

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	\$0	\$0	\$0	\$0	\$0
Operating Costs	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	\$0	\$0	\$0	\$0	\$0
# Additional FTE Positions (Cumulative)	0	0	0	0	0
Is Item Included in Current Budget:	Yes	_____	No	_____	_____

Budget Account No: _____

Reporting Category _____

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

Departmental Fiscal Review: John Murphy, Finance Mgr

III. REVIEW COMMENTS

OFMB Fiscal and/or

[Signature]
OFMB 1/29/2014
1/29

Contract Development & Control
Comments:

[Signature]
Contract Dev. & Control
1-31-14 1/31/14

Legal Sufficiency:

[Signature]
Assistant County Attorney 1/31/14

Other Department Review:

Department Director

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

**FIRST AMENDMENT TO THE AGREEMENT FOR THE
MANAGEMENT, OPERATION AND FUNDING OF
PALM BEACH COUNTY'S PUBLIC TRANSIT SYSTEM
BY AND BETWEEN PALM BEACH COUNTY
AND PALM TRAN, INC.
(R96-18D)**

THIS FIRST AMENDMENT to the Agreement for the Management, Operation and Funding of Palm Beach County's Public Transit System (hereafter referred to as the "Agreement"), is made and entered into this 4th day of February, 2014, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereafter referred to as "County") and Palm Tran, Inc., a Florida not-for-profit corporation and instrumentality of Palm Beach County, by and through its Board of Directors (hereafter referred to as "Palm Tran").

WITNESSETH:

WHEREAS, the Board of County Commissioners created Palm Tran to be and function as an instrumentality of Palm Beach County; and

WHEREAS, thereafter, the County entered into that certain Agreement with Palm Tran regarding the operation of County's public transportation system (also commonly referred to as Palm Tran but referred to hereafter as "System") and the provision of certain services to facilitate the management of the System with the County retaining title to and ownership of the transit property and all revenues derived from the operation of the System; and

WHEREAS, under said Agreement, Palm Tran was to furnish certain personnel and services required by County for the operation of the System and County was to furnish certain higher level managerial personnel; and

WHEREAS, the parties desire to modify the Agreement to identify other positions that will be filled by County employees.

NOW, THEREFORE, in consideration of these premises and of the mutual promises and agreements hereinafter set out, the parties agree that the agreement is amended as follows:

1. **Section II. General Management** of the Agreement is revised, in its entirety, to provide as follows:

A. For the purposes of this Agreement, Palm Tran will be the employer of all employees holding positions necessary for the operation of the System, excluding the positions set forth in paragraph B. below. Palm Tran positions shall not be included within County's Classification and Pay Plan. Palm Tran's employees shall not be deemed to be employees of the County, shall not be included within or subject to County's merit system, shall not participate in or be entitled to benefits provided to County employees, and in accordance with Florida law, may not participate in the Florida Retirement System. This provision does not prevent Palm Tran employees from participating in certain programs or benefits made available by County to Palm Tran employees, such as deferred compensation, health, life, dental, and disability insurances, etcetera. Palm Tran employees shall be compensated by Palm Tran for their services. Employees of contractors providing services that benefit the System shall not be deemed to be employees of County or Palm Tran.

B. Palm Tran's Executive Director, Assistant Director, Deputy Director Fixed Route Operations, Administrative Services Director, and its Maintenance Manager shall be employees of the County and shall be compensated by County for all services provided for the benefit of or management of the System. These positions shall be included in the County's complement of

employees and the County's Classification and Pay Plan. Palm Tran's President shall be the County Administrator of Palm Beach County and an employee of County. The parties acknowledge that other employees of the County may provide services for the benefit of Palm Tran but that such employees shall not be deemed to be employees of Palm Tran.

C. Palm Tran's President shall exercise general supervision and control over all activities of Palm Tran in accordance with Palm Tran's Bylaws and as directed by Palm Tran's Board of Directors and County's Board of County Commissioners. Palm Tran's Executive Director shall be responsible for the day-to-day management, operations and oversight of Palm Tran, the supervision of Palm Tran's employees, and the performance of the duties described in Palm Tran's Bylaws and others assigned to him by Palm Tran's Board of Directors, its President or County's Administrator.

2. Paragraphs A and C of **Section IX. Equal Employment Opportunity & Affirmative Action** of the Agreement are revised, in their entirety, to provide as follows:

A. Palm Tran will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, disability, age, marital status, veteran status, familial status, sexual orientation, or gender identity or expression. Palm Tran will take affirmative action to insure that its applicants and employees are treated without regard to their race, religion, color, sex, national origin, ancestry, disability, age, marital status, veteran status, familial status, sexual orientation, or gender identity or expression. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or

termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. Palm Tran shall not exclude any person on the grounds of race, religion, color, sex, national origin, ancestry, disability, age, marital status, veteran status, sexual orientation, or gender identity or expression from participation in, deny the benefits of, or otherwise subject to discrimination under any program or activity for which County has received federal financial assistance from the Federal Transit Administration.

3. Paragraph B of **Section X. Liabilities & Indemnification** is revised, in its entirety, to provide as follows:

B. County will pay, on behalf of Palm Tran, liability claims from third parties for damages, in tort, for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any officer or employee of Palm Tran, while acting within the scope of his office or employment in the performance of this Agreement, to the same extent that the County would be liable for the acts of its officers and employees. Nothing contained herein shall be construed as an assumption of liability beyond that which a county has under Section 768.28, Florida Statutes. Furthermore, this paragraph shall not be construed as cumulative in nature so as to effectuate an assumption of liability by County which would cause it to be liable for a sum in excess of \$200,000.00 for a claim or judgment, (or portion thereof), for damages in tort by any one person, or for a sum in excess of \$300,000.00 for multiple claims (*i.e.*, more than one person) arising out of the same incident or occurrence, except as such liability limits may otherwise be modified by Section 768.28, F.S. It will be the responsibility of Palm Tran to notify County of any such claim, however made, including but not limited to,

service of a complaint or other process upon Palm Tran, immediately upon receipt thereof. A copy of any such claim and/or process will immediately be delivered to County's Department of Risk Management and Office of County Attorney, Chief of Litigation.

4. **Section XVI. Control** is revised, in its entirety, to provide as follows:

A. All services provided by Palm Tran under this Agreement shall be subject to the supervision of County, acting through its County Administrator or his designees. County is not a successor employer of any Palm Tran employee. County has stipulated, in certain proceedings before the Florida Public Employer Relations Commission, that it is a joint employer of certain Palm Tran employees. Palm Tran employees are subject to and shall comply with the requirements of the Office of Inspector General, Palm Beach County, Florida Ordinance and the Palm Beach County Code of Ethics Ordinance. Final authority on all matters relating to the management, funding and operation of County's System shall reside with the County. County's Department of Surface Transportation may also be referred to as Palm Tran.

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IN WITNESS WHEREOF, the parties, by and through their duly authorized officials, have hereunto made and entered into this First Amendment and set their hand and seals on the date set forth above.

ATTEST:
SHARON R. BOCK

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

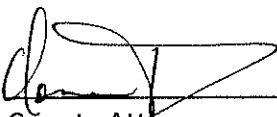
ATTEST:

PALM TRAN, INC.

By: _____
Secretary/Treasurer

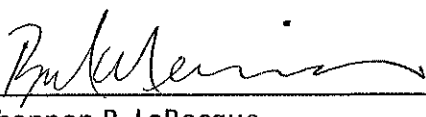
By: _____
Priscilla A. Taylor, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY



County Attorney

APPROVED AS TO TERMS
AND CONDITIONS



Shannon R. LaRocque
Asst. County Administrator &
Palm Tran Interim Executive Director

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AN AGREEMENT FOR THE
MANAGEMENT, OPERATION AND FUNDING OF
PALM BEACH COUNTY'S PUBLIC TRANSIT SYSTEM
BY AND BETWEEN PALM BEACH COUNTY
AND PALM TRAN, INC.

JAN 09 1996

THIS AGREEMENT, made and entered into this _____ day of
January, 1996, by and between Palm Beach County, a political
subdivision of the State of Florida by and through its Board of
County Commissioners (hereafter referred to as "County"), and Palm
Tran, Inc., a Florida not-for-profit corporation (hereafter
referred to as "Palm Tran").

WITNESSETH:

WHEREAS, County, owns the transportation equipment and
facilities used to furnish county-wide public transportation
services; and

WHEREAS, Palm Tran, was created as an instrumentality of Palm
Beach County, for the purpose of owning, operating or managing the
County's public and paratransit transportation system and by so
doing lessening the burden on the County to provide public
transportation; and

WHEREAS, County desires to contract with Palm Tran for the
operation of County's public transportation system (hereafter
"System") and the provision of certain services to facilitate the
management of the System with the County retaining title,
ownership, and the right to use and possess all transit property
and all of the revenues to be derived therefrom, and Palm Tran
furnishing the personnel and services needed to operate the System;

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and

WHEREAS, the parties desire to enter into an agreement setting forth the terms and conditions under which Palm Tran will furnish such services and personnel as may be required to operate County's System, and the manner in which the County will pay the costs incurred operating the System.

NOW, THEREFORE, in consideration of these premises and of the mutual promises and agreements hereinafter set out, the parties hereto agree as follows:

Section I. Engagement of Palm Tran

A. County retains and engages Palm Tran to provide certain services for the management and operation of its System in accordance with such reasonable performance standards as may be developed by County. Palm Tran shall undertake its duties and responsibilities under this Agreement in such a manner as may be determined or required by County.

Section II. General Management

A. Palm Tran will be the employer of all employees necessary for the operation of the transit system, except that its president, and executive director, and the assistant director of Palm Tran (Department of Surface Transportation) shall be and shall remain at all times employees of the County, and shall be compensated by County for all services provided for the management of the System. Palm Tran's employees shall not be deemed to be employees of the County or subject to County's merit system, and shall not be entitled to membership in the Florida Retirement System, nor any

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other benefits provided or available to the County's employees. Similarly, any County personnel providing assistance or services to Palm Tran shall not be deemed the employees of Palm Tran.

B. Palm Tran's president shall exercise general supervision and control over all activities of Palm Tran in accordance with Palm Tran's Bylaws and as directed by Palm Tran's Board of Directors. Palm Tran's executive director shall be responsible for the day to day management and operations of Palm Tran, the supervision of Palm Tran's employees, and the performance of the duties described in Palm Tran's Bylaws and others assigned to him by Palm Tran's Board of Directors or its president. In addition, County will provide, at its expense, a County employee who as the assistant director of County's Department of Surface Transportation, shall assist the executive director with the supervision of Palm Tran's employees and the day to day management and operations of Palm Tran.

Section III. Property, Facilities and Services

A. County will provide all office, garage, parking, bus maintenance and storage facilities, fueling stations, buses, and other equipment, supplies, materials, furniture, and services as are necessary and appropriate for the operation of the System.

B. Services to be provided by Palm Tran shall include but shall not be limited to the following:

1. Operating the System and related facilities in an efficient and cost-effective manner and in accordance with such reasonable performance standards as may be established by

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County, and providing such middle level management services as may be required by County;

2. Hiring, training, supervising, and disciplining Palm Tran's personnel in accordance with policies and procedures approved by County;

3. Insuring that sufficient operating personnel including but not limited to administrative and clerical personnel, bus operators, maintenance and other shop personnel, and supervisors are employed;

4. Developing and maintaining appropriate personnel policies and records approved by the County;

5. Developing and maintaining accounting, inventory, purchasing, office management and record keeping procedures in conjunction with, and subject to the approval of County;

6. Completing accounting, record keeping and other reports, including monthly financial and operating statements in accordance with applicable federal, state and County regulations and requirements;

7. Planning, developing and recommending routes, schedules, levels of service, service extension and service policies;

8. Developing and implementing public relations and marketing programs;

9. Supervising and recommending the rate and fare structure;

10. Preparing capital and operating budgets;

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11. Developing specifications in conjunction with County's Purchasing Department or any other department responsible for the procurement or acquisition of materials, goods, equipments, or services, including construction, and

12. Administering, supervising and monitoring contracts as required by County;

13. Maintaining all equipment and facilities;

14. Planning office, shop and garage location and layout;

15. Developing and implementing safety and loss control programs as required by the County and all applicable federal, state and local laws, as minimum standards;

16. Negotiating and administering collective bargaining agreements and Section 13(c) assurances, including all modifications and amendments thereto, and all labor disputes and grievances, subject to the approval of the County;

17. Preparing monthly, quarterly and annual accounting, budgetary, and other reports as required by County;

18. Preparing and submitting required plans, documents, information and reports to governmental bodies or agencies;

19. Acting as County's liaison with applicable federal and state agencies and bodies, which will include but not be limited to the timely preparation and management of all grant applications and requests for reimbursements to be submitted to the U. S. Department of Transportation and the Florida Department of Transportation, and the planning and

administration of same in accordance with all applicable state and federal regulations and policies;

20. Developing and implementing Section 15 reporting requirements in connection with the Federal Transit Act, as amended;

21. Planning, developing and managing specialized public transportation services for the disabled;

22. Providing any other services, activities or reports requested by County.

C. All real estate, buildings and improvements, equipment, vehicles, goods, materials and supplies furnished by County will remain the property of County. County shall retain title, ownership, and the right to use and possess all such property, whether real or personal, tangible or intangible, and all of the revenues to be derived therefrom. Palm Tran will ensure that all property is tagged showing the County as owner, in accordance with the policies and procedures of County. Palm Tran shall keep a perpetual inventory of all property belonging to the County and used by Palm Tran and shall comply with all County policies and procedures regarding use, maintenance, storage and disposal of property. Palm Tran shall not grant any interest in, whether legal or equitable, or encumber, in any fashion, the County's property.

Section IV. Permits and Licenses

To the extent required by applicable federal law, state statute, or local ordinance, County shall be responsible for and shall secure any and all local, state, and federal franchises,

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permits, licenses or operating rights as may be necessary in order for County to operate its public transportation facility.

Section V. Financial Management

A. All revenues derived from the operation of County's System shall be and remain from the original receipt thereof either from passengers or from other sources, the absolute property of County, and the handling of such revenues, including the banking thereof and the accounting therefor, will be as directed by County.

B. Palm Tran, on behalf of County, will receive, collect, and deposit all the aforesaid revenues of County for the account of County in the manner directed by and under the supervision of the County Administrator or his/her designee. Palm Tran will keep and maintain the books and records reflecting the operation of the System in conformance with the requirements and directions of County, and will render and certify to County such full and complete operating reports and financial statements as County shall request. All monies due and payable on behalf of County in connection with the operation of the System shall be paid directly by County after all invoices have been submitted to the County Administrator or his/her designee; provided, that such monies have been expended in accordance with the budget established by County for its Department of Surface Transportation and the terms and conditions of this Agreement, and the provisions of Palm Tran's Articles of Incorporation and Bylaws.

C. County will, upon presentation by Palm Tran of the appropriate documentation to County, pay all expenses necessary and

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incident to the efficient operation and maintenance of the System, including but not limited to the following:

1. Wages and salaries paid to all Palm Tran employees together with all social security, unemployment or other payroll taxes now or hereafter imposed or levied on an employer;

2. All other employee costs, including but not limited to, all costs and expenses under any collective bargaining agreement entered into, assumed or modified by Palm Tran; provided, that all such collective bargaining agreements, any amendments thereto, and changes to employees' fringe benefits, have been approved by the County;

3. Palm Tran's professional and civic association dues and expenses and its cost of subscription to periodicals; and

4. Tort liability as provided in Section X of this Agreement.

D. All employees' costs including salaries and any fringe benefits will be paid by County for Palm Tran every two (2) weeks after Palm Tran has submitted to County actual payrolls in such form as required by County or in accordance with such other time schedule established by County.

Section VI. Purchasing

Palm Tran will advise County of the types and amounts of materials, supplies, equipment, and services needed to operate, maintain, and repair the System; County will determine the method of purchase of any and all such materials, supplies, and equipment

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required and shall procure the goods and services need to operate the System. Notwithstanding the foregoing, Palm Tran may renew certain contracts for insurance and contracts relating to or establishing employees' benefits programs; provided, that the contracts, were in effect at the time of County's approval of this Agreement, and such renewal has been approved by the County Administrator.

Section VII. Records and Reports

A. Palm Tran will furnish periodic reports and recommendations to County relating to service extensions, route planning, service policies, or other aspects of operations, including an annual report of operations.

B. Palm Tran will maintain financial records pertaining to all matters relative to this Agreement, in accordance with standard accounting principles and procedures and retention schedules established by County.

C. All records and supporting documentation will be made available, immediately upon request, for inspection or audit by representatives of County. Palm Tran shall comply with the requirements of Florida's Public Records Law.

D. In the event that Palm Tran ceases to exist or this Agreement is terminated or assigned, Palm Tran will immediately turn over to County all corporate records.

Section VIII. Agreements

Palm Tran agrees to be bound by and shall act in conformity with the guidelines and conditions of all capital and operating

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assistance grants or contracts between the County, the Federal Transit Administration (FTA) or the Florida Department of Transportation.

Section IX. Equal Employment Opportunity & Affirmative Action

A. Palm Tran will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, marital status, veteran status, or sexual orientation. Palm Tran will take affirmative action to insure that its applicants are employed and that its employees are employed and that its employees are tested during employment without regard to their race, religion, color, sex, national origin, disability, age, marital status or veteran status. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

B. Palm Tran shall adopt equal opportunity and affirmative action policies and procedures as required by FTA, County or such other applicable federal, state, or local rule or regulation.

C. Palm Tran shall not exclude any person on the grounds of race, religion, color, sex, national origin, disability, age, marital status or veteran status from participation in, deny the benefits of, or otherwise subject to discrimination under any program or activity for which County has received federal financial assistance from the Federal Transit Administration.

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Section X. Liabilities & Indemnification

A. Palm Tran was created as and shall be deemed an instrumentality of County. As such, it is entitled to sovereign immunity for liability to the same extent as the County under the Florida Constitution and Section 768.28, Florida Statutes.

B. County will pay, on behalf of Palm Tran, liability claims from third parties for damages, in tort, for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any officer or employee of Palm Tran, while acting within the scope of his office or employment in the performance of this Agreement, to the same extent that the County would be liable for the acts of its officers and employees. Nothing contained herein shall be construed as an assumption of liability beyond that which a county has under Section 768.28, Florida Statutes. Furthermore, this paragraph shall not be construed as cumulative in nature so as to effectuate an assumption of liability by County which would cause it to be liable for a sum in excess of \$100,000.00 for a claim or judgment, (or portion thereof), for damages in tort by any one person, or for a sum in excess of \$200,000.00 for multiple claims (i.e. more than one person) arising out of the same incident or occurrence. It will be the responsibility of Palm Tran to notify County of any such claim, however made, including but not limited to, service of a complaint or other process upon Palm Tran, immediately upon receipt thereof. A copy of any such claim and/or process will immediately be delivered to County's Department of Risk Management and Office of

County Attorney, Chief of Litigation.

C. County agrees to make available to Palm Tran, in its capacity as an instrumentality of County, the services of various departments and employees to assist Palm Tran with the operation of the System. Palm Tran acknowledges and agrees that any County officer, employee or agent providing assistance or services to Palm Tran shall render such solely by virtue of his position as an officer, employee or agent of County, acting within the course and scope of his employment or function. Palm Tran further acknowledges and agrees that any County employee providing service or assistance has no duty of care distinct or distinguishable from or in addition to that owed to the County, his employer. Notwithstanding the foregoing, to the extent that a court of competent jurisdiction, arbitrator or mediator, may determine that a County employee owed a duty of care to Palm Tran, its officers, servants, agents, or employees or their beneficiaries, heirs, or assigns, or to any other person or entity, which duty was distinct or distinguishable from, or in addition to that owed to the County, Palm Tran for its beneficiaries, successors and assigns, hereby forever waives, release, extinguishes and discharges the County and its employees from liability. This waiver, release, extinguishment and discharge shall be broadly construed so as to effectuate the intent of the parties regardless of whether the breach of duty was caused, occasioned, or contributed to solely or in part by the negligent acts of County, or its officers, employees, servants or agents.

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Section XI. Effective Date

This Agreement will become effective as of 12:01 a.m. on January 1, 1996, and will continue and remain in effect until such time as it is terminated by either party. Either party may terminate this agreement, upon notice to the other, in writing, setting forth the effective date of termination.

Section XII. Appropriations

A. This Agreement will be subject to the availability of funds from Palm Beach County to operate the System, and if during the term hereof, County shall fail to provide funds to operate such System, then the performance of this Agreement may be temporarily suspended, in whole or in part, until funds are available.

Section XIII. Beneficiaries

A. This Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the County or Palm Tran. Nothing herein will constitute any imposition or acceptance of any obligation or liability not otherwise imposed by law upon or by any individual associated with County or Palm Tran, except as such may be imposed by Palm Tran's Articles of Incorporation or Bylaws.

Section XIV. Severability

A. Should any provision of this Agreement be held invalid by a court of competent jurisdiction, such shall not affect the remaining portions of the Agreement.

Section XV. Joint Preparation

A. 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 XVI. Control

A. All services provided by Palm Tran under this Agreement shall be subject to the supervision of County, acting through its County Administrator or his designees. Final authority on all matters relating to the operation of County's System shall reside with the County. County's Department of Surface Transportation may also be referred to as Palm Tran.

IN WITNESS WHEREOF, the parties, by and through their duly authorized officials, have hereunto set their hand and seals on the date set forth above.

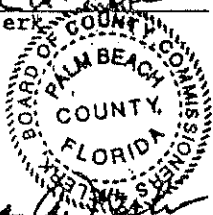
ATTEST:
DOROTHY H. WILKEN

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: Barbara A. Mill
Deputy Clerk

By: Ken Foster
Ken Foster, Chair

ATTEST:



PALM TRAN, INC.

By: Barbara A. Mill
Secretary/Treasurer

By: Ken Foster
Ken Foster, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

[Signature]
County Attorney

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12/19/95

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