersigned, _____, Chairman of the Assignee, does hereby accept, on behalf of the Assignee, the Assignor's rights, title, interest, duties and obligations in that certain JPA identified herein.

Assignee's acceptance of said Assignment is conditioned upon Assignor's representations set forth above, and Assignee agrees to and accepts the conditions upon the Assignment as described above and upon FDOT's consent thereto. Neither the Assignee nor FDOT will be responsible for payment of any services performed by the Assignor prior to the effective date of this Assignment.

In Witness Whereof, the Board of County Commissioners of Palm Beach County, Florida, has duly executed this Acceptance of Assignment this ___ day of _____, 2006.

Attest:

Board of County Commissioners of
Palm Beach County, Florida

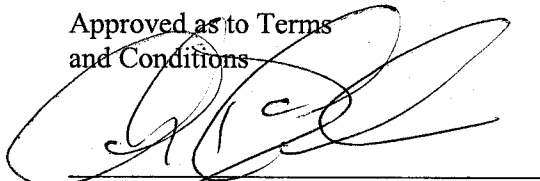
Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

By: _____
~~Chairman~~

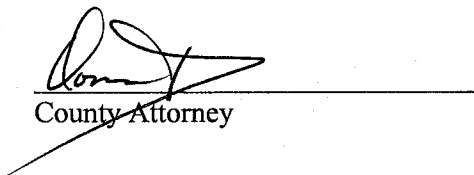
**ADDIE L. GREENE
CHAIRPERSON**

Approved as to Terms
and Conditions



Chuck Cohen, Executive Director
Palm Tran

Approved as to Form
and Legal Sufficiency



County Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
JOINT PARTICIPATION AGREEMENT

FORM 725-030-06
 PUBLIC TRANSP ADMIN - 07/01
 Page 1 of 12

Financial Project No.: <u>23689319401</u> <small>(item-segment-phase-sequence)</small>	Fund: _____ Function: <u>639</u>	FLAIR Approp.: <u>088809</u> FLAIR Obj.: <u>750098</u> Org. Code: <u>55042010429</u> Vendor No.: <u>VF 596000785063</u>
Contract No.: _____	Federal No.: _____	
Catalog of Federal Domestic Assistance Number: _____		Catalog of State Financial Assistance Number: <u>55014</u>

THIS AGREEMENT, made and entered into this 19th day of April, 2002,
 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida,
 hereinafter referred to as the Department, and Metropolitan Planning Organization of Palm Beach County
160 Australian Avenue, West Palm Beach, Florida 33406
 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Agency has the authority to enter into said Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under 341

Florida Statutes, to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1.00 Purpose of Agreement: The purpose of this Agreement is

to provide funding to the Metropolitan Planning Organization of Palm Beach County for the RFP preparation, the design and reconstruction of the existing station and parking, as well as Tamarind Avenue improvements for bus bays and pedestrian friendly features,

and as further described in Exhibit(s) A, B, C attached hereto and by this reference made a part hereof, hereinafter referred to as the project, and to provide Departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

2.00 Accomplishment of the Project

2.10 General Requirements: The Agency shall commence, and complete the project as described in Exhibit "A" attached hereto and by this reference made a part hereof, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.

2.20 Pursuant to Federal, State, and Local Law: In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

2.30 Funds of the Agency: The Agency shall initiate and prosecute to completion all proceedings necessary including federal aid requirements to enable the Agency to provide the necessary funds for completion of the project.

2.40 Submission of Proceedings, Contracts and Other Documents: The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the project as the Department may require as listed in Exhibit "C" attached hereto and by this reference made a part hereof.

3.00 Project Cost: The total estimated cost of the project is \$ 2,300,000.00. This amount is based upon the estimate summarized in Exhibit "B" attached hereto and by this reference made a part hereof. The Agency agrees to bear all expenses in excess of the total estimated cost of the project and any deficits involved.

4.00 Department Participation: The Department agrees to maximum participation, including contingencies, in the project in the amount of \$ 2,300,000.00 as detailed in Exhibit "B", or in an amount equal to the percentage(s) of total project cost shown in Exhibit "B", whichever is less.

4.10 Project Cost Eligibility : Project costs eligible for State participation will be allowed only from the effective date of this agreement. It is understood that State participation in eligible project costs is subject to:

- (a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;
- (b) Availability of funds as stated in paragraph 17.00 of this Agreement;
- (c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;
- (d) Department approval of the project scope and budget (Exhibits A & B) at the time appropriation authority becomes available.

4.20 Front End Funding : Front end funding is is not applicable. If applicable, the Department may initially pay 100% of the total allowable incurred project costs up to an amount equal to its total share of participation as shown in paragraph 4.00.

5.00 Retainage : Retainage is is not applicable. If applicable, _____ percent of the Department's total share of participation as shown in paragraph 4.00 is to be held in retainage to be disbursed, at the Department's discretion, on or before the completion of the final project audit.