

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: November 19, 2013 [ ] Consent [X] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Palm Tran

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to authorize:** Staff to negotiate a Settlement Agreement with Metro Mobility Management Group, LLC (MMMG) to terminate their existing contract and to provide service through January 31, 2015.

**Summary:** On July 16, 2013, the Board of County Commissioners (BCC) encouraged MMMG to seek an additional partner in response to concerns raised about compliance with contractual provisions. MMMG was unable to identify a partner who could participate under the existing terms and has requested that their contract be terminated. Staff is in support of this request and recommends the following Settlement Terms be the basis of the Settlement Agreement:

1. MMMG will provide services through January 31, 2015.;
2. Liquidated Damages currently total approximately \$2.4 Million. Liquidated Damages in excess of \$1 Million shall be waived at upon execution of the Settlement Agreement and the remaining \$1 Million shall be held in abeyance until January 31, 2015. Should MMMG's performance continue at the same levels, the remaining \$1 Million of Liquidated Damages shall be waived. The existing \$1 Million Performance Bond will remain in place.;
3. Liquidated damages will continue to be assessed as appropriate, but contingent upon service being provided by MMMG in an acceptable manner through the termination date, these would be waived.
4. Equipment requirements and future capital investments set forth in Article 7 of the current contract will be waived. To ensure continued safety and on time performance MMMG will remove from service vehicles with 350,000 miles or greater and place into service existing lower mileage vehicles.; and
5. Payment for Non-Dedicated Service shall be based on an increased mileage rate of \$2.15 per mile through January 31, 2015, which is projected to have an impact of \$1.6 Million. Of this amount, 20% of the increase will be shared with MMMG's current DBE partners. MMMG will retain key personnel including the Project Manager and Maintenance Manager through January 31, 2015.
6. A waiver and release of claims that MMMG had, has or may have against the County.

This arrangement will benefit the County as follows: (1) it allows for an adequate transition period to consider all options for service delivery; (2) it provides the best alternative to disruption in service which would be caused by an immediate or non-negotiated termination; (3) it provides a certain level of stability for current MMMG employees and Disadvantaged Business Enterprises; and (4) it is more cost effective than an emergency procurement for a new vendor. Staff intends to present the formal Settlement Agreement to the BCC at the January 14, 2014, Board Meeting. Countywide (DR)

**Background and Policy Issues:** Continued on Page 3

**Attachment:** Staff Presentation

Recommended By: Sharon Q. Boyce for 11/15/13  
Department Director Date

Approved By: Sharon Q. Boyce 11/15/13  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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


Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	\$1.6 Million	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$1.6 Million</u>	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	0	_____	_____	_____	_____

Is Item Included in Current Budget: Yes  No \_\_\_\_\_

Budget Account No: Fund 1340 Dept 540 Unit 5003 Object 4905  
 Program Code: N/A Program Year: 2014

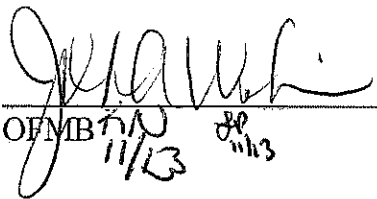
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**


Palm Tran's budget will be reviewed and adjusted if needed during the year end agenda item (Nov 2014).

C. Departmental Fiscal Review:   
 FOR JOHN MURPHY

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

  
 OFMB <sup>7/13</sup> <sup>8/13</sup> 11/13

 11/14/13  
 Contract Development and Control

**B. Legal Sufficiency:**

 11/15/13  
 Assistant County Attorney

**C. Other Department Review:**

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

**This summary is not to be used as a basis for payment.**

**Background and Policy Issues: (Continued from page 1)**

On June 26, 2012, the BCC approved a Contract (R2012-0934) with MMMG for the provision of paratransit services for a term of five (5) years at the not to exceed amount of \$90,246,070.12. On April 23, 2013, the BCC addressed service issues and gave MMMG until July 16, 2013, to bring the service into compliance with the Contract. On July 16, 2013, the BCC further addressed service issues and urged MMMG to identify a partner who could improve service.

This item is intended to identify only certain concepts that the settlement agreement should address. The County Attorney's Office has strongly recommended that a waiver and release of claims be included in these conceptual terms and any settlement agreement negotiated by the parties and ultimately approved by the BCC. A waiver and release of claims would also provide the legal consideration (a benefit flowing back to the County) needed to support the settlement agreement. Counsel for MMMG has been advised that a waiver and release of claims is a necessary term of any such agreement, and has represented that a waiver and release of claims will be a part of the settlement agreement.

# Board of County Commissioners

November 19, 2013

# Palm Tran Connection

Metro Mobility Management Group  
Settlement Agreement Proposal

# Background – BCC Direction

July 16, 2013

- *Continuation of current contract provided full compliance is achieved and maintained*
- *Encouraged MMMG to find a new partner*
- *Assessment of liquidated damages postponed*
- *Staff to return to BCC with progress report in five months*

# Progress Since July 16, 2013

- AVL installed and operating in all vehicles
- Average monthly customer complaints at 2.26/1,000 trips
- Average monthly on time performance at 92%
- Vehicle maintenance improved – New Maintenance Manager
- Contract oversight improved – New Project Manager

# Current Status

- Failure to Meet Vehicle Compliance Standards
  - *15% Minimum Spare Ratio*
  - *48 vehicles exceed 250,000 mileage limit*
  - *No new vehicles on order*
- MMMG was unable to find partner to accept terms
- MMMG has requested termination through a Settlement Agreement

# Settlement Agreement

- 1) MMMG will provide services through January 31, 2015
- 2) Liquidated Damages:
  - *Currently total \$2.4 Million*
  - *Immediately waive \$1.4 Million*
  - *\$1 Million to be held in abeyance until January 31, 2015 and released if MMMG performance continues at same levels*
  - *\$1 Million Performance Bond remains in place*



# Settlement Agreement (cont.)

- 3) Liquidated damages will continue to be assessed as appropriate, but contingent upon service being provided by MMMG in an acceptable manner through the termination date, these would be waived

# Settlement Agreement (cont.)

- 4) Equipment requirements and future capital investments set forth in Article 7 of the current contract will be waived. To ensure continued safety and on time performance MMMG will remove from service vehicles with 350,000 miles or greater and place into service existing lower mileage smaller vehicles

# Settlement Agreement (cont.)

- 5) Payment for Non-Dedicated Service shall be based on an increased mileage rate of \$2.15 per mile through January 31, 2015
- *Budget Impact \$1.6 Million*
  - *\$320,000 will go to DBE partners*
  - *Existing Project Manager will be retained*
  - *Existing Maintenance Manager will be retained*

# Settlement Agreement (cont.)

- 6) A waiver and release of claims that MMMG had, has or may have against the County

# Benefits to the County

- 1) It allows for an adequate transition period to consider all options for service delivery
- 2) It provides the best alternative to disruption in service caused by an immediate or non-negotiated termination

# Benefits to the County (cont.)

- 3) It provides a certain level of stability for current MMMG employees and Disadvantaged Business Enterprises
- 4) It is more cost effective than an emergency procurement for a new vendor

# Cost Analysis

Annual Contract Expense Based on Current Service Levels	
	Total
MMMG (Current)	\$21,168,372
MMMG (Amendment)	\$22,800,732
Transportation America	\$22,988,405
American Logistics Company	\$24,349,371
MV Transportation	\$25,104,623
First Transit	\$27,280,945

# Staff Recommendations

## Motion to Authorize Staff to:

*Negotiate a Settlement Agreement, based on the proposed terms, with Metro Mobility Management Group, LLC to terminate their existing contract and to provide service through January 31, 2015.*



# Next Steps

- January 14, 2014 – BCC
  - *Approval of Settlement Agreement*
  
- February 2014 – BCC
  - *Recommendations for new RFP based on Consultant input*
  - *Pros/Cons of bringing all or part of operation in-house*