

Agenda Item #: 302

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 3/13/2007

☒ Consent ☐ Regular
☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY
Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: the Agreement of Removal, Appointment and Acceptance (the "Agreement") between U.S. Bank National Association, the Bank of New York Trust Company of America, The Bank of New York Trust Company and Palm Beach County, Florida as authorized by Resolution R-2006-2307 adopted on October 17, 2006 as it concerns the Airport System Revenue Bonds project.

Summary: On October 17, 2006, the Board adopted Resolution No. R-2006-2307 authorizing the execution of the Agreement. The fully executed Agreement by the parties has been provided. This Agreement should now be received and filed in the Minutes Department. Countywide (PFK)

Background and Justification: The Minutes Department has requested that fully executed documents be presented as "receive and file" for acceptance into the official records of the Board of County Commissioners of Palm Beach County.

Attachments:

1. Executed Original Agreement of Removal, Appointment and Acceptance (the "Agreement") between U.S. Bank national Association, the Bank of New York Trust Company of America, The Bank of New York Trust Company and Palm Beach County, Florida.

Recommended by: _____

Department Director

2/26/07
Date

Approved by: _____

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	<u>0</u>	—	—	—	—
Operating Costs	<u>0</u>	—	—	—	—
External Revenues	<u>0</u>	—	—	—	—
Program Income (County)	<u>0</u>	—	—	—	—
In-Kind Match (County)	<u>0</u>	—	—	—	—
NET FISCAL IMPACT	<u>0</u>	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	—	—	—	—

Is Item Included in Current Budget? Yes ___ No 0

Budget Account No.: Fund___ Department___ Unit___ Object___
Reporting Category___

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

C. Departmental Fiscal Review: No fiscal impact.

III. REVIEW COMMENTS

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

[Signature] 2-27-07
OFMB
2/27/07

[Signature] 2/28/07
Contract Dev. and Control

B. Legal Sufficiency:

[Signature] 2/22/07
Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

AGREEMENT OF REMOVAL, APPOINTMENT AND ACCEPTANCE

THIS AGREEMENT OF REMOVAL, APPOINTMENT AND ACCEPTANCE, (this "Agreement"), dated and effective as of the 21st day of December, 2006 (the "Effective Date"), among PALM BEACH COUNTY, FLORIDA (the "Issuer"), U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America (the "Prior Trustee"), and THE BANK OF NEW YORK TRUST COMPANY, N.A., a national banking association organized under the laws of the United States of America (the "Successor Trustee"). Capitalized terms not otherwise defined herein shall have the same meaning ascribed to such terms in the Bond Resolution referred to below.

RECITALS

WHEREAS, the Issuer previously adopted Resolution No. R-84-1659 on November 1, 1984 (as amended and supplemented the "Bond Resolution"); and

WHEREAS, pursuant to the Bond Resolution, the Issuer has issued and there remain outstanding the Issuer's Airport System Revenue Bonds, Series 2006A and Airport System Taxable Revenue Refunding Bonds, Series 2006B (collectively, the "Series 2006 Bonds"), Airport System Revenue Refunding Bonds, Series 2002 (the "Series 2002 Bonds") and Airport System Revenue Refunding Bonds, Series 2001 (the "Series 2001 Bonds" and, collectively with the Series 2006 Bonds and Series 2002 Bonds, the "Bonds"); and

WHEREAS, in accordance with the Bond Resolution, the Issuer appointed the Prior Trustee to serve as the Trustee, Bond Registrar and Paying Agent for the Bonds; and

WHEREAS, the Bond Resolution provides that the Trustee, Bond Registrar and Paying Agent thereunder may be removed or resign as provided therein; and

WHEREAS, the Bond Resolution further provides that if the Trustee, Bond Registrar and Paying Agent thereunder is removed or resigns, the Issuer shall appoint a successor Trustee, Bond Registrar and Paying Agent to serve as such under the Bond Resolution; and

WHEREAS, the Issuer further appointed the Prior Trustee to serve as Escrow Agent under that certain Escrow Deposit Agreement relating to the defeasance of the Series 2002 Bonds and the Series 2001 Bonds (the "Escrow Deposit Agreement"); and

WHEREAS, the Escrow Deposit Agreement provides that if the Escrow Agent thereunder is removed or resigns, the Issuer shall appoint a successor Escrow Agent to serve as such under the Escrow Deposit Agreement; and

WHEREAS, the Issuer, by the adoption of its Resolution No. R-2006-2307 on October 17, 2006, has determined to remove the Prior Trustee as (1) Trustee, Bond Registrar and Paying Agent for the Bonds and (2) Escrow Agent under the Escrow Deposit Agreement, and

to appoint the Successor Trustee as (1) Trustee, Bond Registrar and Paying Agent for the Bonds and (2) Escrow Agent under the Escrow Deposit Agreement; and

WHEREAS, the Successor Trustee is willing to accept the appointment as Trustee, Bond Registrar and Paying Agent for the Bonds and as Escrow Agent under the Escrow Deposit Agreement.

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acceptance of Removal of Prior Trustee. The Prior Trustee, having received written notice of its removal as Trustee, Bond Registrar and Paying Agent for the Bonds in accordance with to the Bond Resolution, hereby accepts its removal as Trustee, Bond Registrar and Paying Agent for the Bonds. The Prior Trustee, having received written notice of its removal as Escrow Agent under the Escrow Deposit Agreement, hereby accepts its removal as Escrow Agent under the Escrow Deposit Agreement.

2. Issuer's Representations and Warranties. The Issuer hereby represents and warrants to the Successor Trustee that:

- a. It is duly organized and validly existing and in good standing under all applicable laws, and this Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid, binding and enforceable obligation;
- b. The Bond Resolution, as amended and supplemented, and the Escrow Deposit Agreement, are both in full force and effect;
- c. To the best of its knowledge, no "Event of Default" has occurred and is continuing under the Bond Resolution; and
- d. No covenant or condition contained in the Bond Resolution has been waived by the Prior Trustee;

3. Prior Trustee's Representations and Warranties. The Prior Trustee hereby represents and warrants to the Issuer and Successor Trustee that:

- a. It has not been served with notice of any action, suit or proceeding before any court or governmental authority arising out of any action or omission by the Prior Trustee as Trustee, Bond Registrar and Paying Agent for the Bonds or as Escrow Agent under the Escrow Deposit Agreement;

- b. This Agreement has been duly authorized, executed and delivered on behalf of the Prior Trustee and constitutes its legal, valid, binding and enforceable obligation.
 - c. It has and will assert no claim against the Trust Estate (as defined in the Escrow Deposit Agreement) for the payment of fees or reimbursement of expenses; nonetheless, it does reserve its right to indemnity as provided in the Bond Resolution and the Escrow Deposit Agreement.
4. Successor Trustee's Representations and Warranties. The Successor Trustee represents and warrants to the Prior Trustee and the Issuer that:
- a. It is qualified and eligible to serve as Trustee, Bond Registrar and Paying Agent for the Bonds in accordance with the Bond Resolution and as Escrow Agent in accordance with the Escrow Deposit Agreement; and
 - b. This Agreement has been duly authorized, executed and delivered on behalf of the Successor Trustee and constitutes its legal, valid, binding and enforceable obligation.
 - c. It will assert no claim against the Trust Estate for payment of fees or reimbursement of expenses.
5. Acceptance by Successor Trustee. The Successor Trustee hereby accepts its appointment, as of the Effective Date, as successor Trustee, Bond Registrar and Paying Agent for the Bonds and assumes, as of the Effective Date, all rights, powers, trusts, privileges, duties and obligations of the Trustee, Bond Registrar and Paying Agent under the Bond Resolution, subject to the terms and conditions therein, with like effect as if originally named as Trustee, Bond Registrar and Paying Agent for the Bonds. The Successor Trustee shall give notice of its appointment to the registered owners of the Bonds in the manner required by the Bond Resolution.
- The Successor Trustee further hereby accepts its appointment, as of the Effective Date, as successor Escrow Agent under the Escrow Deposit Agreement and assumes, as of the Effective Date, all rights, powers, trusts, privileges, duties and obligations of the Escrow Agent thereunder, subject to the terms and conditions therein.
6. The Prior Trustee agrees to deliver to the Successor Trustee, as soon as possible but in any event no later than the Effective Date:
- a. The closing transcripts for each series of the Bonds (the Prior Trustee has not received any amendments to the documents therein);
 - b. The registers relative to the current bondholders and outstanding Bonds;

- c. All unissued Bond certificates along with a copy of the original and subsequent printer's certificates and, if the Bonds have been delivered in accordance with DTC FAST procedure, the original Bonds;
- d. A list of the trust accounts and the assets they hold.

7. Assignment by Prior Trustee. The Prior Trustee hereby confirms, assigns, transfers, delivers and conveys, as of the Effective Date, to the Successor Trustee, without recourse, all rights, powers, trusts, privileges, duties and obligations (other than its right to indemnity as provided in the Bond Resolution), which the Prior Trustee now holds under and by virtue of the Bond Resolution, and shall pay over to the Successor Trustee, any and all property and moneys held by the Prior Trustee in the funds and accounts created under the Bond Resolution, together with all records and documents identified in Paragraph 6 hereof. The Prior Trustee further delivers the Trust Estate (as defined in the Escrow Deposit Agreement) to the Successor Trustee, together with the records and accounts identified in Paragraph 6 hereof.

8. Transfer of Rights; Further Assurances. The Issuer, the Prior Trustee and the Successor Trustee agree to comply with Section 909 of the Bond Resolution. The Issuer and the Successor Trustee agree upon reasonable request of the Issuer or the Successor Trustee, to execute, acknowledge and deliver such further instruments of conveyance and further assurance and to do such other things as may reasonably be required for more fully and certainly vesting and confirming to the Successor Trustee all rights, powers, trusts, privileges, duties and obligations which the Prior Trustee now holds under and by virtue of the Escrow Deposit Agreement.

9. Termination Fees and Expenses. The Issuer agrees to reimburse the Prior Trustee \$1,000 for the extraordinary time and expenses anticipated to be incurred to effect the transfers and assignments contemplated hereby and to reimburse the Prior Trustee an amount not to exceed \$1,500 for the reasonable fees and expenses of Prior Trustee's counsel.

10. Effective Date. This Agreement and the removal, appointment and acceptance effected hereunder shall be effective as of the close of business on the Effective Date.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original, but such counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first above written.

PALM BEACH COUNTY, FLORIDA

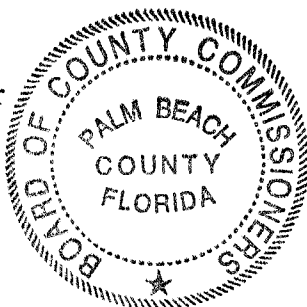
[SEAL]

By: *Adelle L. Greene*
Chairperson

ATTEST:

Sharon R. Bock, Clerk & Comptroller
Palm Beach County

By: *Phyllis House*
Deputy Clerk



Date: _____

Approved as to form and legal sufficiency:

By: *Paul F. J.*
County Attorney

U.S. BANK NATIONAL ASSOCIATION

By: *Scott Schulte*
Title: Vice President
Date: December 11, 2006

THE BANK OF NEW YORK TRUST
COMPANY, N.A.

By: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first above written.

PALM BEACH COUNTY, FLORIDA

[S E A L]

By: _____
Chairperson

ATTEST:

Sharon R. Bock, Clerk & Comptroller
Palm Beach County

By: _____
Deputy Clerk

Date: _____

Approved as to form and legal sufficiency:

By: _____
County Attorney

U.S. BANK NATIONAL ASSOCIATION

By: _____
Title: _____
Date: _____

THE BANK OF NEW YORK TRUST
COMPANY, N.A.

By: Christine W. Gullett
Title: Assistant Treasurer
Date: December 8, 2006