

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Grant Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	*See below				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Current Budget? Yes _____ No X
 Budget Account No.: Fund _____ Dep't. _____ Unit _____ Object _____
 Program _____ Reporting Category _____

Recommended Sources of Funds/Summary of Fiscal Impact: funds from the Letter of Credit will be used to off-set the increased service costs. The increased service costs does not include all damages that may be incurred by the County

B. Departmental Fiscal Review:

John Murphy, Finance Manager

III. REVIEW COMMENTS

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

*In the event of total default by PBMT for the remainder of the contract, Palm Beach County will experience an increase in service costs that will exceed \$4.5 million. This amount does not include any other recoverable damages allowed by law.

damages allowed by law. *Admission 10-24-08*
10/24/08 OFMB *mm*
10-24-08

Contract Dev. and Control

B. Legal Sufficiency:

 10/24/08
Assistant County Attorney

C. Other Department Review:

Department Director

Background and Policy Issues: Palm Tran, through the Director of Purchasing, has notified PBMT on four (4) occasions (January 24, 2006, September 13, 2006, March 25, 2008 and September 8, 2008) of failures that constitute service failures and performance defaults. PBMT has in each instance promised to correct all deficiencies, but has failed to do so and to come into compliance with the Contract requirements. PBMT, County and Purchasing staff met on September 29, 2008, to discuss PBMT's failures and a partial termination of the Contract, but were unable to agree upon a mutually acceptable resolution of the issues. PBMT failed to provide a written response to the County's suggestion that the Contract be partially terminated on the 1st of October as it had represented it would do. Thereafter, on the 9th of October, the Director of Purchasing notified PBMT that PBMT was in default of the Contract and demanded that PBMT cure all defaults within 10 days after receipt of the notice. The Director also notified PBMT that it had not provided a compliant Letter of Credit (LOC) and directed PBMT to furnish a compliant LOC within 10 days. PBMT has not cured the default nor has it furnished a compliant LOC. Despite PBMT's ongoing promises to improve performance, PBMT has not provided the scheduled resources so as to meet the Contract's vehicle composition requirements since January 24, 2006.



P.O. Box 1989
West Palm Beach, FL 33402-1989
(561) 355-2001
FAX: (561) 355-3990
www.pbcgov.com



**Palm Beach County
Board of County
Commissioners**

Addie L. Greene, Chairperson

Jeff Koons, Vice Chair

Karen T. Marcus

Robert J. Kanjian

Mary McCarty

Burt Aaronson

Jess R. Santamaria

County Administrator

Robert Weisman

DEMAND FOR PAYMENT

October 28, 2008

TO: Bank of Montreal, Chicago
c/o 234 Simcoe Street
3rd Floor
Toronto, Ontario, Canada M5T 1T4

Attn: Standby Letters of Credit Unit

**NOTICE TO BANK OF MONTREAL, CHICAGO: PAYMENT PAYABLE
IN UNITED STATES DOLLARS IS DUE UPON PRESENTMENT OF THIS
DEMAND.**

Pursuant to your Irrevocable Standby Letter of Credit No. BMCH202563OS, issued on January 8, 2008 and Amendment No. 1 issued on April 16, 2008 and Amendment No. 2 issued on July 15, 2008 (hereinafter the "Letter of Credit"), established by Palm Beach Metro Transportation, LLC, as Applicant, in favor of Palm Beach County Board of County Commissioners, as beneficiary, demand is hereby made that Seven Hundred Fifty Thousand United States Dollars (\$750,000.00) at your Bank be transferred via wire transfer in immediately available funds to:

WACHOVIA BANK, N.A.
VIA JACKSONVILLE OFFICE
ABA #063000021
CONSOLIDATED ACCT. # 2155001070034
FOR CREDIT TO BOARD OF COUNTY COMMISSIONERS,
PALM BEACH COUNTY, FL

SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

*"An Equal Opportunity
Affirmative Action Employer"*



Bank of Montreal, Chicago, Illinois

STANDBY LETTERS OF CREDIT
C/O 234 Simcoe Street
3rd Floor
Toronto, Ontario M5T 1T4
Canada
Tel: 1-877-801-0414
Fax: 1-877-801-7787
SWIFT BOMUS4X

PUK 78.00 9 AM 3-55

Irrevocable
Standby Letter of Credit No.: BMCH202563OS

Date Issued: January 8, 2008

Beneficiary:
Palm Beach County
Board of County Commissioners
Attn: Kathleen M. Scarlett, Director
Purchasing Palm Beach County
50 South Military Trail, Suite 110
West Palm Beach, FL 33415

Applicant:
Palm Beach Metro Transportation, LLC
24957 Brest Road
Taylor, MI 48180

Amount: Seven Hundred Fifty Thousand and 00/100's United States Dollars (USD750,000.00)

Expiry Date: April 15, 2008

We hereby open our Clean Irrevocable Letter of Credit No. BMCH202563OS in favor of Palm Beach County Board of County Commissioners ("County") for the amount of Seven Hundred Fifty Thousand and 00/100's United States Dollars (USD750,000.00) effective immediately.

This Letter of Credit is issued pursuant to that certain Contract No. 04-029R/DP between Palm Beach Metro Transportation, LLC, as Contractor, and Palm Beach County, Florida dated November 23, 2004 (the "Contract") however, this Letter of Credit is independent of that contract and reference herein is for information only.

ORIGINAL



Bank of Montreal, Chicago

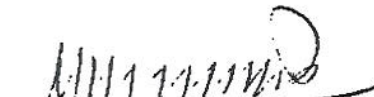
Funds under this Letter of Credit are available to the County hereunder not exceeding in aggregate the amount of this Letter of Credit against the County's demand for payment on us mentioning our Letter of Credit No. BMCH202563OS.

We hereby engage with you that demand for payment presented under and in compliance with the terms of this Letter of Credit on or prior to the expiration date will be duly honoured upon presentation to Bank of Montreal, Chicago c/o 234 Simcoe Street, 3rd Floor, Toronto, Ontario, Canada M5T 1T4, Attn: Standby Letters of Credit Unit.

Kindly address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department, mentioning specifically our Letter of Credit No. BMCH202563OS.
Venue for any and all legal action necessary to enforce the terms of this Letter of Credit shall be Palm Beach County, Florida.

Except as is inconsistent with the express provisions hereof, this Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (2007 Revisions) International Chamber of Commerce Publication No. 600.


Signing Officer
BMCH202563OS


Authorized Signing Officer

ORIGINAL



Bank of Montreal, Chicago, Illinois

STANDBY/ LETTERS OF CREDIT
C/O 234 Simcoe Street
3rd Floor
Toronto, Ontario M5T 1T4
Canada
Tel: 1-877-801-0414
Fax: 1-877-801-7787
SWIFT: BOMUS4X

**Irrevocable
Standby Letter of Credit
No. BMCH202563OS**

Amendment no. 1
Dated April 16, 2008

Beneficiary:
PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
50 SOUTH MILITARY TRAIL, SUITE 110
WEST PALM BEACH, FL 33415, United States

Applicant:
PALM BEACH METRO
TRANSPORTATION,
LLC
24957 BREST ROAD
TAYLOR, MI 48180 United States

We amend our Standby Letter of Credit subject to the following terms and conditions. This amendment forms an integral part of the original instrument. All other terms and conditions remain unchanged.

Amended Terms:

Expiry date has been amended to: July 15, 2008

Attn: Kathleen M. Scarlett, Director, Palm Beach County Purchasing

Unless otherwise instructed herein, all correspondence and inquiries regarding this transaction should be directed to our Customer Service Center at the above address, telephone: 1-877-801-0414. Please indicate our reference number in all your correspondence or telephone inquiries.

Regards,

Authorized Signature(s)

ORIGINAL



Bank of Montreal, Chicago, Illinois

STANDBY/ LETTERS OF CREDIT
C/O 234 Simcoe Street
3rd Floor
Toronto, Ontario M5T 1T4
Canada
Tel: 1-877-801-0414
Fax: 1-877-801-7787
SWIFT: BCFMUS4X

**Irrevocable
Standby Letter of Credit
No. BMCH202563OS**

Amendment no. 2
Dated July 15, 2008

Beneficiary:
PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
50 SOUTH MILITARY TRAIL, SUITE 110
WEST PALM BEACH, FL 33415, United States

Applicant:
PALM BEACH METRO
TRANSPORTATION,
LLC
24957 BREST ROAD
TAYLOR, MI 48180 United States

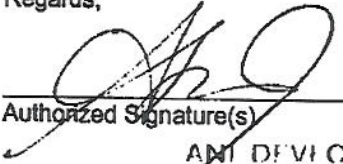
We amend our Standby Letter of Credit subject to the following terms and conditions. This amendment forms an integral part of the original instrument. All other terms and conditions remain unchanged.

Amended Terms:

Expiry date has been amended to: October 31, 2008

Unless otherwise instructed herein, all correspondence and inquiries regarding this transaction should be directed to our Customer Service Center at the above address, telephone: 1-877-801-0414. Please indicate our reference number in all your correspondence or telephone inquiries.

Regards,


Authorized Signature(s)
ANT DE VIGI



ORIGINAL