



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2009	2010	2011	200-	200-
Grant Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	* See below				
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	-0-				

Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No.: Fund \_\_\_\_\_ Dep't. \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
 Program \_\_\_\_\_

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

**C. Departmental Fiscal Review:** Lorraine Szyns for  
 John Murphy, Finance Manager

**III. REVIEW COMMENTS**

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

\* This item has no immediate fiscal impact. Fiscal impact will be shown at the time of awarding the construction contract. *Grant budget is included in the capital fund for this project*

Am. Ord 5-6-09  
 5/5/09 OFMB 5/11/09

Dr. J. Jewell 5/8/09  
 Contract Dev. and Control

**B. Legal Sufficiency:**

[Signature]  
 Assistant County Attorney 5/28/09

*This Draft, in executed agreement meets our review requirements. The Village should create prior to the BCC meeting.*

**C. Other Department Review:**

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

**INTERLOCAL AGREEMENT  
BY AND BETWEEN  
THE VILLAGE OF WELLINGTON  
AND  
PALM BEACH COUNTY  
(Design, Construction, Use, Operations and Maintenance of a  
Park and Ride Facility)**

**THIS INTERLOCAL AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2009, by and between the Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, (hereinafter referred to as the "County") and the Village of Wellington, a Florida municipal corporation, by and through its Village Council (hereinafter referred to as the "Village").

**WITNESSETH:**

**WHEREAS**, Village is the owner of a two (2) acre parcel of land located adjacent to the Wellington Mall in Wellington, Florida, which parcel is described in Exhibit "A" attached to this Agreement and referred to herein as the "Property"; and

**WHEREAS**, Village and County jointly desire that the County construct a Park and Ride lot, with related improvements, connecting Palm Beach County's western communities to the West Palm Beach Intermodal Facility located between Okeechobee Boulevard and Banyan Street near downtown West Palm Beach, and linking various public transit routes for the purpose of promoting public transit efficiency and effectiveness, and reducing traffic congestion; and

**WHEREAS**, the State of Florida Department of Transportation (FDOT) has funds available from its Park and Ride Lot Program, for the construction of park and ride lots which will enhance and improve public transit bus services; and

**WHEREAS**, the County has entered into Joint Participation Agreements with FDOT (also referred to herein as the "JPA") under which FDOT will provide funds to County to assist with the development and construction of park and ride lots; and

**WHEREAS**, County is willing to use a portion of the funds provided by FDOT under the JPA to design, permit and construct a Park and Ride lot and other related improvements on the Property as contemplated under this Agreement (also referred to herein as the "Facility" or the "Park and Ride Facility"), and the Village is willing to make the Property available to the County for the construction, development and use of a Park and Ride Facility, and to operate and maintain the Facility and Property for the duration of this Agreement; and

**WHEREAS**, the Park and Ride Facility and Property shall be open, accessible to and available for use by the County's public transit system, "Palm Tran", and all of the residents of

Palm Beach County; and

**WHEREAS**, Section 163.01, Florida Statutes, authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein, the County and Village agree as follows:

Section 1. **Incorporation of Facts:** The facts set forth above, in the Preamble to this Agreement, are true and correct and incorporated into and made a part of this Agreement.

Section 2. **Purpose:** The purpose of this Agreement is to set forth the various duties, rights and obligations of the parties relating to the Village's provision of the Property, County's design, construction and use of the Park and Ride Facility and the Property, and the Village's use, operation and maintenance of the Facility and Property. (The County's design and construction of the Facility, the Village's provision of the Property, and the Village's use, operation and maintenance of the Facility and Property may also be collectively referred to herein as the "Project").

Section 3. **Contract Representatives and Monitors:** The County's Contract Representative and Monitor during the design, permitting and construction of the Facility shall be Audrey Wolf, Director of Facilities Development & Operations, or her designee, whose telephone number is (561)233-0204. Following the completion of the Facility, the County's Contract Representative and Monitor shall be the Executive Director of Palm Tran, whose telephone number is (561)841-4200 or his designee. The Village's Contract Representative and Monitor shall be James Barnes, Deputy Director of Operations, whose telephone number is (561)753-2504.

Section 4. **The Project:**

A. County has entered into a JPA with FDOT under which FDOT has agreed to provide certain funds to County which County is willing to use to design, permit and construct a Park and Ride Facility upon the Property. The Property is described in Exhibit "A" to this Agreement, which is attached hereto and made a part hereof. The Village shall provide the County and its contractors and subcontractors with unimpeded access to the Property for the purposes described in this Agreement. The County will fund, design and construct the Facility upon the Property as further described in the Project Description, Conceptual Site Plan and Cost Estimate attached hereto as Exhibit "B". The Facility and Property are to be used for County's public transit activities and services, and the other incidental uses described in this Agreement. County and Village will work together and cooperate in the design, permitting and construction of the Facility. Each party does hereby authorize its Contract Representative(s) and Monitor(s) to approve minor modifications to the Project Description, Conceptual Site Plan and Cost Estimate so long as they do not result in an increase in the total not to exceed cost of the Project and each

modification is consistent with the Project's purpose, the JPA, and allowed under the policies, rules, regulations and laws applicable to each party.

B. Following its construction, the Facility and the Property shall be made open and available to the general public for a park and ride lot and for use by the County for public transit services and activities. The Facility and Property shall be operated and maintained by the Village as a park and ride lot and other public transit purposes that advance Palm Tran's public transit bus services. The Village shall also have the right to use the Facility and Property for other incidental public uses, as described in this Agreement, provided that such uses are subordinate to and do not interfere with or preclude the public transit uses or purposes of the Project and this Agreement.

**Section 5. Effective Date and Terms:** This Agreement shall take effect upon execution by the parties and shall remain in full force and effect until November 20, 2019. Upon the expiration of the initial term of this Agreement, the Agreement shall automatically renew for an additional five (5) year period without further action of either party. Upon the expiration of the initial five (5) year renewal period, the Agreement shall automatically renew for another five (5) year period without further action by either party. Notwithstanding the foregoing, the County may notify the Village, at any time, that it does not wish to continue the Agreement beyond the initial term or beyond the first five (5) year renewal period, and upon such notice the Agreement shall expire at the end of the term so identified by County. This provision shall not prevent either party from exercising its right to terminate as described in Section 17 of this Agreement. The phrase "duration of Agreement" as used in this Agreement shall refer to the entire period this Agreement is in effect (*i.e.*, the initial term and any period thereafter).

**Section 6. Design and Construction:**

A. The County shall be responsible for the design and construction of the Facility. The County shall design and construct the Facility generally in accordance with the Conceptual Plan contained in Exhibit "B" to this Agreement, and applicable federal, state, and local laws rules and regulations. While the County will endeavor to design and construct the Facility so as to make one hundred and thirty-eight (138) parking spaces available within the Facility, the Village acknowledges that the design and construction of the Facility and the number of parking spaces contained thereon will be subject to the County's budget for the Facility. The parties intend that the ultimate design and construction of the Facility be within budgetary limitations.

B. Village acknowledges its receipt of the site plan.

C. The County shall be responsible for securing all permits and approvals necessary to construct the Facility. The Village shall assist the County in securing such permits and approvals if assistance is requested by the County.

D. Prior to County's submittal of plans for permitting of construction of the Facility, the County will provide a copy of all plans and specifications, to the Village's Contract Representative and Monitor for Village's review to ensure consistency with this Agreement. The Village shall review all documents within five (5) business days of receipt. If the Village does

not respond within the five (5) day period, then the County may proceed as if Village had no comments and submit for any and all necessary land development and building permits.

E. County agrees that it shall endeavor to complete the Facility so that it is open and available to Palm Tran and the public for its intended use within nine (9) months from the date of execution of this Agreement. The County may request an extension(s) beyond this period for the purpose of completing the Facility. The Village agrees that it may not refuse County's request for an extension(s) as long as the County is pursuing the completion of the Facility with the original or other completion contractor. The Village will extend the completion date for the Facility, should the County's compliance with any federal, state or local law, regulation, rule, requirement or directive hinder or delay the completion of the Facility.

F. The County will submit quarterly Project status reports to Village's Contract Representative and Monitor on or about dates to be established by the parties' Contract Representatives and Monitors during the design and construction phase of the Facility. The quarterly reports will include but will not be limited to a summary of the work accomplished, problems encountered, percentage of completion and other information as deemed appropriate by County's Contract Representative and Monitor.

G. The Village shall grant to County a temporary construction easement to the Property or access, in such other form, acceptable to the County, in its sole discretion. Such temporary construction easement or other method of establishing access shall allow the County and its contractors, subcontractors and invitees with full and unimpeded access to the Property for the purpose of designing and constructing the Facility, and facilitating its operation and use.

Section 7. **Funding:** The County will allocate funds received under the JPA towards the design, permitting and construction of the Facility (also referred to herein as "capital costs"). In the event the capital costs exceed the cost estimate set forth in Exhibit B or the amount budgeted by County for the Facility, the County may elect to either: 1) expend the additional funds required for completion of the Facility, provided that such additional funds have been budgeted for the Facility; 2) redesign and/or rebid the Facility to bring the total costs associated with the Facility within the amount budgeted by County; 3) terminate this Agreement; or 4) construct the improvements in phases. The County shall have the sole discretion to determine its election. The County shall also have the option of requesting that the Village agree to a modification to the scope and design of the Facility so as to bring the capital costs within budget. If County shall present this option to the Village, the Village must, by action of its Village Council, formally accept the revised scope and design (which shall modify Exhibit "B") prior to the County authorizing the commencement of the construction of Facility. The Village shall not, however, have an obligation to fund any portion of the capital costs of the Facility.

Section 8. **Ownership, Operation and Maintenance of the Project:**

A. Following the expiration of this Agreement (*i.e.*, the initial term and any renewals thereof), the County will convey to Village, the County's interest in the improvements to the Property, as is. County's conveyance of the improvements shall be subject to the Village's performance of its duties and obligations under this Agreement.

B. Village hereby represents and warrants that it is the fee simple owner of the Property and that the Property is unencumbered and free and clear of other interests, of any type or character that could interfere with or preclude the County's use of the Facility and/or Property. The Village shall not extinguish or impair, nor shall it permit any third party to extinguish or impair the County's or the public's right to access and use the Facility and/or the Property. The Village shall not permit a third party to encumber or acquire any interest in the Facility during the duration of this Agreement nor shall it permit any liens or encumbrances to be recorded against the Facility or the Property, unless it has first obtained the consent of the County in writing. In the event any liens or encumbrances are filed or recorded against the Facility and/or Property, the Village shall immediately take all necessary acts, at its sole cost and expense, to clear and remove all such liens, interest or encumbrances. The Village shall not take any action which would adversely affect the County's or FDOT's interest in the Facility, make the County or FDOT liable to any other entity or third party, or jeopardize the County's JPA with FDOT or receipt of funds from FDOT. The Village represents and warrants that it has full legal authority to enter into this Agreement, to make the Property available to County for the duration and purposes of this Agreement and to perform its duties and obligations under this Agreement. Village further warrants that it has the financial ability to operate and maintain the Facility and Property as required under this Agreement.

C. The Village shall be responsible for all costs, expenses, fees and charges, and liability related to the operation and maintenance of the Project. Village shall maintain the Facility and Property in good working order, condition and repair and in accordance with industry standards for such facilities and the public transit uses to be made thereof, so as to prevent undue deterioration and to encourage public use. The Village's maintenance obligation shall include, but shall not be limited to, the maintenance and repair of all lighting fixtures, landscaping, and structures, excluding any bus shelter(s), and the provision of all electricity, trash removal, and all grounds keeping. Village shall provide security, at a cost and level appropriate for the use contemplated hereunder and consistent with other active Village properties. The Village will notify the Palm Beach County's Sheriff that the Facility is a publicly owned and operated municipal facility. The Village is solely responsible for determining the appropriate level of security for the Facility and the Property and the uses thereof.

D. The Village shall operate and maintain the Facility and Property for the uses described in this Agreement for the entire duration of the Agreement. However, in the event the Agreement is renewed after the expiration of the initial term and not terminated by the County, the County will undertake any capital renewal work that it determines, in its sole discretion, is necessary as a result of normal wear and tear of the Facility. This provision shall not, however, relieve the Village of its maintenance obligations under this Agreement.

E. The right and duties arising under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Village may not convey, sublet, transfer or assign its interest in the Facility, the Property or this Agreement, or any of its duties and obligations under the Agreement without first having obtained the express prior written consent of the County, which consent may not unreasonably be withheld. The

Village acknowledges that the County will not consider any transfer or assignment unless the assignee is subject to all of the terms and conditions of this Agreement, including any restrictions or reservations in the Bill of Sale.

F. Should the Village desire to contract with a third party for the management of the Facility and/or the Property, the Village must first obtain the written authorization for such from County. No such contract shall release or attempt to release the Village from its liabilities, duties and obligations under this Agreement. The County may not unreasonably withhold its consent to such a contract.

**Section 9. Use:**

A. During the duration of the Agreement, the County shall have the right to use the Facility and Property to provide parking and for other public transportation uses, services and activities. The Facility and Property shall be open and available, and operated and maintained for the benefit of Palm Tran and the general public using the Park and Ride Facility for public transit bus service. The parking spaces located within the Facility shall be allocated exclusively for the use of Palm Tran and its riders from Monday through Friday. The hours of operation shall generally be from 5:00a.m. to 11:00p.m. but the hours may be altered upon notice to the Village. County shall also have the right to use the Facility and Property on Saturdays and Sundays, as its needs may require, and the County's use shall take priority over other uses. To the extent permitted by law, the Village will pass such ordinances, rules, and regulations as may be appropriate and necessary to allow the Village and/or County to control the Facility's usage through appropriate mechanisms which may include, but are not limited to, the posting of use rules and regulations, the provision of trespass affidavits to the Palm Beach County Sheriff's Office to enforce same, and the ticketing and towing of non-authorized vehicles.

B. The Facility and Property may be used for other incidental public activities or uses as described in this section of the Agreement; provided, that, such uses are subordinate to the public transit activities and purposes of the Facility and in accordance with any applicable federal, state or local law, regulation, guidance, requirement or funding condition or restriction. No activity or use shall interfere with or prevent the County's use of the Facility and Property for the public transit uses and activities contemplated under this Agreement. The Facility and Project shall be used, operated and maintained in accordance with all applicable federal, state and local laws, rules and regulations.

C. The Village may request that the County permit the Village to use the Facility for parking for Village sponsored public purposes, which may include but are not limited to, recreational, cultural, civic, or community sponsored events managed directly by the Village on Saturdays, Sundays and other occasions. The Village shall initiate a request to use the Facility by completing the application form attached to this Agreement as Exhibit "C" and submitting it to County's Contract Representative and Monitor for approval at least thirty (30) days in advance of the Village sponsored public purpose. The County will grant such request if the County reasonably determines that the proposed usage is consistent with the terms of this Agreement and the JPA, and that the estimated parking space usage will not conflict with or negatively impact the County's use of the Facility and the Property for County's public transit activities and uses.

The County shall not be responsible for any liability, costs or expenses associated with the Village's or any third party's use of the Facility and Property.

D. Upon completion of the Facility, the Village shall affix a permanent plaque or marker, of a size and composition acceptable to County, in a prominent location at the Facility indicating that the County was a contributor to the Project. Said plaque or marker shall include the County's seal.

E. The Village will also affix or permit the County to affix signage deemed appropriate by County indicating that the Facility is a Palm Tran park and ride lot. The Village shall also permit Palm Tran to provide information to the public that is designed to inform the public about Palm Tran's routes, services, or events and to inform the public about other public transit services that may connect with or link to Palm Tran.

F. The Village warrants that the Project shall serve a public purpose and be open to and benefit all residents of Palm Beach County and shall be available to all residents on the same cost and availability basis as it is available to residents of the Village.

Section 10. **Access and Audit:** Each party will maintain all books, records, accounts, and reports required under the JPA and this Agreement for a period of not less than five (5) years after the later of the date of termination or expiration of this Agreement, or the date of the last audit report issued by the County, Florida's Chief Financial Officer, Florida's Auditor General, FDOT or its designee. Each party will make all records, including but not limited to, all insurance policies, Project records, and maintenance logs, available to the other, the USDOT or the State of Florida, or their respective agencies, officers, employees, contractors, investigators or auditors upon request. In the event claims are asserted or litigation is commenced related to or arising out of the performance of this Agreement, each party agrees that it will maintain all records relating to the Project, and the maintenance, operation and use of the Facility and Property until the other party, FDOT, or other State official or representative have disposed of all such litigation, appeals, claims, or exceptions related thereto.

Section 11. **License and Permit:** The Village hereby grants to the County an irrevocable license and permit to access and use the Facility and Property, and the surrounding roadways, walkways, and other means of ingress and egress to the Property for a park and ride lot and other related public transit uses or activities for the duration of this Agreement. Such license and permit shall be non-exclusive but no other use or activity shall be allowed to interfere with or preclude the use of the Facility and Property for public transit bus service or other related public transit uses or activities.

Section 12. **JPA Terms and Conditions:**

A. The Village acknowledges that County is to be reimbursed for its design, permitting and construction activities under this Agreement from funds made available to the County under the JPA. The Village further acknowledges and understands that the County has continuing obligations to FDOT relating to the use and control of the Facility and Property. Accordingly, the Village agrees to comply with the terms and conditions set forth in Exhibit "D" to this

Agreement, which is attached hereto and made a part of this Agreement.

Section 13. **Prohibition of Discrimination:** The Village warrants that the Facility and Property shall be open and made available to the general public for the purposes of this Agreement. The Village further represents and warrants that it will not discriminate in its performance of the Project and use, operation or maintenance of the Facility and Property, and that it will treat all users of the Facility and Property equally and without regard to race, sex, sexual orientation, gender, gender identity or expression, color, religion, disability, handicap, age, marital status, national origin or ancestry.

Section 14. **Insurance:**

A. Without waiving the right to sovereign immunity as provided by Section 768.28, F.S., each party acknowledges that it is either insured or self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence, or such monetary waiver limits that may change and be set forth by the State Legislature.

B. The Village agrees to maintain or to be self-insured for Workers' Compensation & Employers' Liability insurance in accordance with Chapter 440, Florida Statutes.

C. When requested, each party shall provide to the other, an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status.

D. Compliance with the foregoing requirements shall not relieve either party of its liability and obligations under this Agreement.

E. The Village agrees to include no less than the above-stated insurance requirements as to type of coverage and dollar amount so as to meet the minimum requirements set forth above, in all contracts related to the use of the Facility and/or Property, and shall establish such as a requirement for the issuance of any permit, license, or right to use or occupy the Facility and/or Property, unless this requirements is waived by the County's Contract Representative and Monitor with the approval of County's Department of Risk Management.

F. During the period in which the Facility is being constructed by County, the County agrees that it will have the Village named as a third party beneficiary to each County performance and payment bond associated with the construction of the Facility.

Section 15. **Public Entity Crimes:** Each party shall comply with Section 287.133(2)(a), F.S., which provides in pertinent part as follows:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be

awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S. for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list."

Section 16. **No Third Party Beneficiaries:** This Agreement confers no rights on anyone other than the County, FDOT, or the Village and is not otherwise intended to be a third party beneficiary contract. FDOT is authorized to enforce any of the Village's duties and obligations under this Agreement regardless of whether FDOT or the County benefits from the enforcement. Nothing contained in this Agreement shall constitute the County's acceptance of any obligation or liability not otherwise imposed under this Agreement or by law upon the County.

Section 17. **Termination:**

A. In the event the Village fails to comply with any provision of this Agreement, including the applicable requirements of the JPA, the County may exercise any and all rights available to it, including termination of this Agreement. The County will notify the Village of its noncompliance and provide the Village ninety (90) days or such additional period granted by the County to cure the noncompliant event(s) or act(s). In the event the Village has not cured the noncompliant act(s) or event(s) or if the Village cannot cure the noncompliant act(s) or event(s), the County may terminate this Agreement. If the County terminates this Agreement, the County may require the Village to pay to the County the JPA funds that were expended by the County for the Project, or such other lesser sum equivalent to the value of the remaining useful life of the Facility, as determined by County, if such is approved by FDOT. In no case shall such "lesser" sum be less than the amount owed by the County to FDOT under the JPA, and FDOT must have determined that no other sums are or would be owed by the County to FDOT. In addition, the Village shall pay to the County all costs and expenses incurred by the County in the administration of the JPA as it relates to the Project and the termination of the JPA. The Village shall not have any recourse against the County or FDOT if the County shall terminate this Agreement for any reason set forth in this Agreement.

B. The County may also terminate this Agreement for convenience, in whole or in part, at any time, by written notice of such termination to the Village should the County determine that it is in the best interests of County government to do so. The County shall notify the Village of its intent to terminate for convenience at least ninety (90) days in advance of the termination date by delivering notice of such to the Village specifying the extent of termination and the effective date. In the event the County terminates this Agreement for its convenience, the Village will be relieved of any obligation it might otherwise have to pay to County a sum of money equal to the value of the remaining useful life of the Facility. The Village affirms that the benefits promised to it under this Agreement are adequate consideration to support not only its duties and obligations under this Agreement but the County's right to terminate for convenience as well, and that it will not be harmed by the County's termination of this Agreement.

C. The County's remedies are not limited to those set forth in this Agreement, and the County shall have the right to exercise any other remedy available to it at law, in equity, including specific performance. Notwithstanding the foregoing, the parties agree to comply with all applicable statutory dispute resolution procedures as provided under Florida law.

Section 18. **FDOT Approval & Appropriation:** Each party's performance and obligation under this Agreement is contingent upon FDOT's approval of this Agreement and an annual appropriation by its governing body for the purposes of this Agreement. In addition, County's performance and obligation is contingent upon an appropriation, by its governing body, for the purposes of designing, permitting and constructing the Facility. County shall not be obligated to perform, as contemplated under this Agreement if FDOT terminates or cancels the JPA with the County.

Section 19. **Notice of Accidents, Injuries and Suits:**

A. In the event of an accident or injury related to County's use of the Facility or Property, the Village agrees to immediately notify its insurer and the County of such accident or injury. Upon the request of County, the Village will provide all information relative to the accident or injury.

B. Each party agrees to cooperate with the other and FDOT, and their respective officers, employees, servants or contractors, in any investigation either party or FDOT may conduct and the defense of any claim or suit in which a party or FDOT may be named. Neither party shall do anything to impair or invalidate any applicable insurance coverage.

Section 20. **Hold Harmless and Indemnification:** Neither party shall be deemed to have assumed any liability for the negligent or wrongful acts or omissions of the other party. Nothing contained in this Agreement shall act as a waiver of either party's sovereign immunity in excess of that waived by the Legislature in Section 786.28, F.S.

Section 21. **No Agency Relationship:** Nothing contained herein is intended to nor shall it create an agency relationship between the Village and the County or the Village and Palm Tran, Inc.

Section 22. **Remedies:** This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy conferred upon any party by this Agreement 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 inequity or by statute or otherwise. The parties may pursue any and all actions available under law or equity to enforce the provisions of this Agreement, including any action or remedy available under law or equity. The remedies available to the County shall include specific performance of this Agreement. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 23. **Enforcement Costs:** Any costs or expenses, including reasonable

attorney fees, associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties. This clause pertains only to the parties to this Agreement.

Section 24. **Notice:** All written notices required under this Agreement shall be in writing and hand delivered or sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

Audrey Wolf, Director  
Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411

with copies to:

Chuck Cohen, Executive Director  
Palm Tran  
3201 Electronics Way  
West Palm Beach, FL 33407  
(561) 841-4210

County Attorney's Office  
301 North Olive Ave.,  
Suite 601  
West Palm Beach, FL 33401

and, if sent to the Village shall be mailed to:

Paul Schofield  
Village of Wellington  
14000 Greenbriar Blvd.  
Wellington, FL 33414

with a copy to:

Jeffrey S. Kurtz  
Village Attorney  
Law Office of Glen J. Torcivia  
701 Northpoint Parkway  
West Palm Beach, FL 33407

Each party may change its address upon notice to the other.

Section 25 **No Waiver:** No waiver of any provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver.

Section 26. **Captions:** The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

Section 27. **Joint Preparation:** The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 28. **Severability:** Should any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement.

Section 29. **Entirety of Contract and Modifications:** The County and Village agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

Section 30. **Survivability:** Any provision of this Agreement which is of a continuing nature or imposes an obligation which by its nature extends beyond the term of this Agreement, shall survive its expiration or earlier termination.

Section 31. **Filing:** A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

**(Remainder of Page Intentionally Left Blank)**

**IN WITNESS WHEREOF**, the County and Village have hereunto set their hands the day and year above written.

Attest:  
Sharon R. Bock, Clerk &  
Comptroller

Palm Beach County, Florida, by its  
Board of County Commissioners

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

By: \_\_\_\_\_  
John F. Koons, Chairman

Attest:

Village of Wellington, by its  
Village Council

By: *Awilda Rodriguez*  
Awilda Rodriguez, Village Clerk

By: *[Signature]*  
Darrell Bowen, Mayor

Approved as to Terms  
and Conditions

*[Signature]*  
Chuck Cohen, Executive Director  
Palm Tran

Approved as to Terms  
and Conditions

*[Signature]*  
Paul Schofield, Village Manager

Approved as to Form  
and Legal Sufficiency

*[Signature]*  
County Attorney

Approved as to Form  
and Legal Sufficiency

*[Signature]*  
Jeffrey S. Kurtz, Village Attorney

G:\AWellingtonPark&RideRev4-28-09.pt

**List of Exhibits**

- Exhibit A. Description of Property**
- Exhibit B. Project Description, Conceptual Site Plan & Cost Estimate**
- Exhibit C. Special Event permit Application**
- Exhibit D. Additional Terms and Conditions**

**Exhibit A**  
**Description of Property**

Civic Tract, of the plat of WELLINGTON GREEN, a MUPD/PUD, according to the plat thereof as recorded in Plat Book 87, Pages 81-90, inclusive, of the Public Records of Palm Beach County, Florida (the "Property").

**Exhibit B**  
**Project Description, Conceptual Site Plan & Cost Estimate**

The project is a 138-space paved parking lot including associated site improvements for site lighting, landscaping, irrigation, surface water management, and signage. The project also includes a bus shelter.



**OPINION OF PROBABLE CONSTRUCTION COST  
WELLINGTON PARK & RIDE FACILITY**

**95% Plan Submittal  
April 6, 2009**

**for  
Facilities Development and Operations Department  
Capital Improvements Division**



Prepared by:

**MILLER  LEGG**

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OPINION OF PROBABLE CONSTRUCTION COST  
WELLINGTON PARK & RIDE FACILITY  
95% Plan Submittal  
April 6, 2009

ITEM	COST
Civil Site Work	\$408,472.05
Landscape & Irrigation	\$75,386.50
Site Lighting	\$117,180.45
<b>Subtotal</b>	<b>\$601,039.00</b>
Contingency @ 10%	\$60,103.90
<b>TOTAL CONSTRUCTION COST</b>	<b>\$661,142.90</b>
Construction Layout & Testing @ 5%	\$33,057.15
<b>TOTAL ESTIMATED COST</b>	<b>\$694,200.05</b>



OPINION OF PROBABLE CONSTRUCTION COST  
WELLINGTON PARK & RIDE FACILITY

APRIL 6, 2009

No.	Item	Quantity	Unit	Unit Cost	Total
1	Mobilization & General Conditions	1	L.S.	\$25,000.00	\$25,000.00
2	Clearing	2	AC	\$1,500.00	\$3,000.00
3	Embankment (approx 1 foot fill)	3,000	C.Y.	\$10.00	\$30,000.00
4	Asphalt Pavement (2" ACSC; 6" Base; 12" Subbase)	6,108	S.Y.	\$44.00	\$268,755.72
5	Bus Bay Asphalt Pavement (2" ACSC; 8" Base; 12" Subbase)	226	S.Y.	\$50.00	\$11,277.78
6	Signing and Striping	1	L.S.	\$8,000.00	\$8,000.00
7	Wheel Stops	138	EA	\$25.00	\$3,450.00
8	Type 'D' Curb	1,615	L.F.	\$18.00	\$29,070.00
9	Type 'F' Curb	161	L.F.	\$22.00	\$3,542.00
10	Concrete Flumes	5	EA	\$600.00	\$3,000.00
11	24" CMP	53	L.F.	\$50.00	\$2,650.00
12	Type 'C' Ditch Bottom Inlet	1	EA	\$3,000.00	\$3,000.00
13	Concrete Sidewalk (4 in. thick)	255	S.Y.	\$31.00	\$7,901.56
14	Silt Fence	1,265	LF	\$5.00	\$6,325.00
15	Turbidity Barrier	100	LF	\$20.00	\$2,000.00
16	Construction Entrance Soil Tracking Device	1	EA	\$1,500.00	\$1,500.00
<b>Subtotal Civil Site Work</b>					<b>\$408,472.05</b>

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**OPINION OF PROBABLE CONSTRUCTION COST  
WELLINGTON PARK & RIDE FACILITY**

APRIL 6, 2009

Trees								
Code	Botanical	Common	Cont. Size	Dimensions	Quantity	Unit Cost	Sub-Total (Raw Cost)	Construction & Installation Cost
BS	Bursera simaruba	Gumbo Limbo	B&B	14' OAH, 7' SPR	9	160	1440	2880
CE	Conocarpus erectus	Green Buttonwood	B&B	14' OAH, 7' SPR	19	150	2700	5400
PE	Pinus elliotti	Slash Pine	B&B	14' OAH, 7' SPR	7	150	1050	2100
QV	Quercus virginiana	Southern Live Oak	B&B	14' OAH, 7' SPR	30	160	4800	9600
SP	Sabal palmetto	Cabbage Palmetto	B&B	10' CT, Staggered, Boot	9	75	675	1350
VM3	Veitchia merrillii	Adonidia Palm	B&B	10' CT, TRIPLE TRUNK	2	160	320	640
TD	Taxodium distichum	Bald Cypress	B&B	14' OAH, 7' SPR	17	170	2890	5780
<b>Tree Sub-Total</b>							<b>13875</b>	<b>27750</b>
Shrubs								
Code	Botanical	Common	Cont. Size	Dimensions	Quantity	Unit Cost	Sub-Total (Raw Cost)	Construction & Installation Cost
ARC	Acalypha reptans	Dwarf Chenille	1 gal@12" o.c.	12" x 12"	78	2	156	312
CES	Conocarpus erectus 'Sarcus'	Silver Buttonwood	3 gal@ 30" oc	24" x 24"	1829	4.5	8230.5	16461
CHI	Chrysobalanus icaco 'Red Tip	Red Tip Cocoplum	7 gal@ 36" oc	48" x 30"	150	15	2250	4500
COF	Cordyline fruticosa 'Red Sis Ti Plant		3 gal., as shown	36" ht., 3 stem min.	9	3.75	33.75	67.5
ILV	Ilex vomitoria 'Shillings'	Dwarf Yaupon Holly	1 gal@ 24" oc	18" x 18"	243	4.5	1093.5	2187
NEE	Nephrolepis exaltata	Boston Fern	3 gal@ 24" oc	18" x 18"	140	3.5	490	980
RHI	Rhaphiolepis indica	Indian Hawthorn	4 gal@ 24" oc	18" x 18"	7	4.5	31.5	63
TRF	Tripsacum floridanum	Florida Gamagrass	3 gal@ 30" oc	24" x 24"	47	4	188	376
SCH	Schefflera arbuticola 'Variegata	Variegated Arbuticola	3 gal@ 24" oc	24" x 24"	69	5	345	690
<b>Shrub Sub-Total</b>							<b>12818.25</b>	<b>25636.5</b>
Irrigation								
					Quantity	Unit Cost	Sub-Total (Raw Cost)	Construction & Installation Cost
					1	12000	12000	22000
<b>Project Sub-Total</b>							<b>38693.25</b>	<b>75386.5</b>
<b>Sub-Total Landscape &amp; Irrigation</b>							<b>38693.25</b>	<b>75386.5</b>

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Palm Tran Park & Ride Facility							
April 5, 2009							
Items:	Unit	Qty	Material	Extension (\$)	OPINION OF PROBABLE CONSTRUCTION COST	Extension (\$)	Total Cost per Item
Utility Cost							
FPL Tran	Ea	1	\$1,000.00	\$1,000.00		\$ -	\$ 1,000.00
Power Distribution							
Meter Cst	Ea	1	\$1,000.00	\$1,000.00	4.00	\$ 180.00	\$ 1,180.00
Disconnct	Ea	2	\$2,500.00	\$5,000.00	12.00	\$ 1,080.00	\$ 6,080.00
Panel/Cab	Ea	1	\$12,500.00	\$12,500.00	66.00	\$ 2,700.00	\$ 15,200.00
Time Cst	Ea	1	\$1,000.00	\$1,000.00	4.00	\$ 180.00	\$ 1,180.00
Conduit & Wire							
3/8" x 1/4"	Lf	60	\$5.59	\$335.34	0.13	\$ 341.33	\$ 676.67
3/8" x 1/8"	Lf	20	\$6.11	\$122.13	0.14	\$ 124.13	\$ 246.26
4/8" x 1/8"	Lf	2	\$9.52	\$19.04	0.24	\$ 21.20	\$ 40.24
2#10, 1#10	Lf	1000	\$3.86	\$6,162.40	0.11	\$ 7,783.20	\$ 13,965.60
2#10, 1#10	Lf	200	\$3.24	\$648.00	0.10	\$ 910.80	\$ 1,555.40
2#6, 1#6	Lf	50	\$4.00	\$200.00	0.12	\$ 261.16	\$ 506.11
2#10, 1#10	Lf	200	\$2.71	\$542.34	0.10	\$ 88.13	\$ 1,430.47
1 1/2" w/	Lf	1800	\$3.44	\$6,192.00	0.09	\$ 7,452.00	\$ 13,641.30
Light Fixture Assembly							
Assembly	Ea	9	\$2,500.00	\$22,500.00	16.00	\$ 6,480.00	\$ 28,980.00
Assembly	Ea	3	\$3,000.00	\$9,000.00	16.00	\$ 2,160.00	\$ 11,160.00
In-ground	Ea	1	\$750.00	\$750.00	16.00	\$ 720.00	\$ 1,470.00
Relocate	Ea	1	\$2,500.00	\$2,500.00	24.00	\$ 1,080.00	\$ 3,580.00
Misc 15%	Ea	1		\$10,430.11		\$ 4,854.29	\$ 15,284.41
Total Material Cost:				\$ 79,964.21			
Total Labor Hours:					827.03		
Rate per Hour:					\$ 45.00		
Total Labor Cost:					\$ 37,216.34		
							<b>Total Cost: \$ 117,180.45</b>

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\_\_\_ Recreation \_\_\_ Cultural \_\_\_ Civic \_\_\_ Community \_\_\_

**Event Preparation**

\_\_\_ Advertising \_\_\_ Banners/Signage \_\_\_ Electric \_\_\_ Field Prep \_\_\_ Water @ Range

**Event Sales**

\_\_\_ Admission Charge \_\_\_ Food/Beverage \_\_\_ Merchandise \_\_\_ Tickets

**Event Personnel**

\_\_\_ EMT \_\_\_ Fire Rescue \_\_\_ Maintenance \_\_\_ Security \_\_\_ Volunteers

**Event Logistics**

\_\_\_ Audio/Video Equipment \_\_\_ Shooter/Judges Platform \_\_\_ Dumpster \_\_\_ Parking

\_\_\_ Portable Restrooms \_\_\_ Scaffolding/Construction

\_\_\_ Shade Structures \_\_\_ BBQ grill \_\_\_ Temporary Structures

6. Attach a Site Plan showing the location of the items identified as Event Details above, including vehicle and pedestrian traffic flow.
7. Attach a description of any temporary structures to be used at the Event. (Any utilities required for the construction and/or demolition of temporary structures must be provided by the Applicant).
8. Organization(s) Benefiting from Event Proceeds, if other than Producer (attach additional pages to list more organization/individuals)

Benefiting Organization/Individuals Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail \_\_\_\_\_

Status: Non Profit \_\_\_\_\_ Profit \_\_\_\_\_ Other \_\_\_\_\_ (Explain)

Date of Incorporation: \_\_\_\_\_ Tax Exempt # \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact Fax \_\_\_\_\_ Contact E-mail \_\_\_\_\_

9. List all vendors of the Event: \_\_\_\_\_

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10. Will the event be advertised to the Public? Yes \_\_\_ No \_\_\_  
If yes, by what means?: Radio \_\_\_\_\_ TV \_\_\_\_\_ Other \_\_\_\_\_

11. Number of years Event has taken place in Palm Beach County: \_\_\_\_\_

**Insurance**

The requirements of Article 12 with respect to the Village's insurance requirements shall extend to cover any special event permitted and approved.

**Indemnification**

The requirements of Article 11 with respect to the Village's indemnification requirements shall extend to cover any special event permitted and approved.

\_\_\_\_\_  
Signature of Village Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title of Authorized Representative

**Special Conditions on Following Page**

**TO BE PROVIDED BY COUNTY (after evaluation of the application):**

Special Conditions \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Director Facilities Development & Operations

Date: \_\_\_\_\_

\_\_\_\_\_  
Executive Director Palm Tran

Date: \_\_\_\_\_

**Exhibit D**  
**Additional Terms and Conditions**

A. The Village acknowledges that County is to be reimbursed for its design, permitting and construction activities under this Agreement from funds made available to the County under the JPA. Accordingly, the Village agrees that it will not perform any act or refuse to comply with any County request which would contribute to or cause: the County to be in violation of any term or condition of the JPA; FDOT to seek to terminate the JPA; or FDOT to request the return of any FDOT funds provided to the County, whether budgeted or expended for this Project. The Village will immediately remedy any situation or condition, within the control of the Village, which would contribute to or cause the County to be in violation of the JPA or any federal, state, or local law, regulation rule or requirement, upon notice of such from the County. The Village's failure to do so may result in the termination of this Agreement.

B. The Village agrees that all of its records relating to this Agreement, including but not limited to, its ownership, use, possession, operation and maintenance of the Facility, Property, or Project are public records for the purposes of Chapter 119, F.S. The County shall have the right to terminate this Agreement for refusal by the Village to allow public access to all documents, paper, records and other materials related to this Agreement.

C. The Village's execution of this Agreement constitutes a certification that it will comply with all of the applicable requirements under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et. seq.*, and the implementing regulations issued thereunder, as they may be amended or replaced from time to time.

D. The Village's execution of this Agreement constitutes a certification that it will comply with all of the applicable requirements under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, *et. seq.*, and the implementing regulations issued thereunder, as they may be amended or replaced from time to time.

E. The Village's execution of this Agreement constitutes a certification that it will comply with all of the requirements imposed by the Americans with Disabilities Act, 42 U.S.C. 12102, *et. seq.*, and the implementing regulations issued thereunder, as they may be amended or replaced from time to time.

F. In carrying out or in connection with any activity related to the Project, the Village agrees that it will not discriminate against any employee or applicant for employment because of race, age, creed, color, disability, sex or national origin. The Village will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their race, age, creed, color, disability, sex or national origin. Such action shall include, but may not be limited to employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Village shall insert the foregoing provisions, modified only to show the particular contractual relationship in all of its contracts in connection with the Project, except contracts for standard commercial supplies or raw materials, and shall require all of its contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The Village shall post, in conspicuous places available to employees and applicants for employment, notice of this nondiscrimination clause.

G. Prohibited Interests: The Village agrees that none of its members, officers or employees, during their tenure or for two (2) years thereafter, shall have any interest, direct or indirect, in the Project, the Facility or its use. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the County, the County with prior approval by FDOT, may waive the prohibition contained in this subsection. However, any such present member, officer or employee shall not participate in any action by the Village relating to such contract, subcontract, or arrangement. The Village shall insert in all contracts entered into in connection with the Project and shall require its contractors to insert in each of their subcontracts, the following provision:

No, member, officer or employee of the Village during their tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

H. The Village's execution of this Agreement constitutes a certification that it will carry out this Agreement and assist the County in carrying out this Agreement in conformity with all applicable environmental regulations including the securing of any applicable permits.

I. The Village agrees that no federal appropriated funds have been paid or will be paid by

or on its behalf, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federal appropriated funds have been paid by the Village to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Grant Agreement, the Village shall complete and submit Standard Form-LLL A Disclosure Form to Report Lobbying,® in accordance with its instructions. The Village shall require that the language of this paragraph be included in the award or contract documents for all awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements). All recipients of JPA funds shall certify and disclose accordingly. Furthermore, no funds received pursuant to this Agreement may be expended for lobbying the state legislature or a state agency.

J. No member or delegate to Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising out of or from this Agreement. No funds received under this Agreement may be expended for lobbying the legislature or a state agency.

K. The Village shall use, operate and maintain the Facility in accordance with the terms and conditions of this Agreement, the JPA, and all applicable state and federal laws, rules and regulations.

L. Disadvantaged Business Enterprises: It is policy of FDOT and the County that Disadvantaged Business Enterprises (DBE's) as defined in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed, in whole or in part, with federal funds. The Village agrees that the DBE requirements of 49 CFR Part 26, as amended, apply to this Agreement. The Village and its contractors performing any part of the Project agree to ensure that said DBE's have the maximum opportunity to participate in the performance of contracts and this Agreement. In this regard, the Village and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that the DBE's have the maximum opportunity to compete for and perform contracts. The Village and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Village's failure to comply with this provision shall be deemed a material breach of this Agreement which may result in the termination of this Agreement or such other remedy as the County deems appropriate. The Village agrees to report any reasonable cause notice of noncompliance based on 49 CFR Part 26 filed under 49 CFR Part 26 to the County within thirty (30) days of its receipt of information regarding the noncompliance.

M. Discriminatory Vendor List: The Village agrees that an entity or affiliate who has been placed on Florida's discriminatory vendor list may not submit a bid on a contract to provide

any goods or services, may not submit a bid on a contract for the construction or repair of a public building or public work, may not submit bids on leases of real property, and may not be awarded or perform work as a contractor, supplier, subcontractor or consultant or transact business with any public entity.

N. Preparation of Certifications, Documents and Reports: Should the County be required by FDOT, the USDOT, or any other agency of the Federal or State government to provide any certifications, documents or reports related to the Facility, Property or the Project, the Village will cooperate and assist the County with the preparation of such certifications, documents or reports, or prepare and furnish any such certifications, documents or reports requested. Village shall provide County with all environmental findings relevant to the Facility, Property or Project.

O. The Village will require all of its permittees, contractors and subcontractors to save, defend, indemnify and hold harmless the Village, County, and FDOT if required by the County, including their respective officers, agents, servants and employees from and against any and all claims, liability, losses and/or causes of action which may arise out of or from any permittee's contractor's or subcontractor's performance of the Project, negligent acts or omissions.

P. Village shall further require all of its permittees, contractors and subcontractors to save, defend, indemnify and hold harmless the Village, County, and FDOT if required by the County, from and against any and all claims, demands, suits or causes of action arising out of any conduct or misconduct of a permittee, contractor or subcontractor not included in the paragraph above and for which the Village, County, or FDOT are alleged to be liable.

Q. The Village shall permit and shall require its contractors to permit FDOT's or the County's authorized representatives to inspect all work, materials, payrolls and records, and to audit the books, records and accounts pertaining to the Project.

R. To the extent applicable, the Village will maintain property records, conduct physical inventories and develop control system as may be required by County or FDOT, or assist County or FDOT in their actions related thereto.

S. To the extent applicable, the Village shall retain and maintain all records required to satisfy the "Agency's" audit and record retention obligations under the JPA, including but not limited to those described in Section 7.00 through 8.30 and 11.00 of the JPA.