PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date:	October 28, 2008	[]	Consent Ordinance	[X]	Regular Public Hearing
Department:	Palm Tran				
Submitted By:	Palm Tran				
Submitted for:	Palm Tran				

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: A) authorize a demand for full payment in the total amount of \$750,000.00 against, under and in compliance with the Irrevocable Standby Letter of Credit No. BMCH202563OS dated January 8, 2008, as amended by Amendment No. 1 dated April 16, 2008 and Amendment No. 2 dated July 15, 2008, issued by the Bank of Montreal, Chicago, in the amount of \$750,000 and the presentment of the demand for payment to the Bank of Montreal, Chicago; B) direct the Chair, on behalf of the Palm Beach County Board of County Commissioners, to send a letter to the Bank of Montreal, Chicago (Bank) presenting the County's demand for payment against, under and in compliance with the Bank's Letter of Credit No. BMCH202563OS and to provide any other information or document required by the Bank to honor the County's demand for payment; and C) authorize the Palm Beach County Office of Financial Management and Budget (OFMB) to prepare budget amendments necessary to account for the Letter of Credit transactions.

Summary: On November 23, 2004, the Board awarded a seven (7) year contract to Palm Beach Metro Transportation L.L.C. (PBMT), to provide paratransit services within the County. PBMT has failed to perform as required under the Contract and Palm Tran, through the Director of Purchasing, has advised PBMT of such on several occasions. PBMT has incurred liquidated damages in excess of \$100,000.00 in a 12 month period which constitutes substandard performance under the Contract's requirements, exceeded the limitation on the number of at-fault accidents in 10 of the previous 12 months, and had more than 1 road call per 10,000 miles of service in 9 out of the prior 12 months. Recently, on the 8th of September, PBMT was again notified that it was not performing as required. PBMT and Palm Tran staff met to discuss a partial termination of the Contract, but were unable to agree upon a mutually acceptable resolution. Thereafter, the Director of Purchasing notified PBMT that it was in default of the Contract and demanded that PBMT cure its performance failures. The Director also notified PBMT that it had not furnished a Letter of Credit (LOC) in accordance with the Contract requirements. The current LOC expires on October 31, 2008 and a renewed LOC has not been received. The Contract requires that an annually renewable LOC be furnished at least 60 days in advance of the expiration date of the then current LOC. The Director also advised PBMT that if the defaults were not cured, the County currently intended to initiate a partial termination (i.e., the removal of 15 routes or approximately 150 hours of service). PBMT has failed to cure, and as a result of the September 29th discussion, Palm Tran is concerned that PBMT may seek to "cancel the contract" in its entirety. Palm Tran will need the funds covered by the LOC, which expires on the 31st of October, to recover its damages such as the excess costs of service. The Bank of Montreal, Chicago has advised staff that it must receive a written demand for payment from the Board and presentment of the original LOC, as amended, by the 31st of October to issue the proceeds under the LOC. It is necessary for the County to demand payment against the LOC, in its total amount, to ensure that the County has sufficient funds to cover the excess cost of performance of a partial breach, or a total breach if PBMT advises that it no longer will perform the Contract. In the event costs exceed the Letter of Credit amount of \$750,000, Palm Tran will return to the Board for additional funding. Staff further recommends, at this time, that the funds obtained from the Letter of Credit be placed in a separate interest bearing account and not be comingled with any other County funds. COUNTYWIDE (DR)

Background and Policy Issues: (Continued on page 3)

Attachments:

1. Letter from the Board of County Commissioners Demanding Payment Against, Under and in Compliance with the Bank of Montreal, Chicago Letter of Credit No. BMCH202563OS

Copy of Original Letter of Credit and Amendments

Recommended By:	() () () ()	Oct. 23,2008
Approved By:	Separtment Director	10/23/08
	Assistant County Administrator	/ Øate

II. FISCAL IMPACT ANALYSIS

A. Five Year Summar	y of Fiscal Imp	act:			
Fiscal Years	2009	2010	2011	2012-	2013
Grant Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	*seebelow				
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included In Cu Budget Account No.:	rrent Budget? Fun	Yes d Dep't	No X Unit	Object	
	Prog	gram	Reporting C	ategory	
B. Departmental F	iscal Review:	John Murph	<u>V Szym</u> y, Finance Mar	sar)	-
	III. <u>F</u>	REVIEW COMM	<u>IENTS</u>		
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B. Legal Sufficiend	:y:	ט` "			
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C. Other Departme	ent Review:				
Department Dire	ector	_			

REVISED 9/03 ADM FORM 01 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

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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

"An Equal Opportunity
Affirmative Action Employer"

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
Ву:	By:
Deputy Clerk	Addie L. Greene, Chairperson





Bank of Montreal, Chicago, Illinois

STANDBY/ LETTERS OF CREDIT C/O 234 Sknooe Street 3rd Floor Toronto, Onterio M5T 1T4 Canada Tet 1-877-801-0414 Fax: 1-877-801-7787 SWIFT BOFMUS4X

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

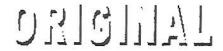
Applicant: Palm Beach Metro Transportation, LLC 24957 Brest Road Taylor, MI 48180

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.





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

DRIGINAL

Authorized Signing Officer



Bank of Montreal, Chicago, Illinois

STANDBY/ LETTERS OF CREDIT C/O 234 Simcoe Street 3rd Floor Toronto, Onlario MET 1T4 Canada Tai: 1-877-801-0414 Fax: 1-877-801-7787

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.

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Regards,

Authorized Signature(s)



Bank of Montreal, Chicago, Illinois

STANDBY/ LETTERS OF CREDIT CAO 234 Skincoe Street 3rd Floor Toronio, Onlario M5T 174 Canada Tet: 1-877-801-0414 Fax: 1-877-801-7787 SWIFT: BOFMUS4X

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.

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Regards,

Authorized Signature(s)

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