

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 21, 2007

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Administration

Submitted By: Administration

Submitted For: Administration

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Contract with Cheney Bros., Inc. for the period August 21, 2007, through November 30, 2012, for transportation services for community-based needs during local or State emergencies.

**Summary:** This Contract will be utilized for distribution of food, water and ice or other essential items in the event of a declared emergency. Under this contract, Cheney Bros. will: provide an on-site staging area for parking of State and FEMA supply trailers dispatched from the County Staging Area; unload the trailers; transfer the product to Cheney trucks; and ultimately deliver the product to designated community supply distribution locations. A flat fee of \$1500 per semi-truck delivery will be paid to Cheney Bros. for the inclusive services provided under the Contract. A lesser per truck fee will be negotiated if trucks less than a designated size are utilized. It is anticipated that FEMA will reimburse the County for a majority of expenditures under this Contract. The Contract does not specify a not-to-exceed amount. Expenditures under the Contract will be subject to County Administrator approval and annual budget appropriation. In accordance with the provisions of Palm Beach County Purchasing Code Sec. 2-54, the Director of Purchasing has determined that Cheney Bros. is the only firm able to provide the required services and has authorized this purchase as a sole-source purchase without competitive solicitation. Countywide (GB)

**Background and Justification:** Disaster preparedness activities have been accelerated and expanded since the onset of multiple hurricanes affecting Palm Beach County in 2004 and 2005. The expanded efforts have included development of the Community Supply Distribution Program designed to provide bulk delivery of supplies (food, water and ice or other essential items) to communities with large concentrations of seniors such as retirement communities and communities with large concentrations of migrant workers, disadvantaged citizens or other individuals that are likely to have difficulty accessing distribution sites due to lack of transportation. Activation of this Program and designation of community delivery sites will be determined by emergency managers based upon an initial needs assessment and the availability of FEMA and State supplies for distribution. The Cheney Bros. contract will provide the warehousing, product handling and delivery services required to implement the Program.

Attachment: Contract

Recommended by:

N/A  
Department Director Date

Approved by:

  
Assistant County Administrator Date  
8-3-07

**II. FISCAL IMPACT ANALYSIS**

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

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

# ADDITIONAL FTE POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Units \_\_\_\_\_  
 Object \_\_\_\_\_ Program \_\_\_\_\_

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

Expenditures under this contract will be charged to Non-departmental Operations, General Government. FEMA reimbursement, if received, will be returned to General Fund.

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

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

\_\_\_\_\_ 8-6-07 OFMB  
 \_\_\_\_\_ 8/14/07 Contract Development and Control  
 (Handwritten initials and dates)

**B. Legal Sufficiency:**

\_\_\_\_\_ 8/20/07 Assistant County Attorney  
 \_\_\_\_\_ This Contract complies with our contract review requirements.  
 At the time of CDC's review, a revised certificate of insurance was being obtained.  
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**C. Other Department Review:**

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

**CONTRACT FOR TRANSPORTATION SERVICES  
FOR COMMUNITY BASED NEEDS DURING THE  
DECLARATION OF A LOCAL OR STATE EMERGENCY**

This Contract is made this 9 day of AUG, 2007, by and between Palm Beach County, a Political Subdivision of the State of Florida, hereinafter referred to as "COUNTY" and Cheney Bros., Inc., a corporation authorized to do business in the State of Florida, hereinafter referred to as "CHENEY", whose address is One Cheney Way, Rivera Beach, FL 33403-7000.

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

**ARTICLE 1 - SERVICES**

A. COUNTY's responsibilities shall include the following:

1. Upon the Declaration of a Local or State Emergency, the COUNTY shall notify CHENEY of the potential need for transportation services for the delivery of food, water, ice or other items deemed necessary for distribution within Palm Beach County during the Declaration of a Local or State Emergency ("goods").
2. The COUNTY shall notify CHENEY when the need for transportation resources for the delivery of goods within Palm Beach County has been determined.
3. The COUNTY shall deliver to CHENEY at One Cheney Way, Rivera Beach, FL, hereinafter referred to as "Facility", truckloads of goods to be transported to communities as directed by COUNTY. Goods will be palletized and delivered in enclosed trailers.
4. The COUNTY shall provide the location(s), specific address(es) and name(s) of community(ies) for each delivery to be made by CHENEY, hereinafter referred to as "orders".
5. COUNTY shall designate a COUNTY employee to coordinate communication between the COUNTY and CHENEY.
6. COUNTY, in coordination with the State of Florida and the Federal Emergency Management Agency ("FEMA") shall retrieve trailers from Facility within a reasonable time period following emptying by CHENEY.

B. CHENEY's responsibilities shall include the following:

1. Upon notification that the COUNTY is in need of transportation services for the delivery of goods within Palm Beach County, CHENEY shall make available staff, licensed truck drivers, approximately ten (10) to twenty (20) twenty foot (20') to fifty foot (50') trucks, and all equipment and materials

necessary to load goods received from COUNTY into the trucks and offload goods in various communities.

2. Upon COUNTY's delivery of the goods to CHENEY, CHENEY shall provide an on-site staging area at Facility for parking of trailers received from COUNTY.
3. CHENEY shall maintain a log identifying all trailers delivered by COUNTY to Facility and shall maintain records of the disposition of contents of each trailer for tracking purposes.
4. CHENEY shall, within 24 hours of receipt of orders from COUNTY, transport the goods to the location(s) as designated by the COUNTY. CHENEY acknowledges and understands that COUNTY may require mixed loads causing a truck to make deliveries to more than one (1) location. CHENEY further acknowledges and understands that it may be required to make more than one (1) delivery to each location(s) as designated by the COUNTY on any given day.
5. Upon reaching the locations(s) as designated by the COUNTY, CHENEY shall unload the specified amount of goods as designated solely in the COUNTY's orders. The amount of goods unloaded by CHENEY at a particular location, and the place where the goods are to be unloaded, are at the sole discretion of the COUNTY. If for some reason CHENEY is unable to follow the COUNTY's direction(s), CHENEY shall immediately contact the COUNTY's representative for resolution.
6. It is anticipated that up to approximately thirty (30) community supply distribution sites may be established by COUNTY during a Declaration of Local or State Emergency. Each site may require one (1) or more daily delivery(ies) by CHENEY.
7. CHENEY shall at all times be responsible for and guard against damage or loss to the goods being loaded, distributed, and unloaded pursuant to this Contract. All trucks must be attended at all times during the loading and unloading thereof. Load tracking and delivery documentation shall be maintained and provided to COUNTY's coordinator.
8. CHENEY shall, at the request of the COUNTY, accommodate a COUNTY employee at the Facility during the period within which orders and deliveries will occur pursuant hereto. Said COUNTY employee will assist in the coordination of orders and the tracking of trailers delivered by COUNTY and provide general assistance as needed to expedite and streamline activities under this Contract.

C. REPRESENTATIVES:

1. The COUNTY'S representative/liaison during the performance of this Contract is Jon Van Arnam, Assistant County Administrator, telephone number (561) 355-2740 (office) and (561) 762-0359 (cell).
2. CHENEY's representative/liaison during the performance of this Contract is Mark Jayne, President and Chief Operating Officer, telephone no. (561) 684-7910 (office) and (561) 723-7444 (cell).

**ARTICLE 2 – TERM**

The term of this Contract commences upon the date signed by both COUNTY and CHENEY and shall be effective through November 30, 2012.

**ARTICLE 3 - PAYMENTS TO CHENEY**

- A. COUNTY shall pay CHENEY \$1,500 per full thirty-six (36) foot or forty-eight (48) foot truck for the transportation services provided herein. Said amount shall include all costs and expenses associated with the services provided by CHENEY, including but not limited to the unloading of COUNTY's trucks and the loading of CHENEY's trucks, palletizing or re-palletizing of goods to be transported, gasoline, diesel fuel, two (2) drivers, labor, overhead, onload and offload equipment, etc. Smaller trucks may be utilized for deliveries if CHENEY determines that the use of smaller trucks is more efficient or suitable for specific orders. Payment rates for smaller trucks shall be agreed to by both parties.
- B. Upon determination by COUNTY that CHENEY has completed all services required by this Contract, CHENEY shall provide an invoice to the COUNTY for payment.
- C. Invoices received from CHENEY pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.

**ARTICLE 4 - TERMINATION**

This Contract may be terminated, with or without cause by either party upon thirty (30) days prior written notice to the other party's Contract representative. Unless CHENEY is in breach of this Contract, CHENEY shall be paid for services rendered through the date of Contract termination.

**ARTICLE 5 - PERSONNEL**

CHENEY has, or will secure at its own expense, all necessary personnel required to perform the services required 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 CHENEY or under its supervision, and all personnel engaged in performing the

services shall be fully qualified and, if required, authorized or licensed under state and local law to perform such services.

#### **ARTICLE 6 - 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 vehicles and equipment of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. CHENEY is encouraged to seek small business enterprises ("SBE") for participation in subcontracting opportunities. The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County contracts and CHENEY acknowledges and understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal. If applicable, CHENEY shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated.

#### **ARTICLE 7 - FEDERAL AND STATE TAX**

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

#### **ARTICLE 8 - AVAILABILITY OF FUNDS**

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

#### **ARTICLE 9 - INSURANCE**

- A. CHENEY shall, at its sole expense, maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CHENEY are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CHENEY under this Contract.
- B. **Commercial General Liability** CHENEY shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Director. CHENEY shall provide Commercial General Liability on a primary basis.
- C. **Business Automobile Liability** CHENEY shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event CHENEY does not own any automobiles, the Business Auto Liability requirement shall be amended allowing CHENEY to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or by separate Business Auto

coverage. CHENEY shall provide Business Automobile Liability coverage on a primary basis.

- D. **Worker's Compensation Insurance & Employers Liability** CHENEY shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CHENEY shall provide this coverage on a primary basis.
- E. **Additional Insured** CHENEY 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." CHENEY shall provide the Additional Insured endorsements coverage on a primary basis.
- F. **Waiver of Subrogation** CHENEY 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 CHENEY shall 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 CHENEY enter into such an agreement on a pre-loss basis.
- H. **Certificate(s) of Insurance** Prior to execution of this Contract, CHENEY shall deliver to the COUNTY'S representative, 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. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage.

#### **ARTICLE 10 - INDEMNIFICATION**

CHENEY shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CHENEY.

#### **ARTICLE 11 - SUCCESSORS AND ASSIGNS**

The COUNTY and CHENEY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract.

Except as above, neither the COUNTY nor CHENEY 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 CHENEY.

#### **ARTICLE 12 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this 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.

#### **ARTICLE 13 - CONFLICT OF INTEREST**

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

CHENEY shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence CHENEY'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 CHENEY 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 CHENEY. The COUNTY agrees to notify CHENEY of its opinion by certified mail within thirty (30) days of receipt of notification by CHENEY. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by CHENEY, the COUNTY shall so state in the notification and CHENEY 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 CHENEY under the terms of this Contract.

#### **ARTICLE 14 - EXCUSABLE DELAYS**

CHENEY 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 CHENEY 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.

#### **ARTICLE 15 - ARREARS**

CHENEY 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. CHENEY

further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

**ARTICLE 16 - INDEPENDENT CONTRACTOR RELATIONSHIP**

CHENEY is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to CHENEY'S sole direction, supervision, and control. CHENEY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CHENEY'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. CHENEY does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

**ARTICLE 17 - CONTINGENT FEES**

CHENEY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CHENEY 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 CHENEY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

**ARTICLE 18 - ACCESS AND AUDITS**

CHENEY 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 CHENEY'S place of business.

**ARTICLE 19 - NONDISCRIMINATION**

CHENEY 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, or sexual orientation.

**ARTICLE 20 - AUTHORITY TO PRACTICE**

CHENEY hereby represents and warrants that it has and will continue to maintain all licenses, permits and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

**ARTICLE 21 - SEVERABILITY**

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

**ARTICLE 22- PUBLIC ENTITY CRIMES**

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

**ARTICLE 23 - NOTICE**

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

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

Jon Van Arnam, Assistant County Administrator  
Palm Beach County Board of County Commissioners  
c/o Kathleen Scarlett, Director of Purchasing  
50 South Military Trail, Suite 110  
West Palm Beach, FL 33415-3199

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

Mark Jayne, President, Chief Operating Officer  
Cheney Brothers, Inc.  
One Cheney Way  
Riviera Beach, FL 33404-7000

**ARTICLE 24 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and CHENEY 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.

**ARTICLE 25 - REGULATIONS; LICENSING REQUIREMENTS:**

CHENEY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CHENEY 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.