

Time Certain
2:00 PM

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A. Approve an amendment to the contract with Metro Mobility Management Group, LLC (MMMGMG); and
- B. Waive \$951,607 in liquidated damages charges (LQD's) that have been assessed since the start of the contract, contingent on satisfaction of all vehicle requirements by July 15, 2013, and collection of \$479,870 of the remaining LQD's.

Summary: Staff issued a Request for Proposal (RFP) for a single vendor to operate the Palm Tran Connection paratransit service in December 2011 (previously, three vendors with two vendors operating 90% of the work operated this service). This was done as a cost saving measure having a single provider with between 25-40% of the work being operated by the provider using non-dedicated (smaller) vehicles.

MMMG began service under the new contract on August 13, 2012 with only a seven-week start-up period after contract award. This short start-up period, originally planned to be 3 to 4 months, was in part due to a protest by MV Transportation (the 2nd ranked proposer), which delayed the award until June, when the protest was dropped. During the first six weeks of the contract, MMMG could not meet the daily service requirements, mostly the result of having an insufficient number of drivers and vehicles, and substantial critical service failures were experienced. By mid-October, MMMG was operating service at or near the 91% on-time service performance threshold. In late November, an issue arose between MMMG and one of the Disadvantaged Business Enterprise (DBE) vendors which resulted in additional critical service failures between late November 2012 and January 2013. In an effort to quickly resolve these failures, staff and MMMG agreed to have Connection do 100% of the scheduling and to limit the use of the non-dedicated service to the minimum 25% threshold established in the contract and the RFP. These changes have worked very well and staff is recommending their continuation.

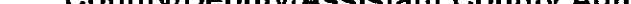
On-time performance since February 2013 (when Connection assumed doing 100% of the scheduling) has averaged **above 95%** (above the 91% requirement) and higher than the 92% performance average achieved in 2012. The primary contract modification relates to Connection doing 100% of the scheduling. MMMG has agreed to pay the additional cost of approximately \$60,000 per year for the hiring of one additional scheduler.

Staff has recently provided MMMG with a letter documenting several contract compliance issues. MMMG has responded with proposals to cure each item. (Continued on Page 3)

Attachment(s):

1. Weekly Service Performance
2. Proposed contract changes
3. Liquidated Damages (LQD's by Month)

Recommended By: [Signature] Apr 18, 2013
Department Director Date

Approved By: 
County/Deputy/Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	20--
Capital					
Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					
No. ADDITIONAL FTE POSITIONS (Cumulative)					

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

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

C. Departmental Fiscal Review: _____
 John Murphy, Finance Manager

III. REVIEW COMMENTS

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

While partially waiving liquidated damages (LQD) will result in the loss of revenue, the current budget did not anticipate such revenue. The proposal would require the vendor to pay the County \$479,870. The contract anticipated a range from non-dedicated service between 25% and 40%. As this percentage goes down, the cost to the County increases. The estimated cost of limiting non-dedicated service to 25% versus 40% is approximately \$2 million. Part of the additional costs is a result of higher ridership compared to the estimates included in the RFP.

[Signature] 4/19/2013
 OFMB 4-14-13 4/19

[Signature] 4/22/13
 Contract Dev. and Control
 4-22-13 B. Wheeler
 At the time of our review the Amendment was not executed.

B. Legal Sufficiency:

[Signature] 4/21/13
 Assistant County Attorney

C. Other Department Review:

 Department Director

If a portion of the LQDs are waived by the BCC, the CAO recommends that language be added to the Contract making the waiver conditioned upon the County's receipt (by offset or deduction) of the non-waived LQDs by July 13, 2015 or such other date determined appropriate by the BCC.

Summary:
(Continued from Page 1)

MMMG has exceeded the limit established in the Contract for LQD. LQD's are assessed under the terms of the contract when the vendor fails to perform the contract requirements including within a specified time, or at a specified level of performance. MMMG has asked staff to waive many of the LQD's given the circumstances involved. Staff does not believe that the contract provides staff the authority to waive LQD's in this manner.

LQDs were established for many items in the contract including on-time performance and vehicle requirements. The total LQDs from the beginning of the contract through February exceeds \$1.4 million. This is largely the result of the two main issues:

- start-up issues that impacted the service during the first six weeks of the contract, mostly the result of MMMG not having a sufficient number of vehicles and/or drivers to meet the service requirements; and
- vehicle (non-safety) requirements that have not been met, including for flex fuel and installation of a Automated Vehicle Locator (AVL) system. The AVL system has been delayed in part due to interface issue between the County's Scheduling vendor (Trapeze) software and the software from MMMG's vendor, which is now being resolved.

Staff recommends the reduction of the LQD's for the first six weeks of the contracts and establishing a July 15, 2013 date for all vehicles to be in compliance. This would leave LQD's of \$479,870 that MMMG would need to pay. These remaining LQD's primarily relate to the service failures referenced above. Staff further recommends that the outstanding remaining LQD's be paid by July 15, 2013. Countywide (DR)

Background and Policy Issues:

Palm Tran is required under Federal Law to operate Americans With Disabilities Act (ADA) paratransit service for disabled residents wherever Palm Tran's Fixed Route service is operated. For years, Palm Tran has provided this service using contracted vendors. There was no union opposition to our contracting this service out. The contract with MMMG is a five-year contract (expiring in August 2017), and was based on a concept using smaller vehicles including cabs operating between 25-40% of the scheduled service in order to reduce costs. Limiting the non-dedicated service to 25% of the scheduled service is within the terms of the contract. This revised service with Connection doing 100% of the scheduling has worked well, providing improved on-time performance levels since we implemented this "trial fix" at the end of January 2013. The operating cost for this contract has been higher than expected in part due to ridership levels that were above the levels that were quoted in the RFP. Staff's review of projected 1st year operating costs based on these higher ridership levels exceeding the projections used in the RFP is that MMMG would still be the lowest cost proposal of any of the other firms that submitted a proposal if the impacts of the increased ridership levels were applied equally to all proposals. Staff believes there is no reason to expect that if we were to do a new five (5) year RFP now that the proposed costs would be significantly different than we received in 2012. One other issue that hampered service was a dispute between one of the DBE providers and MMMG. This dispute has also now been resolved to the satisfaction of all parties. The proposed minor contract changes (as attached), which are acceptable to MMMG, would provide for the continuation of this contract.

The Amalgamated Transit Union (ATU) opposed the award of this contract to MMMG and continues to recommend that we terminate this contract. The ATU has indicated they plan on challenging the release of any further Federal grant money coming to Palm Beach County/Palm Tran as part of their opposition to our use of this firm. Palm Tran receives approximately \$15 million dollars annually in Federal grants.

CONNECTION WEEKLY STATUS REPORT

Week Since Contract Startup	Week of	On-time Performance	Raw Complaints	Average Daily Weekday Ridership
Prior Week	6-Aug	94.8%	86	2,818
One	13-Aug	85.4%	557	2,736
Two	20-Aug	83.1%	831	2,996
Three*	27-Aug	79.3%	470	2,868
Four	3-Sep	84.1%	216	3,046
Five	10-Sep	86.6%	280	3,071
Six	17-Sep	87.8%	199	2,987
Seven	24-Sep	90.4%	110	2,928
Eight	1-Oct	87.8%	120	3,146
Nine	8-Oct	90.7%	81	3,039
Ten	15-Oct	90.5%	83	3,109
Eleven	22-Oct	91.1%	63	2,778
Twelve	28-Oct	91.4%	56	3,116
Thirteen	4-Nov	90.0%	91	3,203
Fourteen	11-Nov	91.0%	83	3,116
Fifteen	18-Nov	92.7%	35	2,520
Sixteen	25-Nov	91.9%	67	3,151
Seventeen	2-Dec	86.0%	81	3,203
Eighteen	9-Dec	89.5%	310	3,208
Nineteen	16-Dec	88.0%	137	3,114
Twenty	23-Dec	94.9%	47	1,901
Twenty-one	30-Dec	93.2%	40	2,381
Twenty-two	6-Jan	88.8%	116	3,168
Twenty-three	13-Jan	88.9%	114	3,246
Twenty-four	20-Jan	92.5%	131	2,893
Twenty-five	27-Jan	95.0%	91	3,147
Twenty-six	3-Feb	94.2%	107	3,257
Twenty-seven	10-Feb	93.8%	108	3,256
Twenty-eight	17-Feb	97.0%	52	2,964
Twenty-nine	24-Feb	96.6%	71	3,267
Thirty	3-Mar	96.0%	73	3,170
Thirty-one	10-Mar	95.6%	80	3,285
Thirty-two	17-Mar	96.0%	89	3,228
Thirty-three	24-Mar	98.0%	59	2,573
Thirty-four	31-Mar	96.1%	78	3,125
Thirty-five	7-Apr	95.1%	82	3,348

* School Startup Week

** Tropical Storm Issac - Connection service modified or did not operate on Aug. 25-27

*** Labor Day (No Connection Service on Labor Day)

***** On Thursday, October 4th - accident on I-95 had an impact on am service/on-time performance

+ Tropical Storm Sandy

++ Thanksgiving Week - No service operated on Thursday... staff off after Wednesday - complaints received after Wednesday will show in next week's report

+++ Christmas Week - No service operated on Tuesday

++++ New Year's Day - No service operated

+++++ .MLK Day - regular service provided

@ with Palm Tran Connection scheduling ALL service beginning on Jan. 29th

+++++ President's Day - regular service provided

^ School vacation week

^^ Easter Sunday no service

**FIRST AMENDMENT
TO CONTRACT FOR PARATRANSIT SERVICES
(Contract No. 11-097R/SC)
(R2012-0934)**

THIS FIRST AMENDMENT is made and entered into this ____ day of _____, 2013, to the Contract for Paratransit Services by and between Metro Mobility Management Group, LLC (hereinafter the "CONTRACTOR") and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter the "COUNTY").

WITNESSETH

WHEREAS, on June 26, 2012, the COUNTY entered into that certain Contract with CONTRACTOR (R2012-0934) for the provision of paratransit services; and

WHEREAS, there have been difficulties arising out of or related to the transition from two providers to a single provider and the efficient scheduling of non-dedicated paratransit services; and

WHEREAS, COUNTY has assessed liquidated damages for various failures to comply with the Contract's requirements and CONTRACTOR has appealed the assessments and/or claimed that its performance failures were beyond its control and should be excused; and

WHEREAS, COUNTY has now determined that the waiver of a portion of the liquidated damages assessed by COUNTY is appropriate given the transition difficulties that were experienced by CONTRACTOR; and

WHEREAS, in consideration of COUNTY's waiver of various liquidated damages assessments or charges, the CONTRACTOR has agreed to waive, release and forever discharge COUNTY from any and all claims that liquidated damage charges assessed, for an incident occurring prior to the effective date of this First Amendment, were or are invalid, improper, wrongly assessed, or excusable under any provision of the Contract, and from any claim that COUNTY has violated any provision of the Contract; and

WHEREAS, CONTRACTOR acknowledges and agrees that the COUNTY is harmed if the CONTRACTOR fails to: provide adequate resources; refuses or is unable to perform scheduled trips or timely perform scheduled trips; provide conforming vehicles; comply with the disadvantaged business requirements of the Contract; comply with applicable transit employee protective requirements; and otherwise comply with the requirements of the Contract; and

WHEREAS, the parties now desire to modify and clarify certain provisions of the Contract to address the forgoing issues and other matters including, but not limited to, scheduling, equipment, the utilization of disadvantaged business enterprises and the provision of services.

NOW, THEREFORE in consideration of the mutual representation, terms and covenants hereinafter set forth the, the parties agree as follows:

1. The statements set forth in the Preamble to this First Amendment are true and correct and incorporated into and made a part of this First Amendment.

2. Paragraph C of Article 4 of the Contract is amended to add the following as subparagraph 8.

8. The weekly sum due COUNTY for the scheduling of services. Such weekly sum shall be offset as provided in Section 18.B.a of Exhibit A, Scope of Work/Services to the Contract and such offset shall be reflected in the adjusted total amount which the CONTRACTOR is requesting from the COUNTY as payment. (See No. 12 of this First Amendment.)

3. Paragraphs A, D and E of Article 7 of the Contract are amended to provide as follows:

A. In accordance with Section 9 of Article 32 of the Contract, the CONTRACTOR agrees that it shall subcontract at least forty-five percent (45%) of the total value of the Contract to disadvantaged business enterprises (DBEs), during each year of the Contract and shall endeavor to maintain this level of participation for all billing periods during the term of the Contract.

D. The CONTRACTOR shall provide a minimum of forty (40) new vehicles for use in the dedicated fleet no later than July 15, 2013, which shall be fully compliant with the vehicle standard requirements of this Contract. Prior to July 15, 2013, the CONTRACTOR shall be permitted to temporarily use vehicles contained within its existing fleet of vehicles, which it was permitted to use under the prior contract it had with COUNTY for paratransit services (*i.e.*, R2004-2447, as amended); provided, that the vehicles used for dedicated service do not exceed a 2004 model year age and the vehicles used for non-dedicated service do not exceed a 2006 model year age. All such temporary use vehicles shall be otherwise compliant with the requirements of this Contract, excluding the mileage limitations of Section 28 of Exhibit A, Scope of Work/Services to this Contract. All non-dedicated vehicles shall be fully compliant with the vehicle standard requirements of Section 28 by July 15, 2013. All other vehicles utilized by the CONTRACTOR for the provision of dedicated services shall be fully compliant with the vehicle standard requirements of Section 28 by July 15, 2013.

E. No later than July 15, 2013, the CONTRACTOR shall have procured, installed and put into use, at its own cost and expense, Mobile Data Terminals (MDTs) and GPS technology in all vehicles used in the delivery of paratransit services. On or before August 12, 2013, or such additional period of time authorized by COUNTY's Contract Representative, not to exceed ninety (90) days, the CONTRACTOR shall have procured, installed and put into use Smart Phone Technology and Smart Card Technology.

4. Paragraph F of Article 7 of the Contract is deleted and replaced with the following notation:

F. Reserved.

5. Paragraph G of Article 7 of the Contract is revised to provide as follows:

G. All technicians (mechanics) shall be ASE Certified for the nature of the work they are performing. In the event work is performed by a non-ASE certified technician, all such work shall be performed under the direct supervision and control of an ASE Certified supervisor, who shall approve the work and document such approval before the vehicle is placed into service. Evidence of required ASE certifications and approvals by ASE Certified supervisors shall be made available immediately upon request.

CONTRACTOR agrees that all non-dedicated drivers utilized by the CONTRACTOR shall possess, satisfy and adhere to the same skill levels, competency testing, training, certification, background checks, drug and alcohol testing and all other service standards and requirements of the Contract as set forth in Exhibit A, Scope of Work/Services for the dedicated drivers. CONTRACTOR shall develop and utilize a program for the participation and use of non-dedicated drivers (also referred to in this Contract as "independent contractors") so as to ensure that all standards and requirements of the Contract are met, including but not limited to compliance with the insurance requirements of Article 16 and the indemnification obligation of Article 17 of this Contract. CONTRACTOR's program shall be in place no later than the commencement date of the Contract. CONTRACTOR shall submit its program to COUNTY for approval prior to implementation. The term "independent contractors" as used in this Contract shall refer to non-dedicated drivers (taxi drivers) unless the context of the provision indicates that the term is intended to refer to the CONTRACTOR. The parties acknowledge that the relationship between the CONTRACTOR and the COUNTY is that of an Independent Contractor and that nothing contained in this Article or any other provision of the Contract shall alter that relationship or modify the application of Article 25 to the CONTRACTOR.

6. Article 11 of the Contract is revised to provide as follows:

ARTICLE 11 – PERSONNEL AND CHANGE OF CONTROL

A. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

B. All of the services required hereunder shall be performed by the CONTRACTOR, or under its supervision and control, and all personnel (including those of the subcontractors and all independent contractors) engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. Other specific requirements for personnel training are set forth in Exhibit A, Scope of Work/Services.

C. To protect the COUNTY against the possible consequences of a Change of Control of the Contractor's Key Personnel, as defined below, the COUNTY shall have the right, but not the obligation, to terminate the Contract under the termination provisions of Article 10.B of this

Contract as if a default had occurred or deny any assignment of the Contract, whichever the case may be; all within its sole discretion.

D. A "Change of Control" or Key Personnel shall mean:

1. The acquisition by any individual, entity, or group of 20 percent or more of either (i) the then-outstanding member interests of PTG ENTERPRISES, LLC ("PTG") (Outstanding Member Interest) or (ii) the combined voting power of the then-outstanding voting member interests of PTG entitled to vote generally in the election of directors (Outstanding Voting Member Interest); or

2. Individuals who, as of the date of the First Amendment to the Contract, constitute the Board of Directors of PTG (Incumbent Board) cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director after the date of this Agreement whose election, or nomination for election by PTG's voting members, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (by a specific vote of PTG in which such person is named as a nominee for director, without written objection to such nomination) shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors.

3. Any of the following Key Personnel: Cullan F. Meathe, President and CEO; Clark J. Davis, COO; or Robert Glaeser Sr., Vice President of Paratransit Operations; or others as may be listed in Exhibit B are terminated, resign or otherwise removed from the duties that they currently maintain for CONTRACTOR. Any changes or substitutions to any of CONTRACTOR's Key Personnel must be made known to the COUNTY's Contract Representative and written approval must be granted by the COUNTY's Contract Representative before a change or substitution can become effective.

E. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

F. All of the CONTRACTOR's personnel (and all subcontractors and independent contractors) will comply with all COUNTY, State and Federal requirements governing conduct, safety, and security while on COUNTY premises or performing services on behalf of the COUNTY.

7. Article 22 of the Contract is revised to provide as follows:

ARTICLE 22 – EXCUSABLE DELAYS

A. The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Contractor and without its fault or negligence. Such causes shall be limited to: acts of God or the public enemy; fire; floods; epidemics; quarantine restrictions; and unusually severe weather. Work stoppages, strikes, sick outs, slow downs, or other concerted acts of CONTRACTOR's

employees, or the acts of its independent contractors, suppliers, and subcontractors shall not be deemed a cause reasonably beyond the control of CONTRACTOR. The COUNTY may waive certain requirements of this Contract so as to allow the CONTRACTOR to provide alternative service delivery pending such work stoppages, strikes, sick outs, slow downs, or other concerted acts as COUNTY determines appropriate in its sole discretion.

B. Upon the CONTRACTOR's request, the COUNTY shall consider the facts and extent of any failure to perform the Work and if the CONTRACTOR's failure to perform was without its or its independent contractors, suppliers or subcontractors' fault or negligence, the Scope of Work/Services and any other provision of the Contract may be revised. However, nothing contained herein shall affect the COUNTY's right to change, terminate, or stop any or all of the Work at any time.

8. Section 9.e. of Article 32 of the Contract is amended to provide as follows:

e. DBE Goal:

COUNTY fully supports the federal government's Disadvantaged Business Enterprise (DBE) Program. The CONTRACTOR has agreed to achieve DBE participation as set forth in paragraph A of Article 7 of the Contract and that its DBE participation shall be determined based upon the total value of the Contract (*i.e.*, gross revenues paid by COUNTY to CONTRACTOR for performance of the Contract, including fares retained by CONTRACTOR). However, for purposes of compliance with the requirements of 49 CFR Part 26 and reporting DBE participation in this Contract to the Federal Transit Administration, the DBE participation goal shall be forty-five percent (45%) of the sum derived from subtracting the total amount of vehicle lease payments paid by DBE subcontractors for vehicle leases, inclusive of maintenance and insurance, from the total value of the Contract; provided, however, that nothing contained herein shall reduce CONTRACTOR's DBE participation goal to less than thirty percent (30%) of the value of the Contract as such value, for DBE participation purposes, is determined by COUNTY's DBE Coordinator in accordance with 49 CFR Part 26, nor shall otherwise modify CONTRACTOR's DBE obligations under this Contract.

9. Subparagraph 2.b. of Section 1. Services, of Exhibit A, Scope of Work/Services to the Contract is deleted and replaced with the following notation:

2.b. Reserved.

10. Paragraph C of Section 6. On-Time Performance, of Exhibit A, Scope of Work/Services to the Contract is amended to provide as follows:

C. The CONTRACTOR shall be charged with a missed trip for all trips which are not performed, regardless of the reason for non-performance, or which was performed more than one (1) hour after the end of the pickup window or more than one (1) hour after the requested arrival time.

11. Subparagraph 12 of Section 18.A. Dedicated Service, of Exhibit A, Scope of Work/Services is amended to provide as follows:

12. All routes will have a minimum one (1) hour break, unless otherwise approved by CONNECTION.

12. The parties have agreed that the scheduling of non-dedicated service shall now be performed by COUNTY and to modify Section 18.B. Non-Dedicated Service, of Exhibit A, Scope of Work/Services to the Contract to reflect that agreement. Accordingly, subparagraph a of Section 18.B. is modified as set forth below, and subparagraphs b through e, g and h of Section 18.B. are deleted and replaced with the notation indicated below:

a. The COUNTY shall schedule non-dedicated service. CONTRACTOR shall compensate COUNTY for the scheduling of non-dedicated services in the amount of One Thousand One Hundred Fifty-Four Dollars (\$1,154.00) for each week of the Contract. (On an annualized basis, the sum due COUNTY for scheduling services shall be Sixty Thousand Eight Dollars (\$60,008.00)). Each weekly invoice submitted by CONTRACTOR to COUNTY for payment for services rendered under the Contract shall be reduced by the amount of \$1,154.00 and shown as an offset or reduction in the total sum due CONTRACTOR for services invoiced.

- b. Reserved.
- c. Reserved.
- d. Reserved.
- e. Reserved.
- g. Reserved.
- h. Reserved.

13. Paragraphs E and L of Section 40 Liquidated Damages (LQD) of Exhibit A, Scope of Work/Services is amended to provide as follows:

E. The CONTRACTOR shall not be charged with liquidated damages (LQDs) when the delay or lack of performance is beyond the control and without the fault or negligence of the CONTRACTOR. The events that may be deemed causes beyond the CONTRACTOR's control and without its fault or negligence are limited to those set forth in Section B.3(a) through (f) of Article 10. CONNECTION will not negotiate the assessment of valid LQDs. Within twenty (20) days of CONTRACTOR's receipt of the notification of monthly LQDs from COUNTY, the CONTRACTOR may appeal a LQD that has been assessed in error or for an incident that was without CONTRACTOR's fault or negligence. Thereafter, CONNECTION's Director will review the appeal. If an LQD is determined not to be valid (*i.e.*, assessed in error or without CONTRACTOR's fault or negligence), the assessment will be removed by CONNECTION. This provision does not provide an appeal mechanism for LQDs that CONTRACTOR contends are excused under Article 22 of the Contract.

L. Failure of the CONTRACTOR to respond to ninety percent (90%) of estimated time of arrival (ETA) requests within five (5) minutes of the issuance of the request shall result in an

assessment of a liquidated damage in the amount of ten dollars (\$10.00) per unresponsive ETA request.

14. CONTRACTOR shall be responsible for and shall reimburse COUNTY for any and all costs and expenses, including attorney fees and costs incurred by COUNTY that are related to or arise out of an objection(s) submitted by the Amalgamated Transit Union (ATU), by or for the benefit of any local ATU labor organization, to the referral terms of any application for federal assistance submitted by or for the benefit of COUNTY to the Federal Transit Administration (FTA) and referred to the U.S. Department of Labor (DOL) for certification of employees protective arrangements under 49 USC 5333. CONTRACTOR shall be responsible for all damages, losses, costs and expenses, including attorney fees and costs, incurred by COUNTY as a result of the DOL's delay, failure, or refusal to certify employees' protective arrangements or the imposition of new or additional conditions on any certification(s) issued by the DOL. CONTRACTOR shall be responsible for and shall reimburse COUNTY for all attorney fees, costs and expenses incurred by COUNTY as a result of COUNTY's participation in negotiations, discussions and dispute resolutions procedures with the DOL and/or ATU, or any other legal or administrative proceeding related to COUNTY's or CONTRACTOR's 13(c) obligations, if any, as such obligations are further discussed in Section 19 of Article 32 of the Contract and Section 2.24 of RFP 11-097R/SC.

CONTRACTOR agrees that it is responsible for and shall indemnify and hold the COUNTY harmless from any and all claims, causes of actions, demands, costs, charges, expenses, losses, or the like, including attorney fees and costs, related to or arising out of CONTRACTOR's failure to carry out the paratransit operations work on the Contract in compliance with the terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interest of employees performing work or employed under the Contract and to meet the employee protective requirements made applicable to CONTRACTOR under this Contract.

CONTRACTOR acknowledges and agrees that COUNTY shall have the right to select its own legal counsel.

15. In consideration of the COUNTY's waiver of certain assessments of liquidated damages, CONTRACTOR does hereby rescind, waive, acquit, release and forever discharge the COUNTY from any and all causes of actions, claims or demands, of any kind or nature, whether legal or equitable, that CONTRACTOR and its heirs, successors, guarantors, legal representatives or assigns had, have or may have against COUNTY arising out of or under the Contract or COUNTY's performance or failure to perform any obligation under the Contract prior to the date of the First Amendment. CONTRACTOR affirms and agrees that no mistake of fact or law exists and that there is no other basis, at law, equity or under the Contract that would discharge, release or excuse the performance of CONTRACTOR's obligations set forth in the Contract. CONTRACTOR affirms that it is lawfully bound to perform the Contract, that any claim it has, had or may have for arising out of or under a breach of any duty or obligation of COUNTY is hereby forever waived, released and withdrawn, that it has no basis to assert a claim for damages or a breach of any obligation of COUNTY under the Contract, that no facts exist that would support a claim for reformation or rescission of the Contract or any other claim that would void or modify the Contract, and that no facts exist which would support a mistake of fact by CONTRACTOR or mutual mistake of fact by the parties. CONTRACTOR further acknowledges that COUNTY has relied

upon CONTRACTOR's representations, assertions and affirmations and changed its position, as a result of such reliance to the detriment of COUNTY.

CONTRACTOR further acknowledges that the foregoing waiver and release includes any and all claims that CONTRACTOR had, has or may have against COUNTY arising out of or related, in any manner to the number or quantity of service hours ordered, trips ordered, trips scheduled and number of routes created, scheduled or assigned to CONTRACTOR by COUNTY, and shall include but not be limited to those matters described as "Trip Shortage Non-Dedicated Service" on CONTRACTOR invoices submitted to Palm Tran Connection and identified as Invoice # 082012 dated September 1, 2012, Invoice #092012 dated October 1, 2012, Invoice #102012 dated November 1, 2012, Invoice # 112012 dated December 1, 2012, and Invoice #012012 dated January 1, 2013.

16. CONTRACTOR agrees that it has been adequately and fully compensated for the indemnification and hold harmless obligations, releases and waivers set forth in this First Amendment, and that this First Amendment contains not only adequate consideration for said indemnification and hold harmless obligations, releases and waivers but for all other promises and modifications made to the terms and conditions of the Contract.

17. Except as amended herein, all other provisions of the Contract are hereby confirmed and shall remain in full force and effect.

18. This First Amendment shall take effect on April 23, 2013.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this First Amendment on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

WITNESS:

METRO MOBILITY MANAGEMENT,
GROUP, LLC

Signature

By: _____
Clark J. Davis, Manager

Name (type or print)

(corp. seal)

Signature

GUARANTOR's Acknowledgment and
Acceptance of First Amendment

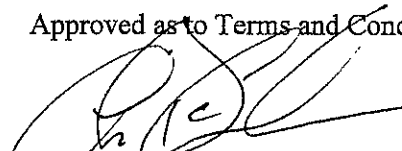
Name (type or print)

By: _____
Clark J. Davis, Manager
PTG Enterprises, LLC, as Guarantor

Approved as to Form
and Legal Sufficiency

Approved as to Terms and Conditions

County Attorney



Charles Cohen, Executive Director
Palm Tran

PROPOSED LQD ASSESSMENTS								
	August	September	October	November	December	January	February	Total
DID NOT MEET ON TIME PERFORMANCE REQUIREMENT	\$ -	\$ -	\$ 5,000	\$ -	\$ 5,000	\$ -	\$ -	\$ 10,000
DID NOT MEET COMPLAINT RATIO	\$ -	\$ -	\$ 1,200	\$ -	\$ 1,200	\$ 1,200	\$ -	\$ 3,600
DRIVER DID NOT WAIT REQUIRED TIME BEFORE DEPARTING (\$60)	\$ -	\$ -	\$ 180	\$ -	\$ -	\$ -	\$ -	\$ 180
ETA NOT RESPONDED TO (\$10)	\$ -	\$ -	\$ 6,070	\$ 2,550	\$ 8,760	\$ 5,650	\$ 2,830	\$ 25,660
DRIVER DID NOT LEAVE A NO SHOW TAG (\$60)	\$ -	\$ -	\$ -	\$ -	\$ 600	\$ -	\$ -	\$ 600
DRIVER DID NOT ASSIST CLIENT (\$60)	\$ -	\$ -	\$ 360	\$ 1,500	\$ 240	\$ 480	\$ 1,020	\$ 3,600
IMPROPER DROP-OFF (\$60)	\$ -	\$ -	\$ 120	\$ 60	\$ 480	\$ 180	\$ -	\$ 840
MISSED TRIPS (\$60)	\$ -	\$ -	\$ 46,260	\$ 32,940	\$ 70,920	\$ 43,380	\$ 24,480	\$ 217,980
NO LONGER NEEDS SERVICE (\$50)	\$ -	\$ -	\$ -	\$ -	\$ 50	\$ -	\$ 100	\$ 150
REPORTS NOT SUBMITTED ON TIME (PER DAY) (\$45)	\$ -	\$ -	\$ 8,190	\$ 7,875	\$ 14,760	\$ 21,645	\$ 16,290	\$ 68,760
DRIVER NON-COMPLIANT (\$60)	\$ -	\$ -	\$ 540	\$ 240	\$ 3,660	\$ 1,440	\$ 3,660	\$ 9,540
WRONG VEHICLE TYPE DISPATCHED	\$ -	\$ -	\$ 4,980	\$ 120	\$ 660	\$ 1,380	\$ -	\$ 7,140
VEHICLE EXCEEDS AGE AND/OR MILEAGE LIMITS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 54,300	\$ 38,640	\$ 92,940
VEHICLE NOT INSPECTED BEFORE OPERATION	\$ -	\$ -	\$ -	\$ 420	\$ 60	\$ -	\$ -	\$ 480
SAFETY EQUIPMENT MISSING OR INOPERABLE**	\$ -	\$ -	\$ 780	\$ 1,140	\$ 420	\$ 18,840	\$ 17,220	\$ 38,400
TOTAL:	\$ -	\$ -	\$ 73,680	\$ 46,845	\$ 106,810	\$ 148,495	\$ 104,040	\$ 479,870

PROPOSED LQD WAIVERS								
TRANSITION PERIOD	\$ 84,710	\$ 113,005	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 197,715
REMOVAL OF REVENUE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 77,617	\$ 275,415	\$ 353,032
VEHICLE DID NOT HAVE FLEX FUEL	\$ -	\$ -	\$ -	\$ 16,200	\$ 28,980	\$ -	\$ 64,200	\$ 109,380
VEHICLE DID NOT HAVE GPS	\$ -	\$ -	\$ -	\$ -	\$ 141,660	\$ 100,920	\$ 48,960	\$ 291,540
TOTAL LQD DOLLAR ASSESSMENT	\$ 84,710	\$ 113,005	\$ -	\$ 16,200	\$ 170,640	\$ 178,537	\$ 388,575	\$ 951,667

** Includes bald tires, A/C not functioning, lift inoperable, wheelchair straps missing