

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: June 8, 2010

☒ Consent      ☐ Regular  
☐ Ordinance      ☐ Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: **A) approve** Grant Agreement with the Palm Beach Metropolitan Planning Organization (MPO) in an amount not-to-exceed \$65,000 for funding a water taxi shelter at DuBois Park; **B) authorize** the County Administrator or his designee to execute all future time extensions, task assignments, minor amendments, and other necessary forms and certifications during the term of the Grant Agreement that do not change the amount of funding, scope of work, or terms and conditions of the Agreement; **C) authorize** the Director of the Parks and Recreation Department to serve as Liaison Agent with the MPO for this project; **D) approve** a Budget Transfer of \$65,000 in the Metro Planning Organization Fund for PBC Water Taxi Facilities from Contributions to Other Governmental Agencies to Transfer to Park Improvement Fund 3600; and **E) approve** a Budget Amendment of \$65,000 in the Park Improvement Fund to recognize the transfer from the Metro Planning Organization Fund.

**Summary:** This Grant Agreement provides an amount not-to-exceed \$65,000 for design, permitting and construction of a water taxi shelter on the Jupiter Inlet at DuBois Park. The estimated cost for the water taxi shelter is \$125,444, and the additional funding of \$60,444 will be provided from previously established funding from the 2004 Waterfront Access Bond for the DuBois Park Marina project. The project must be completed and the facility open to and accessible by the public within two years of the execution of the Grant Agreement. The term of this Grant Agreement is for ten (10) years, until June 8, 2020. Funding is from the U.S. Department of Transportation, Ferry Boat Discretionary Program, through the State of Florida Department of Transportation, and is administered by the Palm Beach County MPO. District 1 (AH)

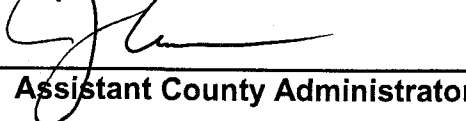
**Background and Justification:** On September 9, 2008, the Board approved a \$100,000 MPO grant (R2008-1526) to build a water taxi landing at DuBois Park as part of the larger marina project, and on April 6, 2010, the Board approved a third Amendment to the Agreement (R2010-0528) increasing the grant funding to \$130,000. Water taxis using the DuBois Park docking facilities will provide riders an alternative means of transportation for access to DuBois and Jupiter Beach parks for picnicking, fishing, beach access, and snorkeling. The water taxi project is a part of the larger DuBois Park Marina and Shoreline Stabilization Project. The entire DuBois Park Marina project will be funded from the 2004 \$50 Million Waterfront Access and Preservation General Obligation Bond Issue, a \$130,000 MPO grant, a \$50,000 Florida Coastal Partnership Initiative grant, a \$987,000 Florida Inland Navigation District Waterways Assistance Program grant, and a \$500,000 Florida Fish and Wildlife Conservation Commission Florida Boating Improvement Program grant. When complete, the DuBois Park project will include the water taxi facility, seventeen (17) day use dock slips along the peninsula, replacement of the dock slips at Zeke's Marina, shoreline revetment and stabilization, and construction of an approximately one (1) acre snorkeling area.

The Grant Agreement requires the County to maintain the water taxi facility and guarantee it is open and accessible to the public as a water taxi facility for no less than ten (10) years or until June 8, 2020. The grant also stipulates if the MPO terminates the Agreement, the County shall return the grant funds or a portion thereof based upon the remaining useful life of the facility, in addition to all costs and expenses incurred by the MPO, in the administration of the Joint Participation Agreement with the Florida Department of Transportation as its relates to this project and the termination of the Grant Agreement.

- Attachments:**
1. Grant Agreement
  2. Budget Transfer
  3. Budget Amendment

Recommended by:   
Department Director

5-19-10  
Date

Approved by:   
Assistant County Administrator

6/2/10  
Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>125,444</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(65,000)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>60,444</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

Is Item Included in Current Budget? Yes        No X  
Budget Account No.: Fund        Department        Unit         
Object        Program N/A

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

Palm Beach MPO grant	3600-581-P605	\$65,000
Waterfront Access Bond	3038-581-P605	<u>\$60,444</u>
Grant Project Total		\$125,444

C. Departmental Fiscal Review: chopelakis

## III. REVIEW COMMENTS

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

N. Diaz 9/28/10  
OFMB  
9/26/10 9/28/10

Ann J. [Signature] 9/28/10  
Contract Development and Control

### B. Legal Sufficiency:

This Contract complies with our  
contract review requirements.

Anne [Signature] 6/1/10  
Assistant County Attorney

### C. Other Department Review:

        
Department Director

REVISED 10/95  
ADM FORM 01

2010 -

BGEX -560-05061000000000001317

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

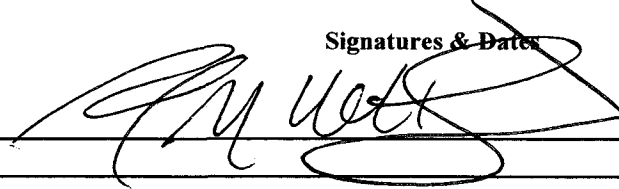
BUDGET TRANSFER  
Fund 1360 Metro Planning Organization

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 5/6/2010	REMAINING BALANCE
<u>Appropriations</u>							
<u>PBC Water Taxi Facilities</u>							
560-5648                      8101- Contributions Othr Govtl Agency	393,500	447,814	0	65,000	382,814	322,173	60,641
<u>PBC Water Taxi Facilities</u>							
820-5648                      9184 - Tr To Park Imprv Fd 3600	100,000	130,000	65,000	0	195,000	0	195,000
			65,000	65,000			

Metropolitan Planning Organization

INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval  
OFMB Department - Posted

Signatures & Dates

 5/11/2010

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

June 8, 2010

Deputy Clerk to the

Board of County Commissioners

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA  
BUDGET AMENDMENT

BGRV 581 050610\*371  
BGEX 581 050610\*1316

FUND 3600 - PARK IMPROVEMENT

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 05/06/10	REMAINING BALANCE
<b>REVENUES</b>								
3600-581-P605-8065	Tr Fr MPO Fd 1360	100,000	130,000	65,000		195,000		195,000
<b>TOTAL RECEIPTS &amp; BALANCES</b>		9,809,163	10,159,944	65,000		10,224,944		
<b>APPROPRIATIONS</b>								
3600-581-P605-6520	Park Improvements	0	1,037,000	65,000		1,102,000	6	1,101,994
<b>TOTAL APPROPRIATIONS &amp; EXPENDITURES</b>		9,809,163	10,159,944	65,000		10,224,944		

Parks and Recreation Department  
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Signatures

Date

By Board of County Commissioners  
At Meeting of  
June 8, 2010  
Deputy Clerk to the Court



5-7-10

Don

**GRANT AGREEMENT  
BY AND BETWEEN  
PALM BEACH METROPOLITAN PLANNING ORGANIZATION  
AND  
PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS  
(DuBois Park Water Taxi Shelter)**

**THIS GRANT AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Palm Beach Metropolitan Planning Organization, Florida, an entity created pursuant to Chapter 339, F.S., (hereinafter referred to as the "MPO") and Palm Beach County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as the "Grantee"), for its Parks and Recreation Department (also referred to herein as "P & R").

**WITNESSETH**

**WHEREAS**, the MPO desires to encourage the creation of a Countywide water taxi transit system linking cities along the Intracoastal Waterway via an integrated water taxi transit system; and

**WHEREAS**, the State of Florida Department of Transportation (FDOT) has funds available from the U.S. Department of Transportation, Ferry Boat Discretionary Program (FBP), for the design, permitting and construction of docks, improvements to docks, and other access facilities needed for water taxi service; and

**WHEREAS**, the MPO has entered into a joint Participation Agreement (JPA) with FDOT under which FDOT will provide funds to assist the MPO with the development of Phase One of a Countywide water taxi transit system; and

**WHEREAS**, the Grantee would like to design, construct and install a water taxi shelter facility at the DuBois Park site in Jupiter, Palm Beach County, that will be used to provide park patrons protection from the weather while waiting for the water taxi; and

**WHEREAS**, the MPO is willing to make available certain grant funds to be used by the Grantee to design, permit, construct and install a water taxi shelter facility in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein, the MPO and the Grantee 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 Grantee's design, permitting, construction, and installation of a water taxi shelter facility as described in this Agreement (also referred to herein as the "Project").

Section 3. **Representatives and Contract Monitor:** The MPO's representative and contract monitor during the term of the Agreement shall be the Director of the MPO, whose telephone number is 561-684-4170. The Grantee's representative and contract monitor during the term of this Agreement shall be its Director of P & R, Dennis L. Eshleman, whose telephone number is 561-966-6614.

Section 4. **Effective Date and Term:** This Agreement shall take effect upon execution by the parties and shall remain in full force and effect for a period of ten (10) years from the date the Facility is fully open to and accessible by the public. Within two (2) years of the execution of this Grant Agreement, the Project shall have been completed by the Grantee and the Facility shall be open to and accessible by the public. In addition, the first invoice for reimbursement of work completed by the Grantee is to be submitted to the MPO within Calendar Year 2010. Grantee acknowledges that any invoice submitted after December 31, 2010, will not be eligible for reimbursement under this Agreement.

Section 5. **The Project:** The MPO has entered into a JPA with FDOT under which FDOT has agreed to provide Ferry Boat Discretionary Program (FBP) funds to the MPO to be used to assist with the first phase of a Countywide system to link cities by way of an integrated water taxi transit system. The Grantee has requested a grant of FBP funds to be used to design, permit, construct and install one (1) water taxi shelter facility at DuBois Park, Florida (also referred to herein as the "Facility") as further described in Attachment A, Project Description, attached to this Agreement. The MPO will make available up to Sixty Five Thousand Dollars (\$65,000.00) in grant funds to be used to reimburse the Grantee for permissible Project expenses related to the design, permitting, construction and installation of the Facility in accordance with the Project Budget set forth in Attachment B to this Agreement. The Grantee shall utilize such grant funds in accordance with the terms and conditions of this Agreement, and all Federal, State and local laws, rules and regulations that are applicable to the Project.

Section 6. **FDOT Funding and Control, and Other Obligations Related to Grantee's Status:**

A. The Grantee acknowledges that this Grant Agreement and the MPO's activities hereunder are paid for from funds the MPO has or will receive from FDOT under the JPA. Accordingly, the Grantee agrees that its expenditure of the grant funds will be subject to the same terms and conditions of the JPA applicable to the MPO's receipt of and expenditure of the grant funds. The Grantee further acknowledges its receipt of the following documents: 1) A copy of the JPA which is attached hereto as Attachment C which also includes a copy of a documents extending the terms and conditions of the JPA to December 31, 2010; and 2) FBP information from the USDOT FHWA, attached hereto as Attachment D. Grantee shall not perform any act or refuse to comply with any MPO direction or request which would cause the MPO to be in violation of any

term or condition of the JPA, contribute to or cause the FDOT to seek to terminate the JPA, or cause FDOT to request the return of any FDOT funds provided to the MPO. Grantee will immediately remedy, at its sole cost and expense, any deficiency or violation of the JPA found by the MPO upon notice of such from the MPO or the MPO may unilaterally terminate this Agreement.

B. Grantee further acknowledges and understands that the MPO, as a recipient of an FDOT grant, has continuing obligations to FDOT under the JPA relating to the use and control of the Facility. Accordingly, the MPO may unilaterally terminate this Agreement if the MPO determines, at any time, that any of the following conditions exist: that the Grantee's use of the grant funds or Grantee's ownership, use, operation or maintenance of the Facility is not in accordance with the terms and conditions of the JPA or any Federal, State or local law rule or regulation; that any funds were used to reimburse expenses that were not reimbursable or were unlawfully or improperly incurred; or that the Grantee's ownership or use of the Facility does not constitute a valid public purpose.

C. Grantee agrees that all of its records relating to this Grant Agreement and the ownership, use, possession and maintenance of the Facility are public records for the purposes of Chapter 119, F.S. The MPO reserves the right to unilaterally terminate this Agreement for refusal by the Grantee to allow public access to all documents, paper, records and other materials related to this Agreement.

D. If the MPO terminates this Agreement, the Grantee shall return to the MPO the grant funds that were paid to the Grantee under this Agreement or, if deemed appropriate by the MPO, such other lesser sum equivalent to the value of the remaining useful life of the Facility if such is approved by the MPO and FDOT; provided, that, such sum is not less than the amount owed by the MPO to FDOT under the JPA and FDOT has determined that no other sums are or would be owed by the MPO to FDOT. In addition, Grantee shall pay to the MPO all costs and expenses incurred by the MPO in the administration of the JPA as it relates to the Project and the termination of the Grant Agreement.

E. The Grantee will maintain, in Palm Beach County, Florida, all books, records, accounts, and reports required under this Agreement for a period of not less than five (5) years after the date of termination or expiration of this Agreement. Grantee will make all records, including but not limited to, all insurance policies, construction records and maintenance logs, available to the MPO, USDOT or the State, 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, the Grantee agrees that it will maintain all records relating to the Facility or its use in Palm Beach County, Florida, until the MPO, and FDOT have disposed of all such litigation, appeals, claims, or exceptions related thereto.

F. Grantee's execution of this Grant Agreement constitutes a certification that it will comply with all of the requirements imposed upon it by 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.

G. Grantee's execution of this Grant Agreement constitutes a certification that it will comply with all of the requirements imposed upon it by 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.

H. Grantee's execution of this Grant 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.

I. In carrying out or in connection with any activity related to the Project, the Grantee 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 Grantee 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 Grantee shall insert the foregoing provisions, modified only to show the particular contractual relationship in all of its contracts in connection with the development or operation of 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. Grantee shall post, in conspicuous places available to employees and applicants for employment, notice of this nondiscrimination clause.

J. Prohibited Interests: Grantee 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 this Grant Agreement, 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 MPO, the MPO 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 Grantee relating to such contract, subcontract, or arrangement. The Grantee shall insert in all contracts entered into in connection with the Facility and shall require its contractors to insert in each of their subcontracts, the following provision:

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

K. Grantee's execution of this Grant Agreement constitutes a certification that it will carry out this Grant Agreement in conformance with all applicable environmental regulations including the securing of any applicable permits.



L. Grantee 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 Grantee 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 Grantee shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions. The Grantee 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 the grant funds shall certify and disclose accordingly. Furthermore, no funds received pursuant to this Grant Agreement may be expended for lobbying the State Legislature or a state agency.

**Section 7. Application of State and Federal Laws:** Grantee shall use the grant funds in conformity with the terms and conditions of this Agreement, the JPA, and State and Federal laws, rules and regulations relating to the use and expenditure of FBP funds. The Federal laws applicable to the Project, include but not are not limited to, the provisions of Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (1991 ISTEA, Public Law 102-240), reauthorized by Section 1207 of the Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178) and continued under the Surface Transportation Extension Acts, and Section 1801 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), as codified at 23 U.S.C. 147, as modified, amended or replaced from time to time.

**Section 8. Project Cost, Reimbursement and Submittal of Invoices:**

A. The MPO will make up to Sixty Five Thousand Dollars (\$65,000.00) in grant funds available to the Grantee, on a cost reimbursement basis. These funds shall be used by the Grantee solely for allowable expenses incurred by the Grantee in the performance of the Project, however, the MPO shall not reimburse any expenses incurred by the Grantee if all permits needed to commence and complete the work have not been obtained by the Grantee.

B. The Grantee shall submit to the MPO, monthly invoices for reimbursable costs that identify and describe the work, materials, time, and provide such other information, including copies of corresponding paid contractor invoices acceptable to the MPO, with sufficient clarity to enable the Palm Beach County Clerk & Comptroller to perform her pre-audit functions. Invoices shall be submitted to the MPO on or before the 10th day of each month for the immediately preceding month. Descriptions shall identify the percentage of work completed and address future time projection for completion of the Facility. Such documentation shall be sufficient to establish that the expense was actually incurred in the performance of the Project, is eligible for reimbursement and

was incurred prior to the expiration of the JPA. The Grantee shall certify that each expenditure was proper, lawful and made in accordance with this Grant Agreement. Invoices shall reference the Grant Agreement and shall contain an original signature of an authorized Grantee official. In the event no reimbursements are sought during a month, then for each such month, the Grantee shall submit a status report indicating the work completed to date.

C. Invoices received from the Grantee will be reviewed and approved by the MPO to confirm that costs for which reimbursement is sought have been incurred in conformity with this Grant Agreement and then sent to the Palm Beach County Finance Department for payment. Invoices will normally be paid within thirty (30) days following the MPO's representative's approval; provided, that, the MPO has received the funds from FDOT.

D. All invoices for reimbursement shall be submitted within thirty (30) days of the expiration of the JPA. In order for each party to close its books and records, the Grantee will clearly state "final invoice" on its last and final billing. This certifies that all costs eligible for reimbursement have been presented and invoiced to the MPO. Since this account will thereupon be closed, any and other future charges, if not properly included on this final invoice, are waived by the Grantee.

E. Disallowed Costs: Project costs incurred by the Grantee prior to the effective date of this Agreement, costs which are not provided for in the latest approved budget for the Project, and costs attributable to goods or services received under a contract or an arrangement which has not been approved for reimbursable expenses under this Grant Agreement shall not be eligible for reimbursement by the MPO.

Section 9. **Grantee's Contribution:** There is no local match required of the Grantee for this Project. Grantee acknowledges and agrees, however, that it is responsible for and will fund all costs to complete the Project in excess of the Sixty Five Thousand (\$65,000.00) granted hereunder. In addition, Grantee is responsible for all the ongoing costs and expenses of maintaining and operating the Facility. Grantee shall insure that the Facility is fully open to and accessible by the public, and used for the provision of water taxi services as contemplated in this Grant Agreement for a period of no less than ten (10) years, and that it is well maintained and operated in conformity with all Federal, State and local laws, rules and regulations.

Section 10. **Procurement:**

A. The Grantee shall be responsible for the design, permitting, bidding, evaluation, contract preparation, administration and construction of the Project, in accordance with this Grant Agreement, the JPA and all applicable Federal, State and local laws, rules and regulations. The Grantee shall utilize a competitive solicitation process in the selection of all contractors and shall ensure that all FDOT or MPO required contract clauses are included in its procurement documents and all third party contracts and subcontracts.

B. The Grantee shall comply with all provisions of Florida law, including but not limited to the applicable provisions of Chapters 255 and 287, F.S., and the applicable provisions of the

Consultants' Competitive Negotiation Act as it relates to procurements or projects involving engineering, architecture or surveying services.

C. Disadvantaged Business Enterprises: It is policy of FDOT and the MPO that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. 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. Consequently, the DBE requirements, of 49 C.F.R. Part 26, as amended, apply to this Agreement. To the extent applicable, Grantee agrees to comply with the requirements of 49 C.F.R. Part 26, including any amendments that may be made to those regulations during the term of this Agreement. Neither the Grantee nor any of its contractors or permittees shall discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Grantee shall carry out the applicable requirements of 49 C.F.R. Part 26 in the award and administration of FDOT assisted contracts. The Grantee'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 MPO deems appropriate.

D. Public Entity Crimes: The Grantee shall comply with the provisions of Section 287.133(2)(a), F.S. The relevant provisions of Section 287.133(2)(a), F.S. are 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."

E. Discriminatory Vendor List: Grantee agrees that no entity or affiliate who has been placed on the discriminatory vendor list may submit a bid on a contract to provide any goods or services, may submit a bid on a contract for the construction or repair of a public building or public work, may submit bids on leases of real property, may be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with the Grantee, or transact business with the Grantee.

F. The Grantee shall require all of its permittees, contractors and subcontractors to save, defend, indemnify and hold harmless the Grantee and the MPO, and FDOT if required by the MPO, 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, including but not limited to all negligent acts or omissions.

G. Grantee shall further require all of its permittees, contractors and subcontractors to save, defend, indemnify and hold harmless the Grantee and the MPO, and FDOT if required by the MPO, 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 paragraph F. above and for which the Grantee, MPO or FDOT are alleged to be liable.

**Section 11. Use and Operation of the Water Taxi Shelter Facility:** The Facility shall be used and operated for the benefit of the general public and the licensed water taxi operators that provide public water transportation to the general public on a fixed route, non-exclusive basis. Water taxi service shall be scheduled so as to connect to other water taxi services provided by water taxi operators in other areas of Palm Beach County, with Palm Tran's fixed route transit service, and the community transit service provided by municipalities or others in Palm Beach County. The Grantee shall present a proposed schedule to the MPO, for the MPO's approval, at least thirty (30) days prior to the implementation of or any change to the water taxi service. Service shall initially be made available to the public as described in Attachment A and during the times approved by the MPO's contract representative. Water taxi vehicle operators may use the Facility for other public transportation services only with prior written approval of the Grantee and the MPO, and only for such periods of time expressly approved by the Grantee and MPO; provided, that, such use does not interfere with the use and activities contemplated under this Grant Agreement as determined by the MPO in its sole discretion.

**Section 12. Title, Risk of Loss:**

A. Title to and ownership of the Facility shall be vested in the Grantee. The Grantee shall not sublet, assign, or transfer its ownership of or any rights it has in the Facility, in whole or in part, for a period of ten (10) years from the date the Facility was fully open to and accessible by the public, unless it has first repaid all grant funds received under this JPA to the MPO or such lesser amount of grant funds approved by the MPO and FDOT as described in paragraph 6.D. of this Agreement. Grantee shall not permit any lien or encumbrance to be recorded against the Facility during such period. In the event any liens or encumbrances are filed or recorded against the Facility, Grantee shall immediately take all necessary acts, at its sole cost and expense, to clear and remove all such liens, interest or encumbrances. This provision shall not be construed to prevent the Grantee from granting a limited revocable permit to one or more water taxi service operators to use the Facility for the purposes contemplated under this Agreement.

B. Grantee shall bear all risk of loss or damage to the Facility during the term of this Agreement. Grantee further certifies that it has the ability and will retain the ability during the term of this Agreement to repair or replace all Project equipment and facilities in the event of loss or damage. All funds derived from the proceeds of any insurance policy or self-insurance shall be used by Grantee to repair or replace the Facility. However, if the Facility has not reached the end of its useful life, as determined by the MPO, and the MPO and Grantee agree that Grantee cannot satisfactorily repair or replace the Facility, then the insurance proceeds or a sum of money equal to the grant funds provided to the Grantee shall be paid to the MPO, who shall distribute to FDOT any

sums due it, retain any portion for redistribution under the JPA or the FBP program, or use the funds for any other purpose permitted by FDOT. Any insurance proceeds paid to the MPO in excess of the grant funds provided to the Grantee shall be returned to the Grantee.

C. Grantee shall continuously and actively use the Facility for the purposes contemplated herein. In the event the MPO shall determine, in its sole discretion, that Grantee is permitting the Facility to waste or the Grantee is not actively and continuously using the Facility for the purposes described herein, then the MPO may immediately terminate this Agreement and Grantee shall refund or repay to the MPO the grant funds received by Grantee in accordance with paragraph 6.D. of this Agreement.

**Section 13. Encumbrances:**

A. Grantee shall provide and promptly pay for all labor, materials and equipment necessary for the construction of the Facility. Grantee shall not grant any interest in the Facility to any person, transfer its interest in the Facility, in whole or in part, to any other entity nor shall it permit any lien, claim, or other encumbrance to be filed against the Facility or action to be taken against the MPO or FDOT on account of any labor, service, good, material, or equipment furnished or installed related to the Facility.

B. Grantee shall not transfer, assign or sublease the Facility.

C. Grantee shall require any water taxi user, operator, or other party to whom it gives permission to use, occupy, or enjoy the Facility to subrogate any rights or interest that party may have in the Facility to the rights and interests of the MPO and FDOT. The Grantee represents and warrants to the MPO that it shall furnish a copy of the Grant Agreement to any person or entity to whom it gives permission to use, occupy or enjoy the water taxi docking Facility. Grantee shall require such person or entity to use the Facility solely for and in the furtherance of the purposes of this Agreement and to act in conformity with the Grantee's duties and obligations under the Agreement.

D. Grantee shall be responsible for any and all costs and expenses incurred by the MPO relating, in any fashion, to the enforcement of this Agreement. Grantee shall not take any action which would adversely affect the MPO's or FDOT's interest in the Facility, make the MPO or FDOT liable to any other entity or third party, or jeopardize the MPO's JPA with FDOT or receipt of funds from FDOT.

**Section 14. Care, Repairs and Maintenance:** Grantee is solely responsible for all repairs and maintenance of the Facility, all equipment located thereon, and all costs associated with and arising out of the use of the water taxi shelter facility. Grantee will keep the Facility in good working order, condition and repair. Grantee shall also require all water taxi operators to use the water taxi shelter Facility in a manner that will prevent loss or damage to either person or property, including death.

**Section 15. ADA Compliance:** Grantee shall ensure that the Facility, access thereto and

all service operated therefrom are fully accessible to the disabled, and that the Facility is used, operated and maintained in conformity with the requirements of the Americans with Disability Act (ADA) of 1990, as it may be amended from time to time, and all federal rules and regulations implementing the ADA. Grantee shall save, defend, indemnify and hold the MPO harmless, to the fullest extent of the law, from any and all liability which may or shall inure to the MPO, as a result of the Grantee's use, operation or maintenance of the Facility, or as a result of any failure on the part of the Grantee, its officers, employees, servants, agents, contractors, permittees or other party acting on behalf of or under the authority of the Grantee to comply with the ADA and its implementing rules and regulations, or the requirements of this Grant Agreement.

**Section 16. Limit of Obligation:**

A. The MPO's obligations to the Grantee shall be strictly limited to those expressly set forth in this Agreement. The MPO shall have no obligation to any other entity, contractor, permittee or person who is in anyway associated with this Agreement or benefits from the Grantee's use of the grant funds or the ownership or use of the Facility.

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

**Section 17. Information and Data:** Upon the request of the MPO, the Grantee will furnish directly, or through its water taxi operators, monthly performance reports indicating ridership, nautical miles of service provided, types of conveyances used for service, hours of operation, stops, and such other information requested by the MPO or FDOT from time to time. The Grantee also agrees to cooperate with the MPO in any surveys of water taxi service passengers and/or water taxi shelter users which the MPO may desire to undertake. The Grantee will also assist the MPO by distributing information regarding Palm Tran's public transportation services, community transit services and other coordinated transit services in Palm Beach County or within the South Florida Regional Transit Authority's service area to users of water taxi services or various businesses near water taxi service stops (i.e., places where passengers embark or disembark).

**Section 18. Preparation of Certifications, Documents and Reports:** Should the MPO 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 or its use, the Grantee will cooperate and assist the MPO with the preparation of such certifications, documents or reports, or prepare and furnish any such certifications, documents or reports requested. Grantee shall provide MPO with all environmental findings relevant to the location of the Facility.

**Section 19. Prohibition of Discrimination:** Grantee represents and warrants that it will not discriminate in its performance of the Project and use of the Facility, and that its operators,

permittees, employees and members of the general public utilizing the dock facility will be treated 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 20. Insurance:**

A. Grantee agrees to insure the Facility for fire, bodily injury and death, property damage, and liability and to maintain such coverage during the term of this Agreement. Without waiving the right to sovereign immunity as provided by Section 768.28, F.S., Grantee acknowledges that it is 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. In the event Grantee maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28, F.S., Grantee agrees to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

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

D. Grantee agrees to maintain property insurance, which includes builder's risk insurance, while the Facility is in the course of construction in an amount at least equal to the estimated completed Facility value as well as subsequent modifications of that sum. When construction is completed, Grantee agrees to maintain all-risk property insurance for adequate limits of coverage on the Facility and related equipment and facilities based on the Grantee's replacement cost calculation or the Grantee's probable maximum loss estimate for either the perils of fire, wind, or flood, which shall, in no event, be less than the sum of all grant funds (*i.e.*, Sixty Five Thousand Dollars). Grantee agrees to be fully responsible for any deductible, uncovered loss, or self-insured retention under the all-risk property insurance. The requirements of this provision may be waived by the MPO's contract representative after consultation with Grantee's Department of Risk Management, if the Grantee establishes, to the satisfaction of the MPO's contract representative, the Grantee's capability to adequately meet, satisfy or cover the Grantee's potential risks or exposure (*i.e.*, liability) related to, arising out of, or resulting from its construction of the Project and use, operations and maintenance of the Facility and related equipment.

E. When requested, Grantee shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the MPO will, if acceptable to FDOT, recognize as acceptable for the above mentioned coverages.

F. Any policy of insurance obtained pursuant to paragraphs A., B. and D. above shall designate the Palm Beach Metropolitan Organization as an additional insured.

G. Compliance with the foregoing requirements shall not relieve Grantee of its liability and

obligations under this Grant Agreement.

H. Grantee further agrees to include 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 the provision of water taxi services, and shall establish such as a requirement for the issuance of any permit, license, or right to use or occupy the Facility.

Section 21. **Termination:** In the event the Grantee abandons the Project, discontinues the Project, or after completion of the Project notifies the MPO that it no longer desires to use the Facility for the purpose for which the grant funds were provided, ceases to use the Facility for the purpose of providing water taxi shelter service, or fails to comply with any provision of this Agreement, then the MPO may exercise any and all rights available to it, including termination of this Agreement upon ten (10) days notice to Grantee. In the event the Agreement is terminated, the MPO will be entitled to direct the Grantee to undertake either of the following actions: 1) Pay to or return to the MPO a sum of money equal to the grant funds it received from the MPO; or 2) Pay to the MPO such lesser sum that the MPO has been directed to remit or return to FDOT, plus all administrative costs and expenses incurred by the MPO, whether direct or indirect, related to the Project; provided, that, the MPO has determined such to be appropriate, in its sole discretion. In addition, the MPO is not limited to the exercise of the foregoing action but shall have the right to exercise any other remedy available to it at law, in equity, or under this Agreement.

Section 22. **Appropriation:** Each party's performance and obligation under this Agreement is contingent upon an annual appropriation by its governing body for the purposes of this Agreement. In addition, the MPO shall not be obligated to perform and/or reimburse the Grantee for any costs and expenses Grantee has incurred if: 1) FDOT does not approve this Agreement; 2) FDOT determines that any of the costs and expenses for which reimbursement is sought are not eligible project costs; 3) FDOT does not approve any requisition for payment or invoice submitted by the MPO to FDOT for reimbursement under the JPA; or 4) FDOT terminates or cancels the JPA with the MPO. Grantee expressly waives and releases the MPO from liability, of any kind or nature, as a result of the occurrence of any of the foregoing events. Grantee also hereby represents and warrants that Grantee's governing body intends to appropriate all grant funds received hereunder for the purposes of this Grant Agreement and, at the time of execution of this Grant Agreement, has appropriated all funds in excess of the grant amount set forth in Sections 5 and 8 needed to complete the Facility.

Section 23. **Notice of Accidents, Injuries and Suits:**

A. In the event of an accident or injury related to the ownership or use of the Facility, the Grantee agrees to immediately notify its insurer and the MPO of such accident or injury. Upon the request of MPO, the Grantee will provide all information relative to the accident or injury.

B. Grantee agrees to fully cooperate with the MPO and FDOT, and their respective officers, employees, servants or contractors, in any investigation either may conduct and the defense of any



claim or suit in which the MPO or FDOT may be named. The Grantee shall do nothing to impair or invalidate any applicable insurance coverage.

Section 24. **Hold Harmless and Indemnification:** Grantee agrees to protect, defend, reimburse, save, indemnify and hold harmless the MPO and FDOT, and their respective officers, employees, servants and agents, from and against any and all suits, actions, damages, liabilities, interest, attorneys' fee, costs and expenses of whatsoever kind or nature arising out of the Grantee's performance of the Project, including but not limited to Grantee's construction, installation and use of the Facility to the fullest extent permitted by law. 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 25. **Assignment:** Neither this Agreement nor any interest therein shall be assigned, transferred or otherwise encumbered, in whole or in part, by Grantee without the prior written consent of the MPO.

Section 26. **No Agency Relationship:** Nothing contained herein shall create an agency relationship between the Grantee and the MPO.

Section 27. **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 herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or inequity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 28. **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 29. **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, and 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 30. **Captions:** The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

Section 31. **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 constraint, be construed more severely against one of the parties than the other.

Section 32. **Notice:** All written notices required under this Agreement shall be sent by certified mail, return receipt requested, and if sent to the MPO shall be mailed to:

Director of MPO  
2300 N. Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, Fl. 33411-2749

And, if sent to the Grantee shall be mailed to:

Palm Beach County  
Director of Parks and Recreation  
2700 6<sup>th</sup> Avenue South  
Lake Worth, Fl. 33461

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

Section 33. **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 34. **Entirety of Contract and Modifications:** The MPO and the Grantee 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 35. **Survivability:** Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement, shall survive its expiration or earlier termination.

Section 36. **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 Grantee and MPO have hereunto set their hands the day and year above written.

Attest:  
Sharon R. Boch, Clerk &  
Comptroller

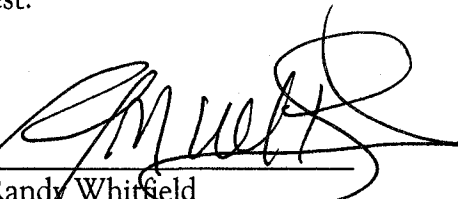
Palm Beach County, Florida, by its  
Board of County Commissioners

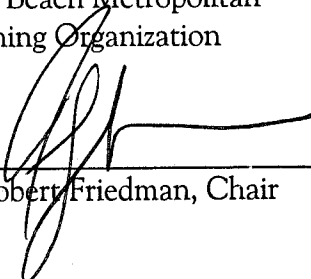
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Burt Aaronson, Chairperson

Attest:

Palm Beach Metropolitan  
Planning Organization

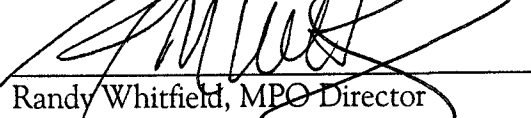
By:   
Randy Whitfield  
Director, MPO

By:   
Robert Friedman, Chair

Approved as to Form  
and Legal Sufficiency

  
County Attorney

Approved as to Terms  
and Conditions

  
Randy Whitfield, MPO Director

Approved as to Form  
and Legal Sufficiency

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

Approved as to Terms  
Conditions

  
Dennis L. Eshleman, P&R Director

## ATTACHMENT A

### Project Description

DuBois Park is located on the south side of the Jupiter Inlet in northern Palm Beach County. This grant request is to build a water taxi shelter facility to provide a place for park patrons to relax out of the weather while waiting for the water taxis to pick them up. The water taxis shelter is part of a larger Palm Beach County redevelopment project at DuBois park which is scheduled to commence in April 2010. The Park will have a designated water taxi dock. From the dock, ramping will be sufficient in grade to accommodate ADA requirements. An ADA compliant hard surface path will lead from the dock to the water taxi shelter.

While there is no bus route in the vicinity, there will be a linkage from the water taxi dock shelter facility to a 15' wide, 2.5 mile pedestrian/bicycle path along the Intracoastal Waterway from Dubois Park on the Jupiter Inlet south to Jupiter Ridge Natural Area. There will also be a connection to the bikeway corridor on U.S. Highway 1 in Jupiter.

**ATTACHMENT “B”**  
**Project Budget**

DuBois Park – Water Taxi Shelter

**Cost Estimate**

Item	Quantity	Total Cost
Pre-Manufactured Pavilion	25' x 25'	\$59,200
Site work including fill	Lump Sum	11,800
Concrete work	Lump Sum	6,500
Siding and carpentry	Lump Sum	11,300
Electrical work	Lump Sum	4,600
Signage, benches & hardscape	Lump Sum	6,200
Installation & Hardware	Lump Sum	8,900
Design and permitting	Lump Sum	3,500
<b>Preliminary Estimate</b>		<b>112,000</b>
Contingency (12%)		<u><b>13,444</b></u>
<b>Total Estimated Cost</b>		<b>125,444</b>

## **ATTACHMENT C**

State of Florida Department of Transportation Public Transportation  
Joint Participation Agreement  
with the Palm Beach Metropolitan Planning Organization



# Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309-3421

STEPHANIE C. KOPELOUSOS  
SECRETARY

## MEMORANDUM

DATE: September 21, 2009

TO: Mr. Randy Whitfield, P.E.  
MPO Director  
2300 North Jog Road  
4<sup>th</sup> Floor  
West Palm Beach, FL 33411

FROM: Lauren Rand  
Transportation Specialist

SUBJECT: **EXTENSION OF TIME--Joint Participation Agreement**  
**Intermodal – Palm Beach County Water Taxi Docks**

FM No. 415050-1-94-01 Contract No. ANO90


The time allotted for the completion of services on subject agreement dated **August 18, 2004** and any supplemental thereto will expire on **December 31, 2009**

In accordance with Section 18.00 of the Joint Participation Agreement, you may request a time extension. For your convenience, you may complete, sign, date and return this form to me.

It is requested that the Joint Participation Agreement for the subject project be extended until December 31, 2010 for the following reason(s): Awaiting permit approval on one of the sites. Geo Tech (soils) testing completed shows that more silt is at one site than was expected. This means redesign of the dock needs to be done because larger and heavier pilings are needed. There was a reduction of staff to complete same amount of work. 3 of the 9 sites are to be relocated to better serve the public needs.

Agency: Palm Beach County Metropolitan Planning Organization Date: September 22, 2009

By  
APPROVED:  Title: Director

APPROVED:  9/29/09  
District Project Manager Date

APPROVED:  9-29-09  
District Director of Transportation Development Date

[www.dot.state.fl.us](http://www.dot.state.fl.us)

# Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309-3421

STEPHANIE C. KOPELOUSOS  
SECRETARY

## MEMORANDUM

DATE: March 04, 2009

TO: Randy M. Whitfield  
Director  
Palm Beach MPO  
2300 N. Jog Rd., 4<sup>th</sup> Floor  
West Palm Beach, FL 33411-2749

FROM: Nancy A. Ziegler, District Modal Development Administrator *N. Ziegler*

SUBJECT: EXTENSION OF TIME--Joint Participation Agreement  
Intermodal- Palm Beach County Water Docks

FM No. 415050-1-94-01 Contract No. ANO90

The time allotted for the completion of services on subject agreement dated August 18, 2004 and any supplemental thereto will expire on April 1, 2009.

In accordance with Section 18.00 of the Joint Participation Agreement, you may request a time extension. For your convenience, you may complete, sign, date and return this form to me

It is requested that the Joint Participation Agreement for the subject project be extended until December 31, 2009 for the following reason(s): Permits were delayed

Agency: Palm Beach County Metropolitan Planning Organization

By  
APPROVED: *[Signature]*

District Project Manager

*[Signature]*  
District Director Transportation Development

Date: 3-19-09

Title: PB MPO Director

Date: 3/24/2009

Date: 3-26-09





RECEIVED

MAR 3 - 2008

METROPOLITAN PLANNING ORG.  
PALM BEACH COUNTY

# Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

OFFICE OF MODAL DEVELOPMENT  
3400 W. Commercial Blvd.  
Ft. Lauderdale, FL 33309-3421  
Telephone: (954) 777-4090 Fax: (954) 673-7892

STEPHANIE C. KOPELOUSON  
SECRETARY

## MEMORANDUM

DATE: February 28, 2008

TO: Mr. Randy Whitfield, P.E.  
MPO Director  
2300 North Jog Road  
4<sup>th</sup> Floor  
West Palm Beach, FL 33411-2749

FROM: Nancy A. Ziegler, Modal Development Administrator

SUBJECT: EXTENSION OF TIME-Joint Participation Agreement - Palm Beach Water Taxi Docks

FM No. 415050-1-94-01 Contract No. ANQ90

The time allotted for the completion of services on subject agreement dated August 18, 2004 and any supplementals thereto will expire on April 2, 2008

In accordance with Section 18.00 of the Joint Participation Agreement, you may request a time extension. For your convenience, you may complete, sign, date and return this form to me

It is requested that the Joint Participation Agreement for the subject project be extended until April 1, 2009 for the following reason(s): (Use attachment if necessary) - see attached documentation.

Agency: Palm Beach County MPO

Date: 3-4-08

By:

Title: DIRECTOR

APPROVED:

Date: 3/7/08

Daphne Sparrow  
District Project Manager

Date: 3-10-08

Stephanie C. Kopeulouson  
Interim District Director Transportation Development



# Florida Department of Transportation

JEB BUSH  
GOVERNOR

OFFICE OF MODAL DEVELOPMENT  
3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309-3421  
Phone: (954) 777-4490 Fax: (954) 677-7892

DENVER J. STUTLER, JR.  
SECRETARY

## MEMORANDUM

DATE: November 13, 2006

TO: Mr. Randy Whitfield, P.E.  
MPO Director  
Palm Beach County MPO  
2300 North Jog Road  
West Palm Beach, FL 33411-2749

FROM: Nancy A. Ziegler, District Modal Development Administrator

SUBJECT: EXTENSION OF TIME-Joint Participation Agreement -- Intermodal --  
Palm Beach Water Taxi Docks

FM No. 415050-1-94-01 Contract No. ANO90

The time allotted for the completion of services on subject agreement dated August 18, 2004 and any supplementals thereto will expire on December 31, 2005.

In accordance with Section 18.00 of the Joint Participation Agreement, you may request a time extension. For your convenience, you may complete, sign, date and return this form to me.

It is requested that the Joint Participation Agreement for the subject project be extended until April 2, 2008 for the following reason(s): (Use attachment if necessary) -- see attached documentation.

Agency: Palm Beach MPO

Date: 11-21-06

By: [Signature]  
APPROVED:

Title: DIRECTOR

Daphne Spanos  
District Project Manager

Date: 12/15/06

[Signature]  
District Director Transportation Development  
Gerry O'Reilly P.E.

Date: 12/5/06

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
PUBLIC TRANSPORTATION  
JOINT PARTICIPATION AGREEMENT

725-030-06  
PUBLIC TRANSPORTATION  
0603  
Page 1 of 12

Financial Project No.: <u>41505019401</u> <small>(item-segment-phase-sequence)</small>	Fund: <u>330</u>	FLAIR Approp.: <u>088774</u>
Contract No.: <u>ANO 90</u>	Function: <u>639</u>	FLAIR Obj.: <u>790004</u>
	Federal No.: <u>FL72-001-R</u>	Org. Code: <u>55042010429</u>
Catalog of Federal Domestic Assistance Number: _____		Vendor No.: <u>VF-596000785063</u>
	Catalog of State Financial Assistance Number: <u>N/A</u>	

THIS AGREEMENT, made and entered into this 18<sup>th</sup> day of August, 2004,  
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida,  
hereinafter referred to as the Department, and Palm Beach County MPO  
160 Australian Avenue, Suite 201, West Palm Beach, FL33406  
hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Agency has the authority to enter into said Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under 341

Florida Statutes, to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

**1.00 Purpose of Agreement:** The purpose of this Agreement is to provide funding assistance to the Palm Beach County Metropolitan Planning Organization for a project consisting of the first phase of a Countywide system to link cities via an integrated water taxi transit system. The system would include the design and construction of docks and other access facilities for use by existing taxi operators.

and as further described in Exhibit(s) A, B, & C attached hereto and by this reference made a part hereof, hereinafter referred to as the project, and to provide Departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

## 2.00 Accomplishment of the Project

**2.10 General Requirements:** The Agency shall commence, and complete the project as described in Exhibit "A" attached hereto and by this reference made a part hereof, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.

**2.20 Pursuant to Federal, State, and Local Law:** In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

**2.30 Funds of the Agency:** The Agency shall initiate and prosecute to completion all proceedings necessary including federal aid requirements to enable the Agency to provide the necessary funds for completion of the project.

**2.40 Submission of Proceedings, Contracts and Other Documents:** The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the project as the Department may require as listed in Exhibit "C" attached hereto and by this reference made a part hereof.

**3.00 Project Cost:** The total estimated cost of the project is \$ 993,500.00. This amount is based upon the estimate summarized in Exhibit "B" attached hereto and by this reference made a part hereof. The Agency agrees to bear all expenses in excess of the total estimated cost of the project and any deficits involved.

**4.00 Department Participation:** The Department agrees to maximum participation, including contingencies, in the project in the amount of \$ 993,500.00 as detailed in Exhibit "B", or in an amount equal to the percentage(s) of total project cost shown in Exhibit "B", whichever is less.

**4.10 Project Cost Eligibility :** Project costs eligible for State participation will be allowed only from the effective date of this agreement. It is understood that State participation in eligible project costs is subject to:

- (a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;
- (b) Availability of funds as stated in paragraph 17.00 of this Agreement;
- (c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;
- (d) Department approval of the project scope and budget (Exhibits A & B) at the time appropriation authority becomes available.

**4.20 Front End Funding :** Front end funding ☐ is ☒ is not applicable. If applicable, the Department may initially pay 100% of the total allowable incurred project costs up to an amount equal to its total share of participation as shown in paragraph 4.00.

**5.00 Retainage :** Retainage ☐ is ☒ is not applicable. If applicable, \_\_\_\_\_ percent of the Department's total share of participation as shown in paragraph 4.00 is to be held in retainage to be disbursed, at the Department's discretion, on or before the completion of the final project audit.

## **6.00 Project Budget and Payment Provisions:**

**6.10 The Project Budget:** A project budget shall be prepared by the Agency and approved by the Department. The Agency shall maintain said budget, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved budget for the project. No budget increase or decrease shall be effective unless it complies with fund participation requirements established in paragraph 4.00 of this Agreement and is approved by the Department Comptroller.

**6.20 Payment Provisions:** Unless otherwise allowed under paragraph 4.20, payment will begin in the year the project or project phase is scheduled in the work program as of the date of the agreement. Payment will be made for actual costs incurred as of the date the invoice is submitted with the final payment due upon receipt of a final invoice.

## **7.00 Accounting Records:**

**7.10 Establishment and Maintenance of Accounting Records:** The Agency shall establish for the project, in conformity with requirements established by Department's program guidelines/procedures and "Principles for State and Local Governments", separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "project account". Documentation of the project account shall be made available to the Department upon request any time during the period of the Agreement and for three years after final payment is made.

**7.20 Funds Received Or Made Available for The Project:** The Agency shall appropriately record in the project account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the Department pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the project, which Department payments and other funds are herein collectively referred to as "project funds". The Agency shall require depositories of project funds to secure continuously and fully all project funds in excess of the amounts insured under federal plans, or under State plans which have been approved for the deposit of project funds by the Department, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State Law for the security of public funds, or as approved by the Department.

**7.30 Costs Incurred for the Project:** The Agency shall charge to the project account all eligible costs of the project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

**7.40 Documentation of Project Costs:** All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers evidencing in proper detail the nature and propriety of the charges.

**7.50 Checks, Orders, and Vouchers:** Any check or order drawn by the Agency with respect to any item which is or will be chargeable against the project account will be drawn only in accordance with a properly signed voucher then or file in the office of the Agency stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

**7.60 Audit Reports:** In addition to the requirements below, the Agency agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department, including but not limited to site visits and limited scope audits. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the State Comptroller or Auditor General. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three years from the date the audit report is issued, and shall allow the Department access to such records and working papers upon request. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official.

**7.61 Federal Audit:** In the event the Agency expends a total of \$300,000 or more in Federal awards in its fiscal year, the Agency must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding Federal agency. If the Agency expends less than \$300,000, this audit is not required and if the Agency elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, the cost of the audit must be paid from non-Federal funds.

The Agency agrees to allow the Department or an independent auditor of the Department, the State Comptroller, and the Auditor General access to the Agency's records and financial statements as may be necessary for complying with the requirements of 31 U.S.C. 7501 et seq.

Pursuant to OMB Circular A-133, Subpart C, .320(d), the Agency shall provide a copy of the reporting package and any management letters to the Department, or copies of audit reports for audits conducted in accordance with OMB Circular A-133, to the Department and to:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10th Street  
Jeffersonville, IN 47132

**7.62 State Audit:** In the event that the Agency expends a total of \$300,000 or more in State awards in its fiscal year, the Agency must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes and the applicable rules of the Executive Office of the Governor, the State Comptroller, and the Auditor General. In determining the State awards expended in its fiscal year, the Agency shall consider all sources of State awards except State awards received for Federal program matching requirements which shall be excluded from consideration. State awards will be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the awarding State agency. If the Agency expends less than \$300,000, this audit is not required and if the Agency elects to have an audit conducted in accordance with the provisions of Section 215.97, F.S., the cost of the audit must be paid from non-State funds.

The Agency agrees to allow the Department, the State Comptroller, and the Auditor General access to records and independent auditor's working papers, as necessary for complying with the requirements of Section 215.97, F.S.

The Agency shall provide annual financial reporting package of audits prepared in accordance with Section 215.97, F.S., and applicable Rules of the Auditor General to the Department and to:

State of Florida Auditor General  
Room 574, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32302-1450

**7.63 Other Requirements:** If an audit discloses any significant audit findings relating to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the Agency, the Agency shall submit as part of the audit package to the Department a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The Agency shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.

**7.70 Insurance:** Execution of this Joint Participation Agreement constitutes a certification that the Agency has and will maintain the ability to repair or replace any project equipment or facilities in the event of loss or damage due to any accident or casualty for the useful life of such equipment or facilities. In the event of the loss of such equipment or facilities, the Agency shall either replace the equipment or facilities or reimburse the Department to the extent of its interest in the lost equipment or facility.

In the event this Agreement is for purchase of land or for the construction of infrastructure such as airport runways the Department may waive or modify this section with an Exhibit "C".

#### **8.00 Requisitions and Payments:**

**8.10 Action by the Agency:** In order to obtain any Department funds, the Agency shall file with the Department of Transportation, District Four Public Transportation Office 3400 W. Commercial Blvd., Ft. Lau., FL, 33309 its requisition on a form or forms prescribed by the Department, and any other data pertaining to the project account (as defined in paragraph 7.10 hereof) to justify and support the payment requisitions.

**8.11** Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

**8.12** Invoices for any travel expenses shall be submitted in accordance with Chapter 112.061, F.S. The Department may establish rates lower than the maximum provided in Chapter 112.061, F.S.

**8.13** For real property acquired, submit;

- (1) the date the Agency acquired the real property,
- (2) a statement by the Agency certifying that the Agency has acquired said real property, and actual consideration paid for real property.
- (3) a statement by the Agency certifying that the appraisal and acquisition of the real property together with any attendant relocation of occupants was accomplished in compliance with all federal laws, rules and procedures required by any federal oversight agency and with all state laws, rules and procedures that may apply to the Agency acquiring the real property.

**8.20 The Department's Obligations:** Subject to other provisions hereof, the Department will honor such requisitions in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment on the project if:

**8.21 Misrepresentation:** The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

**8.22 Litigation:** There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement, or payments to the project;

**8.23 Approval by Department:** The Agency shall have taken any action pertaining to the project which, under this agreement, requires the approval of the Department or has made related expenditures or incurred related obligations without having been advised by the Department that same are approved;

**8.24 Conflict of Interests:** There has been any violation of the conflict of interest provisions contained herein; or

**8.25 Default:** The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

**8.26 Federal Participation (If Applicable):** Any federal agency providing federal financial assistance to the project suspends or terminates federal financial assistance to the project. In the event of suspension or termination of federal financial assistance, the Agency will reimburse the Department for all disallowed costs.

**8.30 Disallowed Costs:** In determining the amount of the payment, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement, costs which are not provided for in the latest approved budget for the project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

**8.40 Payment Offset:** If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this agreement, the Department may offset such amount from payments due for work or services done under any public transportation joint participation agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting amounts shall not be considered a breach of contract by the Department.

#### **9.00 Termination or Suspension of Project:**

**9.10 Termination or Suspension Generally:** If the Agency abandons or, before completion, finally discontinues the project; or if, by reason of any of the events or conditions set forth in paragraphs 8.21 to 8.26 inclusive, or for any other reason, the commencement, prosecution, or timely completion of the project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement.

**9.11 Action Subsequent to Notice of Termination or Suspension.** Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (2) furnish a statement of the project activities and contracts, and other undertakings the cost of which are otherwise includable as project costs; and (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Agency or the closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**9.12** The Department reserves the right to unilaterally cancel this Agreement for refusal by the contractor or Agency to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with this Agreement.

**10.00 Remission of Project Account Upon Completion of Project:** Upon completion of the project, and after payment, provision for payment, or reimbursement of all project costs payable from the project account is made, the Agency shall remit to the Department its share of any unexpended balance in the project account.

**11.00 Audit and Inspection:** The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives to inspect all work, materials, payrolls, records; and to audit the books, records and accounts pertaining to the financing and development of the project.

#### **12.00 Contracts of the Agency:**

**12.10 Third Party Agreements:** Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department joint participation funds, including consultant, construction or purchase of commodities contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department as provided in paragraph 8.23. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.



**12.20 Compliance with Consultants' Competitive Negotiation Act:** It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Chapter 287, F.S., Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all contracts. In all cases, the Agency's Attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

**12.30 Disadvantaged Business Enterprise (DBE) Policy and Obligation:**

**12.31 DBE Policy:** It is the policy of the Department that disadvantaged business enterprises 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 Department funds under this Agreement. The DBE requirements of 49 CFR Part 26, as amended, apply to this Agreement.

**12.32 DBE Obligation:** The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients, and contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

**13.00 Restrictions, Prohibitions, Controls, and Labor Provisions:**

**13.10 Equal Employment Opportunity:** In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: 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 Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**13.20 Title VI - Civil Rights Act of 1964:** Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

**13.30 Title VIII - Civil Rights Act of 1968:** Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VIII of the Civil Rights Act of 1968, 42 USC 3601, et seq., which among other things, prohibits discrimination in housing on the basis of race, color, national origin, creed, sex, and age.

**13.40 Americans with Disabilities Act of 1990 (ADA):** Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the federal government issued thereunder, and the assurance by the Agency pursuant thereto.

**13.50 Prohibited Interests:** Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement in connection with the project or any property included or planned to be included in the project, in which any member, officer, or employee of the Agency during his tenure or for two years thereafter has any interest, direct or indirect. 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 Agency, the Agency with prior approval of the Department, may waive the prohibition contained in this subsection: Provided, that any such present member, officer or employee shall not participate in any action by the Agency relating to such contract, subcontract, or arrangement. The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer, or employee of the Agency during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."  
The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a Governmental agency.

**13.60 Interest of Members of, or Delegates to, Congress:** No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

**14.00 Miscellaneous Provisions:**

**14.10 Environmental Pollution:** Execution of this Joint Participation Agreement constitutes a certification by the Agency that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.

**14.20 Department Not Obligated to Third Parties:** The Department shall not be obligated or liable hereunder to any party other than the Agency.

**14.30 When Rights and Remedies Not Waived:** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Agency, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

**14.40 How Agreement Is Affected by Provisions Being Held Invalid:** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**14.50 Bonus or Commission:** By execution of the Agreement the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

**14.60 State or Territorial Law:** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that if any of the provisions of the Agreement violate any applicable State law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

**14.70 Use and Maintenance of Project Facilities and Equipment:** The Agency agrees that the project facilities and equipment will be used by the Agency to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the Department. The Agency further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.

**14.71 Property Records:** The Agency agrees to maintain property records, conduct physical inventories and develop control systems as required by 49 CFR Part 18, when applicable.

**14.80 Disposal of Project Facilities or Equipment:** If the Agency disposes of any project facility or equipment during its useful life for any purpose except its replacement with like facility or equipment for public transportation use, the Agency will comply with the terms of 49 CFR Part 18 relating to property management standards. The Agency agrees to remit to the Department a proportional amount of the proceeds from the disposal of the facility or equipment. Said proportional amount shall be determined on the basis of the ratio of the Department financing of the facility or equipment as provided in this Agreement.

**14.90 Contractual Indemnity:** To the extent provided by law, the Agency shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Agency, its agents, or employees, during the performance of the Agreement, except that neither the Agency, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the Agency in the performance of services required under this Agreement, the Department will immediately forward the claim to the Agency. The Agency and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Agency in the defense of the claim or to require that the Agency defend the Department in such claim as described in this section. The Department's failure to promptly notify the Agency of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Agency. The Department and the Agency will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

**15.00 Plans and Specifications:** In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations concerning any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause for nonpayment by the Department as provided in paragraph 8.23.

**16.00 Project Completion, Agency Certification:** The Agency will certify in writing on or attached to the final invoice, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency facility, that adequate title is in the Agency and that the project is accepted by the Agency as suitable for the intended purpose.

#### **17.00 Appropriation of Funds:**

**17.10** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

**17.20 Multi-Year Commitment:** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Chapter 339.135(6)(a), F.S., are hereby incorporated: "(a) The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of 25,000 dollars and which have a term for a period of more than 1 year."

**18.00 Expiration of Agreement:** The Agency agrees to complete the project on or before December 31, 2005. If the Agency does not complete the project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the District Secretary. Expiration of this Agreement will be considered termination of the project and the procedure established in paragraph 9.00 of this Agreement shall be initiated.

**18.10 Final Invoice:** The Agency must submit the final invoice on this project to the Department within 120 days after the expiration of this Agreement. Invoices submitted after the 120 day time period will not be paid.

**19.00 Agreement Format:** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**20.00 Execution of Agreement:** This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

#### **21.00 Restrictions on Lobbying:**

**21.10 Federal:** The Agency agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the Agency, 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 Agency 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 Joint Participation Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**21.20 State:** No funds received pursuant to this contract may be expended for lobbying the Legislature or a state agency.

**22.00 Vendors Rights:** Vendors (in this document identified as Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days after receipt of the invoice and receipt, inspection and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), F.S. will be due and payable, in addition to the invoice amount to the Agency. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at (850)410-9724 or by calling the Department of Financial Services Hotline, 1-800-848-3792.

**23.00 Public Entity Crime:** Pursuant to 287.133(3)(a) F.S. the following is applicable to this agreement. 287.133(2)(a) "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 s. 287.017, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

**24.00 Discrimination:** An entity or affiliate who has been placed on the discriminatory vendor list 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.

Financial Project No. 41505019401  
Contract No. ANO 90  
Agreement Date 8/18/04

IN WITNESS WHEREOF, the parties hereto have caused these presents be executed, the day and year first above written.

AGENCY

FDOT

PALM BEACH COUNTY METROPOLITAN PLANNING O

AGENCY NAME

John F Koons  
SIGNATORY (PRINTED OR TYPED)

John F Koons  
SIGNATURE

CHAIR  
TITLE

See attached Encumbrance Form for date of Funding  
Approval by Comptroller 8/10/04

Lance C. Meyer  
LEGAL REVIEW  
DEPARTMENT OF TRANSPORTATION

Gary O'Reilly  
DEPARTMENT OF TRANSPORTATION

Director of Planning and Production  
TITLE

FM NO. 415050-1-94-01  
CONTRACT NO: AN0 90

**EXHIBIT "A"**  
**PROJECT DESCRIPTION AND RESPONSIBILITIES**

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and the PALM BEACH COUNTY METROPOLITAN PLANNING ORGANIZATION Dated 8/18/04.

**PROJECT LOCATION:**

Palm Beach County, Florida

**PROJECT DESCRIPTION:**

The purpose of this Agreement is to provide funding assistance to the Palm Beach County Metropolitan Planning Organization for a project consisting of the first phase of a Countywide system to link cities via an integrated water taxi transit system. The system would include the design and construction of docks and access facilities for public use by existing water taxi operators at locations listed in the attached application package.

**SPECIAL CONSIDERATIONS BY AGENCY:**

The audit report(s) required in paragraph 7.60 of the Agreement shall include a schedule of project assistance that will reflect the Department's contract number, FM number and the Federal Identification number, where applicable, and the amount of state funding action (receipt and disbursement of funds) and any federal or local funding action and the funding action from any other source with respect to the project.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

N/A

FM NO. 415050-1-94-01  
CONTRACT NO. ANO 90

**EXHIBIT "B"**  
**PROJECT BUDGET**

This exhibit forms an integral part of that certain Joint Participation Agreement  
between the State of Florida, Department of Transportation and the PALM BEACH  
COUNTY METROPOLITAN PLANNING ORGANIZATION Dated 8/18/04.

I. PROJECT COST: \$ 993,500.00

Design and Construction of Docks/facilities

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TOTAL PROJECT COST: \$ 993,500.00

II. PARTICIPATION:

Agency Participation

In-Kind ( %) \$

Cash/In-Kind ( %) or \$

Other ( %) \$

Maximum Department Participation,

Primary

(DS) (DDR)(DIM)(PORT) (CIGP) ( %) or \$

Federal Reimbursable (DU)(CM)(F330) (100 %) or \$ 993,500.00

Local Reimbursable (DL) ( %) or \$

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TOTAL PROJECT COST \$ 993,500.00



**EXHIBIT "C"**  
**PROGRAM ASSURANCES**

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and the PALM BEACH COUNTY METROPOLITAN PLANNING ORGANIZATION Dated 8/18/04.

**General**

The MPO shall adhere to all applicable planning requirements established and set forth by the U.S. Department of Transportation, including development and timely submission of its Transportation Improvement Program (TIP) and annual/biennial element and Unified Planning Work Program (UPWP).

The MPO shall comply with any special conditions imposed by the Federal Highway Administration (FHWA) as a condition of grant approval. Costs incurred prior to execution of this agreement can not be charged to the grant. Costs incurred by the MPO to prepare and file an application are not eligible project costs.

1. **Exclusive Rights:** Will permit no exclusive right for the use of the dock facilities by any person providing, or intending to provide, water taxi services to the public.
2. **Federal Funding Eligibility:** Will take appropriate actions to maintain federal funding eligibility for the MPO. Further, will avoid any action that renders the MPO ineligible for federal funding.
3. **Consultant, Contractor, Scope, and Cost Approval:** Will grant the Department the right to disapprove the Agency's employment of specific consultants, contractors, and subcontractors for all or any part of this project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department. Further, the Agency assures that it will grant the Department the right to disapprove the proposed project scope and cost of professional services.
4. **Reports:** Will furnish the Department with quarterly project and work activity reports.
5. **Disclosure:** Will grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
6. **Expiration of Agreement:** Will not be extended beyond date as listed in paragraph 18.00.

If this project involves construction, the Agency assures that it will:

**7. Certifications:** Provide certifications that:

- a. Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- b. All design plans and specifications comply with federal, state, and professional standards and applicable Federal advisory circulars.
- c. The project complies with all applicable building codes and other statutory requirements.
- d. Completed construction complies with the original project plans and specifications.

**8. Construction Inspection & Approval:** Provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Department for the project. The Agency assures that it will allow the Department to inspect the work. The Department may require cost and progress reporting by the Agency.

YEAR 2002  
FERRY BOAT DISCRETIONARY PROGRAM  
APPLICATION FORM

Date: 2/27/02

FDOT District: Four

Grant Recipient Name: Palm Beach Metropolitan Planning Organization

**Project Description:**

The proposed ferry system is a private/public joint venture to utilize the Palm Beach County waterway system to promote tourism, increase mobility and create jobs.

Palm Beach County, Florida has more than 40 miles of the Intracoastal Waterway that is greatly underutilized as a transportation alternative. All of the major eastern cities, including Boca Raton, Boynton Beach, Delray Beach, Lake Worth, West Palm Beach, Palm Beach, Riviera Beach, Palm Beach Gardens and Jupiter, have a portion of the Intracoastal Waterway within their municipal boundaries. This proposal would be the first phase of a Countywide system to link these cities via an integrated water taxi transit system. The proposal includes linking attractions along the waterway near the Downtown West Palm Beach Central Business District and becoming an integrated connection to the entire Palm Tran system. The service also parallels a major portion of the recent transit study of U.S. 1 for Palm Tran which includes increased transit service and improved bus stops with shelters and access improvements.

The system would include construction of docks and access facilities at:

U.S. 1 Bridge, Jupiter	Burt Reynolds Park, Jupiter
Bert Winters Park, Juno Beach	PGA Blvd Bridge, Palm Beach Gdns
Phil Foster Park, Riviera Beach	Light Harbor Park, Riviera Beach
Flagler Memorial Bridge, Palm Beach	Flagler Museum, Palm Beach *
Downtown West Palm Beach	Royal Park Bridge, Palm Beach *
Southern Boulevard Bridge, West Palm Beach	

\* Note: Discussions may result in relocation of these sites.

The use of bridge areas and parks reduces the costs of implementation since these lands are already in public ownership and require little, if any, right-of-way purchases. The attached map indicates the sites for the proposed docks and facilities.

Within this area, there are an appropriate mix of attractions and destinations to make this a successful transit alternative. There are currently 10,200 residents and 23,000 employees that would be within walking distance of the proposed stops. These figures are

anticipated to grow to 13,000 residents and 35,000 employees. In addition the proposal would have pedestrian connections to Palm Tran routes 1, 2, 31, 40, 41, 42, 43, 46 and the downtown trolley. Note that the downtown trolley has only been operating for about a year and has surpassed 70,000 riders a month on several occasions. The downtown trolley would also connect the waterbus to the Tri-Rail multimodal station providing access to all of South Florida through Tri Rail, Amtrak and Greyhound.

#### **ELIGIBILITY:**

Link on a public road or "the ferry facility is providing passenger service only"

The proposal is for passenger service only.

The ferry and/or ferry terminal to be constructed or improved is either publicly owned, publicly operated, or a public authority has majority ownership interest where it is demonstrated that the ferry operation provides substantial public benefits.

The boats, docking facilities and signage purchased with the funds from this proposal will all be publicly owned by Palm Beach County. These facilities would provide access to the current two private providers of water taxi services and be available to any additional providers should more services become available. The result will be an expanded interconnected ferry transit system.

Does not operate in international waters.

The services will operate entirely within Palm Beach County, Florida, USA

#### **SUBMISSION REQUIREMENTS:**

1. State - Florida

2. Counties - Palm Beach County, Florida.

3. U.S. Congressional District No.(s):

The Districts will be affected are as follows:

- FL-16
- FL-22
- FL-23

4. U.S. Congressional Members by District:

FL-16 - Congressman Mark Foley  
FL-22 - Congressman E. Clay Shaw  
FL-23 - Congressman Alcee L. Hastings

U.S. Senators: Bob Graham  
Bill Nelson

**5. Facility or Project Name - Palm Beach County Water Taxi Facilities**

**6. Service Termini and Ports** - Service will focus on the northeastern Palm Beach County area to Downtown West Palm Beach Area with potential expansion along the entire Intracoastal Waterway System the length of Palm Beach County. See Project Description. This application proposes to meet transportation demands by further diversifying the County transit system by *providing scheduled ferry transit service along the most densely populated and developed waterways*

**7. Ownership and Operation.** - The proposal is a public/private partnership. All terminals are publicly owned. The fixed-route service will be privately owned and operated. There is existing water taxi service in the proposed area and there is a waterbus operator currently working in Broward County, Florida. It is anticipated that these operators would utilize these facilities to serve the travel demand. Partnerships can also be developed at docking locations where employers and tourist attractions would participate in operating costs of the docking facilities.

**8. Current and Future Traffic:** It is anticipated the water taxi service would operate consistent with the Palm Tran system and the Downtown Trolley system. Service would be provided for a minimum of 15 hours per day from 7:00 am to 10:00 pm with Saturday and Sunday service. Service will be provided year round due to the warm climate.

**9. Proposed Work** - The project will begin immediately upon notification of Ferry Boat Grant approval. If this application is successful in October 2002, funds should be available by January 2003. Negotiations would be completed with FDOT, Palm Beach County, and the local municipalities for access and use of the public lands proposed in the application. Construction would follow on the landing sites and signage programs.

**10, 11. Leveraging of private or other public funding** - A fixed schedule ferry service would not be viable without a public/private partnership. The proposal leverages private capital where the existing private operators have established a base ridership and support from the hotel, commercial, entertainment and tourist attraction industries. The partnership will allow for the ability to reshape the existing on-call, tourist oriented service to include a fixed-schedule, commuter service. A cost estimate for each proposed location has been prepared using information from marine construction firms and current operators. Each proposed dock would cost \$20,000. A small shelter to be located at the majority of the stops would include benches and access at a cost of \$50,000 each. A large shelter would incorporate bathroom facilities and an attendant area for a cost of \$150,000. The proposed parking lot at Southern Boulevard would cost \$200,000. The total estimated cost is \$1,020,000. A cost summary for each location follows.

<u>Location</u>	<u>Dock</u>	<u>Shelter</u>	<u>Large Shelter</u>	<u>Parking Lot</u>	<u>Estimated Cost</u>
U.S. 1 Bridge, Jupiter	Yes	Yes			70,000
Burt Reynolds Park, Jupiter	Yes	Yes			70,000
Bert Winters Park, Juno Beach	Yes	Yes			70,000
PGA Boulevard Bridge, Palm Beach Gardens	Yes	Yes			70,000
Phil Foster Park, Riviera Beach	Yes	Yes			70,000
Light Harbor Park, Riviera Beach	Yes	Yes			70,000
Flagler Memorial Bridge, Palm Beach	Yes	Yes			70,000
Flagler Museum, Palm Beach	Yes				20,000
Downtown West Palm Beach	Yes	Yes			170,000
Royal Palm Bridge, Palm Beach	Yes	Yes			70,000
Southern Boulevard Bridge, West Palm Beach	Yes	Yes	Yes		270,000

Total

1,020,000

Federal Discretionary Request:	\$816,000
Local Match:	\$204,000
Total Project	\$1,020,000

Operating and maintenance costs will be funded by the private sector through hotel and business docking fees, and passenger revenues.

12. Previous FBD Funding – Palm Beach County has not previously received any ferry boat funds.

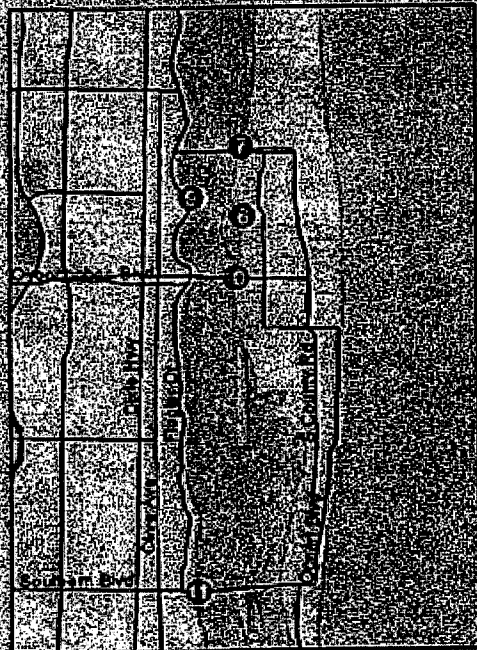
13. Future Funding Needs – All future funding for Phase I will be met through local sources. Future funding needs will include annual operating costs which will be provided by the operators and new docks and access facilities which will be met by local government or through joint development with Palm Tran.

14. Project Purpose and Benefit - The partnership will greatly benefit the citizens of Palm Beach County and tourists by providing an efficiently linked water based transit system to the local fixed route bus system and pedestrian network. Future phases will include service extensions to the south. Studies of increased transit service needs and extension of the water taxi services will be conducted within two years.

# Palm Beach County Water Taxi System

## Docking Sites

1. U.S. 1 Bridge in Jupiter
2. Burt Reynolds Park
3. Ben Winters Park
4. PGA Blvd Bridge
5. Phil Foster Park - Riviera Beach
6. Light Harbor Park - Riviera Beach
7. Flagler Memorial Bridge - Palm Beach
8. Flagler Museum
9. Downtown West Palm Beach
10. Royal Palm Bridge - Palm Beach
11. Southern Blvd Bridge



1 inch equals 1 mile

printed: 20 FEB 2002  
by: water taxi corp



1 inch equals 2 miles

**ATTACHMENT D**  
**Ferry Boat Discretionary Program**



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## Ferry Boat Discretionary Program Information

(December 2005)

### Background:

The Ferry Boat Discretionary (FBD) Program, which provides a special funding category for the construction of ferry boats and ferry terminal facilities, was created by Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (1991 ISTEA, Public Law 102-240). Section 1207 of the Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178) reauthorized the FBD funding category through FY 2003. It was continued through the Surface Transportation Extension Acts. Section 1801 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) added the program in Section 147 of 23 U.S.C.

### Statutory References:

23 U.S.C. 147; SAFETEA-LU Sections 1101(a)(13), 1801  
23 U.S.C. 129(c)

### Funding:

Fiscal Year	2005	2006	2007	2008	2009
Competitive	\$18M	\$35M	\$40M	\$45M	\$47M
NHS Set-aside	\$20M	\$20M	\$20M	\$20M	\$20M

SAFETEA-LU provides \$38 million in fiscal year 2005 and an increasing amount (see table above) in each of fiscal years 2006 through 2009 for the construction of ferry boats and ferry terminals in accordance with 23 U.S.C. 147. Under the provisions of SAFETEA-LU Section 1102(f), Redistribution of Certain Authorized Funds, any funds authorized for the program for the fiscal year, which are not available for obligation due to the imposition of an obligation limitation, are not allocated for the FBD program, but are redistributed to the States by formula as STP funds. Under the provisions of 23 U.S.C. 147(d), \$20 million from each of fiscal years 2005 through 2009 shall be set aside for marine highway systems that are part of the NHS for use by the States of Alaska (\$10 million), New Jersey (\$5 million), and Washington (\$5 million). The remaining funds are available for funding projects.

### Federal Share:

In accordance with 23 U.S.C. 147(b), the Federal share of the costs for any project eligible under this program is 80 percent.

**Obligation Limitation:**

The FBD discretionary funds are subject to obligation limitation; however, 100 percent obligation authority is provided with the allocation of funds for the selected projects. The obligation limitation reduces the available funding for the program under the provisions of SAFETEA-LU Section 1102(f) discussed above.

**Eligibility:**

As specified in 23 U.S.C 147(a), this program is for the construction of ferryboats and ferry terminal facilities in accordance with 23 U.S.C. 129(c). FBD funds are available for construction/improvement to ferry boats or ferry boat terminals where:

- It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.
- The operation of the ferry shall be on a route classified as a public road within the State and which has not been designated as a route on the Interstate System. Projects under this subsection may be eligible for both ferryboats carrying cars and passengers and ferryboats carrying passengers only.
- Such ferry boat or ferry terminal facility shall be publicly owned or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits.
- The Ferry does not operate in international water except for: Hawaii, Alaska, any territory of the United States, and between a State and Canada.

The set-aside discretionary funds for marine highway systems for use by the States of Alaska, New Jersey and Washington are available for the construction or refurbishing of ferry boats and ferry terminal facilities and approaches to such facilities within marine highway systems that are part of the NHS as set forth in 23 U.S.C. 147(d).

**Solicitation Procedure:**

Each year, a memorandum is sent from the FHWA Headquarters Office of Program

Administration to the FHWA Division Offices, requesting the submission of candidate projects

for the following fiscal year's funding. This solicitation is also posted on FHWA's website at <http://www.fhwa.dot.gov/discretionary> (due to Congress designating all of the FY 2006 FBD funding for specific projects, no discretionary funding remains. Accordingly, FHWA is soliciting applications for only those projects for FY 2006). The Division Offices provide this solicitation request to the State transportation departments, who are the only agencies that can submit candidates. The State transportation departments coordinate with local agencies within their respective States in order to develop viable candidate projects. The State transportation departments submit the candidate applications to the Division Office in their state. After the Division Office has reviewed the submission and ensured that the applications meet the requirements, they will send the applications to the Office of

Program Administration in Headquarters. Applications for FY 2006 are due in Headquarters from the Division Office by **JANUARY 20, 2006**. The Office of Program Administration will review the applications for completeness.

#### **Submission Requirements:**

Because Congress has been fully designating funding for specific projects, the application has been shortened to obtain only the necessary information. Only State transportation departments may submit applications for funding under this program. The Division Office must submit the applications by electronic mail in MS Word format.

1. **State(s)** in which the project is located. If more than one State, indicate which State is the applicant.
2. **County(ies)** in which the project is located.
3. **U.S. Congressional District No.(s)** in which the project is located.
4. **U.S. Congressional Member's Name(s)** for each District.
5. **Facility or Project Name** Use the description in Attachment 1.
6. **Service Termini and Ports** - Identify if the ferry operates in domestic, foreign or international waters. Describe the ferry boat operation including the terminal locations, public road connections and name of the water crossing. A statement must be included for ferry boat operations carrying motorized vehicles, describing the link in the roadway system. Clearly identify any "transit" ferry service, and coordinate with the Federal Transit Administration (FTA).
7. **Ownership/Operation** - Specify which of the following apply (a, b, or c):
  - a. The boat or terminal is publicly owned. The term "publicly owned" means that the title for the boat or terminal must be vested in a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality.
  - b. The boat or terminal is publicly operated. The term "publicly operated" means that a public entity operates the boat or terminal.
  - c. The boat or terminal is "majority publicly owned" (as opposed to public owned). This means that more than 50 percent of the ownership is vested in a public entity. If so, does it provide substantial public benefits? Documentation of substantial public benefits, concurred in by the Division Office, is required for ferry facilities that are in majority public ownership.
8. **Proposed Work** - Describe project work that is to be completed under this particular request, and whether this is a complete project or part of a larger project.
9. **Amount of Federal FBD Discretionary Funds Requested** - Indicate the total cost of the proposed work along with the amount of FBD funds being requested for FY 2006 (the maximum Federal share for this program is 80 percent).

10. **Project Purpose & Benefits** - Describe the project benefits and purpose, including how the completion of the proposed project will benefit the transportation network. This information should be short and concise (three to five) statements. Language should be used to the extent possible so as to be understood by a reader that is not closely familiar with the highway and ferry boat operations. This item should include a statement concerning the project schedule showing how the work would be commenced in the fiscal year for which the funds are being requested. If applicable, the expected date when the ferry boat or terminal will be operational. A short statement concerning project planning and coordination should be included. If this is a regionally significant project, a statement about the cooperation with State and metropolitan planning organizations should be included. This information will also be used for briefings and bulletins.

#### **State Transportation Agency Responsibilities:**

1. Coordinate with State and local agencies within the State to develop viable candidate projects. If the project is a "transit" project coordination with FTA is needed.
2. Ensure the application for the project meets the submission requirements outlined above.
3. Submit the applications to the local FHWA Division Office on an agreed upon date and time so the submission deadline by the Division Office can be met.

#### **FHWA Division Office Responsibilities:**

1. Provide the solicitation memorandum and this program information to the State transportation agency electronically to facilitate their electronic submission of candidates.
2. Request project applications be submitted by the State to the local FHWA Division Office electronically to meet the submission deadline established in the solicitation memorandum. The Division's request to the State for FY 2006 projects should allow enough time to meet the responsibilities outlined below in advance of the FHWA Headquarters deadline for receipt of applications
3. Review all candidate applications submitted by the State prior to sending them to FHWA Headquarters, to ensure that they are eligible, complete and meet the submission requirements.
4. Submit the candidate applications electronically to [pete.jilek@fhwa.dot.gov](mailto:pete.jilek@fhwa.dot.gov) and [larry.beidel@fhwa.dot.gov](mailto:larry.beidel@fhwa.dot.gov) in the FHWA Headquarters Office of Program Administration by January 20, 2006. Include the following with the transmitting electronic message:
  - a. Transmittal statement from the Division Office that they have reviewed the State's submittal and that it meets the submission requirements, along with a Division Office contact for questions concerning the submission;
  - b. State transportation department submission email or letter to the FHWA

Division Office. (This will document that all applications were submitted by the State transportation department.); and

- c. Each individual application in MS Word as a separate file or attachment.



This page last modified on December 7, 2005

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