

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

**Motion and Title:** Staff recommends motion to approve: a Consent to Assignment and Assumption of Agreement (Including the Third Amendment) with NextMedia Outdoor, Inc., and CBS Outdoor Group, Inc.

**Background and Justification:** NextMedia has installed 188 shelters in unincorporated Palm Beach County, 64 shelters in West Palm Beach, 2 shelters in Boca Raton, 1 shelter in Delray Beach, 2 shelters in Pahokee, 16 shelters in Palm Springs, 10 shelters in Riviera Beach, and 2 shelters in South Bay. NextMedia makes monthly revenue payments from the income derived from the leasing of space on shelters upon which advertisements can be placed. Revenue generated from advertising shelters located in a municipality is paid to the municipality and revenue generated from advertising shelters located in the County is paid to the County. Next Media is responsible for the maintenance and upkeep of all these shelters. CBS has advised Palm Tran that it has thoroughly investigated the logistics of NextMedia's Palm Beach County operations and has satisfied itself that it can successfully perform the Bus Shelter Advertising Contract.

**Attachments:** Consent to Assignment and Assumption of Agreement (Including Third Amendment).

Recommended By: [Signature]  
Department Director

Oct. 23, 2008  
Date

Approved By:   
Assistant County Administrator

10/27/08  
Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2008	2009	2010	200-	200-
Grant Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	0				
# ADDITIONAL FTE POSITIONS (Cumulative)					

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

### Recommended Sources of Funds/Summary of Fiscal Impact:

### B. Departmental Fiscal Review:

  
 John Murphy, Finance Manager

## III. REVIEW COMMENTS

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

There is no fiscal impact associated with this agenda item.

Atwillhite 10-24-08  
 OFMB  
 10/24/08

10/24/08 J. J. 10/24/08  
 Contract Dev. and Control

### B. Legal Sufficiency:

  
 Assistant County Attorney 10/24/08

### C. Other Department Review:

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

This item meets our review requirements. However, at the time of our review, the Assignment was not executed, and there was evidence of Insurance or Bond.



**CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT**  
**(INCLUDING THE THIRD AMENDMENT)**  
**REGARDING THAT MASTER BUS STOP SHELTER ADVERTISING CONTRACT BETWEEN**  
**PALM BEACH COUNTY AND NEXTMEDIA OUTDOOR, INC., DATED DECEMBER 4, 2001,**  
**AS MODIFIED BY A SUPPLEMENTAL AGREEMENT DATED APRIL 1, 2003 AND A**  
**SECOND AMENDMENT DATED AUGUST 19, 2003**  
**(R2001-2140, R2003-0493 R2003-1267)**

**THIS CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT** (also referred to herein as this "Consent"), including the **THIRD AMENDMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (referred to herein as the "County"), NextMedia Outdoor, Inc., a corporation duly organized and existing under the laws of Delaware and authorized to do business in the State of Florida, with its principal office in Denver, Colorado (referred to herein as the "Assignor"), and CBS Outdoor Inc., a corporation duly organized under the laws of Delaware and authorized to do business in the State of Florida, with its principal office in New York, New York (referred to herein as the "Assignee").

This Consent to Assignment and Assumption of Agreement is based upon the following facts:

1. On December 4, 2001, the County and the Assignor entered into that certain Master Bus Stop Shelter Advertising Contract (R2001-2140) for the design, construction, installation and maintenance of new and replacement bus stop shelters to be installed in the unincorporated areas of Palm Beach County and certain incorporated areas of Palm Beach County under certain circumstances, and for the marketing of advertisements on the shelters, and thereafter, on April 1, 2003, the County and Assignor entered into a Supplemental Agreement Modifying the Master Bus Shelter Advertising Contract for the purpose of implementing an Interlocal Agreement with the City of West Palm Beach (R2003-0493), and on August 19, 2003, a Second Amendment to the Master Bus Shelter Advertising Contract (R2003-1267) (all of which are collectively referred to herein as the "Assigned Contract").
2. The Assignee and Assignor have notified the County that Assignee and Assignor have entered into an Asset Purchase Agreement dated as of August 29, 2008 (referred to herein as the "Asset Purchase Agreement") under which the Assignee has agreed to purchase and the Assignor to assign, transfer and convey all of Assignor's right, title and interest in the Assigned Contract to the Assignee on the Closing Date, as defined in the Asset Purchase Agreement (referred to herein as the "Closing Date"); provided, that, the County consents to the assignment, transfer and conveyance.
3. Pursuant to Section 25.1 of the Assigned Contract, the Assignor cannot assign, convey or transfer its interest in the Assigned Contract without first having obtained the prior written consent of the County to the assignment, conveyance or transfer.
4. The Assignee and Assignor have requested that the County give its written consent to the Assignor's assignment, transfer and conveyance of the Assigned Contract and the Assignee's assumption of all of the Assignor's rights, titles, duties, obligations and interests to, in and under the Assigned Contract from the Closing Date.



5. The Assignee represents and warrants to the County that it is in a position to and is fully capable of performing all of the duties and obligations of the Assignor under the Assigned Contract and further acknowledges that the County's willingness to consent to the assignment, transfer and conveyance of the Assigned Contract is based, in part, upon the Assignee's and Assignor's representations and warranties set forth herein.

6. Assignee and Assignor represent and warrant to the County that the consummation of the transactions described in the Asset Purchase Agreement (also referred to herein as the "Closing") and the approval and delivery of this Consent will not violate, conflict with or result in a breach of, constitute a default under, or result in the termination of: (i) any organizational documents such as articles of corporation, bylaws, operating agreements or other similar or equivalent documents of the Assignor or the Assignee; or (ii) any judgment, decree or order of any court, administrative body, or governmental authority applicable to the Assignor or Assignee.

7. Assignee and Assignor represent and warrant to the County that neither the Assignor nor the Assignee has actual knowledge of any: (i) existing defaults under the terms, covenants or conditions of the Assigned Contract by the County or the Assignor occurring prior to the Closing; (ii) existing or threatened conditions that with giving notice, the passage of time or both, would constitute a default under the terms, covenants or conditions of the Assigned Contract by the County; (iii) liens, encumbrances, restrictions, claims, problems, or impediments, of any kind or nature, to the sale, purchase, assignment, transfer, conveyance and delivery of the Assigned Contract or this Consent; (iv) event that authorizes, or with the passage of time would allow the Assignee or the Assignor to exercise any right of setoff, claims, or defenses against the County under the Assigned Contract; (v) threatened or pending litigation arising out of Assignor's or County's performance or failure to perform the Assigned Contract; or (vi) threatened or pending litigation, of any type or nature, that would preclude, interfere with or delay the assignment, transfer or conveyance of the Assigned Contract.

8. Assignor represents and warrants to the County that it has fully performed all of its duties and responsibilities under the Assigned Contract as of the date of this Consent.

9. The Assignee represents and warrants to the County that on or before the date of this Consent it shall have obtained and provided to the County, documentation satisfactory to the County evidencing that it has obtained insurance coverage which is acceptable to the County as to the insurer, the form and types of coverage and complies with the insurance requirements of Article 21 of the Assigned Contract. Such documentation shall show the Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida and Palm Tran, Inc., and their respective officers, directors, servants, employees and agents, as Additional Insureds in accordance with the requirements of Section 21.7 of the Assigned Contract.

10. The County and the Assignor independently acknowledge that: (i) the Assigned Contract is in full force and effect; (ii) there are no other agreements (except for the agreements contained herein) between the County and the Assignor with respect to the design, construction, installation and maintenance of bus stop shelters and for the marketing of advertisements thereon; (iii) neither has actual knowledge of a default under the Assigned Contract or other event giving rise to the right to terminate the Assigned Contract under Section 16.1 thereof on the part of either the County or the Assignor, nor does the County or Assignor have actual knowledge of any existing circumstance which with the passage of time or the giving of notice or both would constitute a default or right to terminate under Section 16.1; (iv)



neither has any knowledge of any threatened or pending litigation related to or arising out of either's performance or failure to perform the Assigned Contract; and (v) neither has any knowledge of any threatened or pending litigation, of any type or nature, that would preclude, interfere with or delay the assignment, transfer or conveyance of the Assigned Contract.

11. The individual executing this Consent on behalf of the Assignee is fully authorized and empowered by the Assignee to execute this Consent, affirm the representations and warranties of the Assignee, and bind the Assignee to all of the Consent's terms and conditions.

12. The individual executing this Consent on behalf of the Assignor is fully authorized and empowered by Assignor to execute this Consent, affirm the representations and warranties of the Assignor, and bind the Assignor to all of the Consent's terms and conditions.

**NOW THEREFORE**, in consideration of the parties' representations, warranties, and covenants and agreements expressed herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County, Assignor and Assignee agree as follows:

1. The Assignor waives and does hereby release the County from any and all claims and rights it had, has or may have against the County in connection with the Assigned Contract, excluding only claims it has related to payment for Services completed under the Assigned Contract and invoiced to and received by County prior to the date of this Consent.

2. The Assignee agrees to be bound by and to perform the Assigned Contract in accordance with all of the terms and conditions contained in the Assigned Contract. The Assignee shall assume all obligations and liabilities of the Assignor and all claims against the Assignor under the Assigned Contract from and after the Closing Date.

3. The Assignee confirms, ratifies and adopts all prior actions taken by the Assignor with respect to the Assigned Contract, with the same force and effect as if the action had been taken by the Assignee.

4. The County recognizes the Assignee as the Assignor's successor in interest in and to the Assigned Contract. The Assignee, by and from the Closing Date, becomes entitled to all rights, titles, and interests of the Assignor in and to the Assigned Contract as if the Assignee were the original party to the Assigned Contract, excluding claims for payment or reimbursement the Assignor had related to completed Services under the Assigned Contract and invoiced to the County prior to the date of this Consent. The term "Contractor," as used in the Assigned Contract, shall refer to the Assignee and the Contract shall be deemed to have been modified accordingly. Assignee and County acknowledge that such modification shall be known as the Third Amendment to the Master Bus Advertising Contract and shall take effect on the Closing Date. On and after Closing, all notices to the Assignee shall be delivered to the Assignee, at the following address:

General Manager  
CBS Outdoor Inc.  
2640 NW 17<sup>th</sup> Lane  
Pompano Beach, FL 33064

With a copy to:

General Counsel  
CBS Outdoor, Inc.  
405 Lexington Ave., 17<sup>th</sup> Floor  
New York, NY 10174

5. Except as expressly provided in this Consent, nothing shall be construed as a waiver or release of any rights the County had, has or may have against the Assignor.

6. All payments and reimbursements previously made by the County to the Assignor, and any and all other prior actions taken by the County under the Assigned Contract shall be considered to have discharged the County's obligations related to such payments, and reimbursements under the Assigned Contract. All payments and reimbursements made by the County after the date of this Consent in the name of or to the Assignor shall have the same force and effect as if made to the Assignee, and shall constitute a complete discharge of the County's obligations under the Assigned Contract, to the extent of the amounts paid or reimbursed.

7. The Assignor and the Assignee agree that the County is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the assignment, transfer or conveyance of the Assigned Contract or this Consent, other than those that the County, in the absence of this Consent, would have been obligated to pay or reimburse under the terms of the Assigned Contract.

8. Subject to the agreements, warranties and representations stated in this Consent, the County does hereby Consent to the assignment, transfer and conveyance of the Assigned Contract and Assignee's assumption of all of the Assignor's rights, titles, duties, obligations and interests under the Assigned Contract.

9. The parties acknowledge and agree that this Consent is subject to and contingent upon the Closing and receipt by County of: (i) evidence that Assignee has obtained the insurance required under Article 21 of the Assigned Contract effective on or before Closing; (ii) a letter, signed by both Assignor and Assignee, confirming the occurrence of the Closing and any other action(s), if any, necessary to effectuate the assignment, transfer and conveyance of the Assigned Contract; and (iii) a Revenue Guarantee Bond that complies with the requirements of Article 45 of the Assigned Contract that shall be received by County within ten (10) days of the date of this Consent.

10. This Consent shall not waive any rights of the County, except as maybe expressly waived herein, or impose any additional obligations, responsibilities or liabilities on the County in connection with the Assigned Contract.

11. The Assignor shall remain obligated after the Closing for all obligations under the Assigned Contract arising prior to Closing, including its obligations under Articles 24 and 21 of the Assigned Contract.

12. The Assigned Contract shall remain in full force and effect, as modified by this



Agreement. Each party has executed this Agreement as of the day and year first above written.

**IN WITNESS WHEREOF**, the undersigned parties have made and executed this  
CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT (INCLUDING THE  
THIRD AMENDMENT) on the day and year first written above.

**ATTEST:**

Sharon R. Bock, Clerk & Comptroller

**PALM BEACH COUNTY, FLORIDA, by its  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair

**WITNESSES:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

**NEXTMEDIA OUTDOOR, INC.**

By: \_\_\_\_\_  
Eric Neumann, Vice President

Attest:

By: \_\_\_\_\_  
Signature

Title: \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

**CBS OUTDOOR INC.**

By: \_\_\_\_\_  
Raymond Nowak, Executive Vice President

Attest:

By: \_\_\_\_\_  
Signature

Title: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

\_\_\_\_\_  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

\_\_\_\_\_  
Chuck Cohen, Executive Director  
Palm Tran