

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes _____	No <u>X</u>		
Does this item include the use of federal funds?		Yes _____	No <u>X</u>		
Budget Account No:	Fund _____	Dept _____	Unit _____	Object _____	
		Program _____			

B. Recommended Sources of Funds/Summary of Fiscal Impact:
No fiscal impact.

Fixed Assets Number N/A

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 4/14/2020
OFMB *[initials]* 4/14
LM 4/14

[Signature] 4/16/2020
Contract Development and Control
4-15-2020 TW

B. Legal Sufficiency:
Sean-Adel Williams
Assistant County Attorney

At the time of our review, the documents were not executed.

C. Other Department Review:

Department Director

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

Background and Policy Issues: The attached agenda items provide an in depth discussion of the history of this project. The Board originally approved the Agreement with Transit Village on August 14, 2012 (R2012-1158). Transit Village was required to obtain all approvals for its project and close within 5 years (August 13, 2017). The required closing date has been extended twice for a total of 3 years (August 13, 2020). This proposed 2 year additional extension until August 13, 2022 will bring the total of extensions to 5 years.

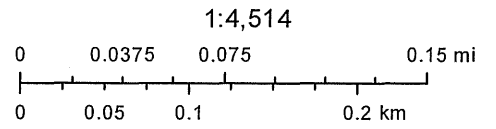
Shortly after approval of the last 2 year extension in June of 2018 (R2018-0956) Transit Village proposed the temporary relocation of the ITC to the train station property during construction of Transit Village's project. This change in approach to development of Transit Village's project required significant time and effort in staff review of the conceptual design of the temporary facility and analysis of the potential impact on transit operations. Palm Tran and its consultant studied the potential impact upon bus travel times and believes that the relocation will result in substantial improvement to its travel times, on time performance, and operational costs. Staff is continuing to evaluate whether it is desirable to permanently relocate the ITC to the train station property. Staff is currently obtaining an additional traffic study to assist in analyzing which of the two options (existing ITC vs. train station) will provide the best operating performance. It has taken staff almost 2 years to work through the details up to this point. As a result of this delay Transit Village has requested an additional 2 year extension.

As County staff supports the relocation on a temporary basis, this Amendment authorizes the temporary relocation and allows time for further consideration of a permanent relocation. The 2 year extension recognizes that Transit Village has been unable to proceed with its project during the roughly 2 years this relocation has been under consideration.



March 30, 2020

LOCATION MAP



ATTACHMENT 2
Amendment No. 2 to the Agreement and ITC Continuity of Operations Plan
13 pages

May 14/2022

AMENDMENT NO. 2 TO THE AGREEMENT
AND
ITC CONTINUITY OF OPERATIONS PLAN

This Amendment No. 2 and ITC Continuity of Operations Plan ("Amendment No. 2") made and entered into on _____, by and between Palm Beach County, a political subdivision of the State of Florida ("County") and Transit Village, LLC, a Florida limited liability company ("Purchaser" or "Transit Village").

RECITALS

WHEREAS, the parties entered into that certain Agreement for Purchase and Sale dated August 14, 2012 and approved under Resolution Number R-2012-1158 ("Agreement") and Amendment No. 1 thereto dated June 19, 2018 and approved under Resolution Number R-2018-0956 (Amendment No. 1"); and

WHEREAS, this Amendment No. 2 is provided in partial satisfaction of the requirement to provide a Continuity of Operation Plan ("COOP") per the Agreement and Amendment No. 1, and to further amend the terms of the Agreement; and

WHEREAS, at the time of execution of the Agreement it was contemplated that Palm Tran would at all times during construction of Transit Village's project remain in continuous operation within its existing ITC facility; and

WHEREAS, at the time of execution of the Agreement the Temporary ITC Site (as hereinafter defined) was not under the control of either the County or Purchaser, however subsequent to the execution of the Agreement, Purchaser has caused its affiliate, Transit Village PPP-Seaboard, LLC ("Affiliate") to enter a Lease Agreement (the "Lease") with the City of West Palm Beach ("City") for the Seaboard Station and Tamarind Parcel which contains the Temporary ITC Site; and

WHEREAS, the Lease does not commence until Transit Village has the Closing with County under the Agreement; and

WHEREAS, Palm Tran and County staff have expressed their support and desire to have Palm Tran relocated to the Temporary ITC Site in order to provide Purchaser with the ability to substantially minimize the impact to Palm Tran operations and to provide a safe environment, away from the construction activities of Purchaser for Palm Tran passengers and employees during construction activities on the Wedge ITC Property and until the completion of the Envelope and Shell Construction Activities (as hereafter defined); and

WHEREAS, provided County has issued a Notice of Acceptance of the Temporary ITC and Palm Tran has relocated to the Temporary ITC Site upon the terms hereinafter set forth, this instrument will modify the Agreement so as to eliminate the limitations upon Purchaser's ability to conduct construction activities on the Wedge ITC Property as it respects Palm Tran and/or ITC operations,

and specifically the limitations contained in Sections 2.8.2 and 6.3 (and other related provisions) of the Agreement as it respects Palm Tran operations and limits Purchaser's construction activities; and

WHEREAS, the relocation of Palm Tran is conditioned upon the ability of the Purchaser to obtain a site plan approval for the Temporary ITC Site from the City that is acceptable to the City, Purchaser and the County; and

WHEREAS, the Palm Tran Plan designed by Palm Tran attached hereto as Exhibit A is subject to additions, modifications and revisions, as permitted and as provided herein during the site plan process for the Temporary ITC; and

WHEREAS, it is the intention of Purchaser that Purchaser shall seek all Governmental Approvals for the Temporary ITC Property and construct the Temporary ITC Site so that Palm Tran can be temporarily relocated to the Temporary ITC Site prior to the commencement of construction activities on the Wedge ITC Site; and

WHEREAS, in the event that the Purchaser is unable to timely secure all Government Approvals for the Temporary ITC Property and until such time that County has issued a Notice of Acceptance of the Temporary ITC Property, the Purchaser may only commence construction activities on the Wedge Non-ITC Property in compliance with terms of the Agreement which shall require an amendment to this COOP which is acceptable to the County pursuant to the Review and Resubmit Process, prior to commencing construction activities on the Wedge ITC Property and accordingly the Purchaser shall comply with the terms of the Agreement relating to continuous operation of the ITC, including specifically Sections 2.8.2 and 6.3; and

WHEREAS, this temporary relocation of Palm Tran was first presented in July of 2018, when Transit Village together with the members of its design and construction team, including its architects, civil engineers, structural engineers, environmental engineers, sustainability engineers, attorneys, and consultants, presented to County staff its plan for the continuity of operations for the ITC for Palm Tran that proposed that Transit Village construct a temporary off-site location for Palm Tran on property that Purchaser's Affiliate had subsequently secured under the Lease on the east side of the CSX tracks and north of the Seaboard Train Station (as hereinafter referred to as the "Temporary ITC Site") in order to provide, Transit Village with the ability, prior to the commencement of construction activities on the Wedge ITC Property and until the completion of the construction of the Envelope and Shell Improvements ("Envelope and Shell Construction Activities"), to substantially minimize the impact to Palm Tran operations and to provide a safe environment, away from construction activities on the Wedge ITC Property, to Palm Tran passengers and employees during the Purchaser's construction activities on the Wedge ITC Property; and

WHEREAS, although the July 2018 presentation was received with support from County staff, County staff requested Transit Village to present its plan at a joint meeting with Transit Village, County Staff and Palm Tran for Palm Tran's comment. This Palm Tran meeting was held in August of 2018. In attendance at that meeting were County staff and Palm Tran's executive team members and Transit Village's civil engineers, consultants and attorneys. At that meeting Palm Tran announced its support of being relocated to the Temporary ITC Site and immediately recognized the safety benefits of Transit Village's COOP and specifically the advantages that the Temporary ITC Site would provide and inquired if the Temporary ITC Site could become permanent as Palm Tran's preliminary observations were that the Temporary ITC Site would provide substantial operational

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efficiencies and operational savings to Palm Tran. At that meeting and at subsequent meetings Palm Tran requested Transit Village make various changes to the proposed conceptual site plan for the Temporary ITC Site. All of this was performed at Transit Village's cost, and then in November of 2018, County staff presented to Transit Village the ITC Plan Operating Proposal ("Palm Tran Plan") prepared by Palm Tran for use in Transit Village's COOP. This Palm Tran Plan for the Temporary ITC Site was presented by County Staff and agreed to by Transit Village and is attached hereto as Exhibit A; and

WHEREAS, County staff has verbally advised Transit Village that it supports the temporary relocation of Palm Tran prior to and during the Envelope and Shell Construction activities on the Wedge ITC Property, County staff has nevertheless advised Transit Village that since the November 2018 meeting that they have been studying and discussing whether to request that the Temporary ITC Site become permanent; and

WHEREAS, the Agreement requires that as a precondition to Closing under the Agreement that Transit Village satisfy the Conditions Precedent To Closing as defined in Section 3.6 of the Agreement and to provide the Pre-Closing Plans as provided in Amendment No.1 and pay the Purchase Price as provided in the Agreement. This Amendment No. 2 does not modify those provisions.

NOW THEREFORE, for and in consideration of the foregoing true and accurate Recitals all of which are incorporated herein, the mutual covenants contained herein and the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

WITNESSETH:

1. **DEFINITIONS**. In addition to the definitions provided in this COOP, the definitions contained in the Agreement shall apply to this Amendment No. 2 and the Agreement in order to implement the terms of this COOP:
 - 1.1. **"Approved Temporary ITC Site Plan"** shall mean a site plan for the Temporary ITC Site that has been approved by the County and the City in accordance with the City-mandated procedure.
 - 1.2. **"Government Approvals for the Temporary ITC Property"** shall mean all land use, zoning, utility, environmental and other permits, licenses and approvals from any federal, state, County, City or other governmental or quasi-governmental agency, utility or private party, including Temporary ITC Building Permits, necessary to commence construction of the Temporary ITC as set forth on the Approved Temporary ITC Site Plan.
 - 1.3. **"Improvements for Temporary ITC Property"** shall mean all improvements necessary to operate the Temporary ITC consistent with operations of the existing ITC, including the land preparation or excavation, landscaping, hardscaping, structural components, parking areas, sidewalks, fences, walls, driveways, major drainage areas, major drainage pipes and drainage outfalls, signs within the Temporary ITC Property and as preliminarily shown on the Palm Tran Plan, subject to additions, modifications and revisions as permitted and as provided herein. The Improvements for the Temporary ITC Property shall provide for a

similar level of materials, finish and workmanship as the existing ITC Property and provide seating, shelters, and other requirements similar to the existing ITC Property, after giving consideration to the limited number of bus pull-outs shown on Exhibit A.

- 1.4. **“Notice of Acceptance”** shall mean a written notice from the County to Purchaser that the County has inspected the construction of the Temporary ITC and has accepted the construction of the Temporary ITC by Purchaser as complete in accordance with the terms of Section 3.2 of this Amendment No. 2 .
- 1.5. **“Notice of Completion of the Envelope and the Shell Construction Activities”** shall mean a written notice from Transit Village to the County submitted pursuant to the Review and Resubmit Process informing County that Transit Village has achieved substantial completion of the Envelope and the Shell Construction Activities. This Notice shall not be deemed to be final until accepted by the County pursuant to the Review and Resubmit Process.
- 1.6. **“Palm Tran”** shall mean the bus system currently operated by Palm Beach County and its successors and assigns utilizing the ITC and that will utilize the Temporary ITC upon its completion.
- 1.7. **“Palm Tran Plan”** shall mean the ITC Plan Operating Proposal for the Temporary ITC prepared by the County and Palm Tran and attached hereto as Exhibit A.
- 1.8. **“Purchaser” or “Transit Village”** shall mean Transit Village or its permitted assigns.
- 1.9. **“Temporary ITC”** shall mean the Temporary Palm Tran Intermodal Transit Center as constructed by Purchaser on the Temporary ITC Property.
- 1.10. **“Temporary ITC Building Permits”** shall mean the required building permit(s) and license(s) to be issued by the City’s Construction Services Department or any other City governmental division or unit having jurisdiction over the Temporary ITC Property and/or Transit Village necessary to commence construction of the Temporary ITC in accordance with the Approved Temporary ITC Site Plan.
- 1.11. **“Temporary ITC Construction Plan”** means a plan and sequencing schedule for the construction of the Temporary ITC that shall include:
 - 1) a copy of plans to be and/or submitted with Temporary ITC Building Permits applications;
 - 2) identification of the means/methods, specifications, shop drawings and/or other documents and all physical and/or operational details relating to the Temporary ITC Contractor’s actions to comply with the requirements of the insurance policies issued for the work;
 - 3) a schedule for the work prepared in accordance with the requirements of Schedule 6, GC 26 of the Agreement as applicable to the Temporary ITC Property as the context may require; and
 - 4) identification of any engineering and operational assumptions which were submitted to the insurer with respect to the insurance policy(ies).

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- 1.12. **“Temporary ITC Contractor”** shall mean a legal entity licensed as a general contractor in the State of Florida, including any subcontractors, hired directly by the Transit Village to be responsible for all construction services pursuant to this Amendment No. 2.
- 1.13. **“Temporary ITC Engineer”** shall mean any engineering, architectural, survey, landscape architecture, testing lab or other professional services firm regulated pursuant to F.S. 287, including all sub-consultants, directly hired by the Purchaser and licensed in the State of Florida responsible for design services required by this Amendment No. 2.
- 1.14. **“Temporary ITC Property”** or **“Temporary ITC Site”** shall mean that portion of the property located on the east side of the CSX tracks where the Temporary Intermodal Transit Center for Palm Tran shall be constructed as shown on Exhibit A attached hereto and shall include any necessary easements or use included in the sublease (as herein provided in Section 2.1) as reasonably required and identified by the County.
- 1.15. **“Temporary ITC Site Plan”** shall mean a site plan detailing the Improvements for the Temporary ITC Property to be constructed by Transit Village on the Temporary ITC Property in such detail as required by the City’s zoning and site plan approval process, or this Amendment No. 2, whichever is more inclusive.
- 1.16. **“Wedge ITC Property”** shall mean the portion of the Property containing the existing ITC Property, as shown within the colored blue area, on Exhibit B-2 of the Agreement.
- 1.17. **“Wedge Non-ITC Property”** shall mean the portion of the Property excluding the ITC Property, as shown within the colored green area, on Exhibit B-2 of the Agreement.

2. CONTINUITY OF OPERATIONS PLAN

2.1. Relocation of Palm Tran Operations to and from the Temporary ITC Property.

Purchaser shall keep County advised of its construction progress and estimated completion date of the Temporary ITC.

All of Palm Tran’s ITC operations shall be temporarily relocated to the Temporary ITC Property within 30 calendar days of the issuance of a Certificate of Completion of construction and/or, if applicable, a Certificate of Occupancy, and the issuance of the Notice of Acceptance, so that no Palm Tran activity shall take place on the existing Wedge ITC Property during the Envelope and Shell Construction Activities. Upon Palm Tran’s ITC operations being relocated to the Temporary ITC Property, the provisions of Section 2.8.2 and 6.3 of the Agreement shall be deferred, without any further action, until completion of the Envelope and Shell Construction Activities.

Palm Tran shall relocate all of its ITC operations from the Temporary ITC back to the Wedge ITC Property within 30 calendar days of the Notice of Completion of the Envelope and Shell Construction Activities. Purchaser may, at its option, seek to obtain a modification of its Lease with the City of the Seaboard Station, including the Temporary ITC Property, to permit Purchaser to construct the Temporary ITC prior to the Closing under the Agreement rather than waiting until the occurrence of the Commencement Date under the Lease. Prior to the commencement of construction of the Temporary ITC, Purchaser shall cause its Affiliate to provide the County, for County’s review and approval by its Board of

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County Commissioners, a sublease to use the Temporary ITC Property for a term extending until Purchaser has completed construction of the Envelope and Shell construction and Palm Tran has relocated back to the Wedge ITC Property. Such sublease shall be effective upon the date of the Notice of Acceptance and shall provide that the County shall be responsible for all activities of Palm Tran while at the Temporary ITC Property.

2.2. Preparation of Temporary ITC Site Plan

2.2.1. The Palm Tran Plan has been prepared and is approved by the County and shall be the basis to develop the Temporary ITC Site Plan.

2.2.2. Any changes to the Palm Tran Plan that are requested by Transit Village or the City shall be submitted to the County Project Manager for comment and approval.

The Temporary ITC Site Plan shall provide for a similar level of materials, finish and workmanship as the existing Wedge ITC Property and provide seating, shelters, and other requirements similar to the existing Wedge ITC Property, after giving consideration to the limited number of bus pull-outs shown on Exhibit A and which shall be included in Transit Village's detailed drawings for the Temporary ITC Site Plan submitted to the City for Site Plan approval. The updated drawings shall become the plan for the Temporary ITC.

2.2.3. Prior to formal submission to the City for the City's approval of the Temporary ITC Site Plan, the proposed application for approval of the Temporary ITC Site Plan shall be submitted to the County Project Manager for approval in accordance with the Review and Resubmit Process.

2.2.4. Transit Village shall pay the necessary filing fees relating thereto (if any) in its efforts to obtain approval of the Temporary ITC Site Plan and shall diligently prosecute all such applications required to obtain approval of the Temporary ITC Site Plan.

2.2.5. To the extent that any reviewing authority provides comments to the Temporary ITC Site Plan, such response shall not be deemed a denial and the Purchaser shall have the opportunity to revise and resubmit the Temporary ITC Site Plan to the City for further review. Transit Village shall resubmit any revisions to the Temporary ITC Site Plan, whether during or after the Temporary ITC Site Plan approval process, to the County Project Manager in accordance with the review and Resubmit Process.

2.2.6. At any time that the Temporary ITC Site Plan is provided to the County for review, the County's review shall be limited to the site plan's conformity with the Temporary ITC Site Plan. Without the consent of the Purchaser, the County shall not be permitted to materially request a change that would have an adverse effect upon the remainder of the Seaboard Station and Tamarind Parcel, expand the footprint of the Temporary ITC or make any substantial changes (substantial being a change that would result in an increase in construction costs greater than 5%) to increase Transit Village's construction costs inconsistent with Exhibit A.

2.2.7. All reviews conducted by the County under this Amendment No. 2 shall occur within the timeframes of the Review and Resubmit Process.

- 2.3. **Government Approvals for Temporary ITC Property and Temporary ITC Building Permits.**
- 2.3.1. **Purchaser to Diligently Pursue Government Approvals for Temporary ITC Property.** Transit Village shall diligently and continuously proceed at its sole cost and expense to obtain the applicable Government Approvals for the Temporary ITC Property and to keep the County Project Manager informed as to the status of obtaining the applicable Government Approvals for the Temporary ITC Property. Transit Village shall promptly provide the County Project Manager with copies of all applications filed in conjunction with the applicable Government Approvals for Temporary ITC Property.
- 2.3.2. **Purchaser to Diligently Pursue Temporary ITC Building Permits.** Upon receipt of the applicable Government Approvals for Temporary ITC Property, Transit Village shall expeditiously apply for Temporary ITC Building Permits and any other required approval for the Temporary ITC. Transit Village agrees to file for and diligently and continuously proceed at its sole cost and expense to obtain Temporary ITC Building Permits and to keep the County Project Manager reasonably informed as to the status of obtaining Temporary ITC Building Permits and any other required approval for the Temporary ITC.
- 2.3.3. **Name on Applications.** Transit Village shall make applications for Government Approvals for the Temporary ITC Property and Temporary ITC Building Permits in its name to the extent permitted and provide prior to submission, copies of all applications to the County. To the extent that the application is required to be in the future user's name, Transit Village shall make application for any such applicable Government Approvals for Temporary ITC Property, the Temporary ITC Building Permits and any other required approval for the Temporary ITC in the County's name as the future user of the Temporary ITC Property. To the extent required for any Government Approval or Permit application, the County will promptly execute any required consent submitted to the County by Transit Village. Notwithstanding the foregoing, the County shall not have any legal or financial responsibility with respect to the Temporary ITC until a Notice of Acceptance has been issued by the County respecting the Temporary ITC Property and thereafter until the County and Palm Tran vacate the Temporary ITC Property. During the period commencing with the Notice of Acceptance and until Palm Tran vacates the Temporary ITC Property, the County shall be fully responsible for all of its activities relating thereto, including all costs relating to its occupancy and/or use of the Temporary ITC.
- 2.4. **Existing Palm Tran Operations.** Until such time that County has issued its Notice of Acceptance of the Temporary ITC and has relocated to the Temporary ITC, Purchaser shall continue to comply with all provisions of the Agreement providing for the continuous operation of Palm Tran at the ITC, including without limitation, the Envelope Construction Plan, Commercial Construction Plan and the COOP as it relates to construction upon the Wedge ITC Property. Purchaser shall obtain the approval of the County Project Manager pursuant to the Review and Resubmit Process prior to commencing any construction activity on the Wedge ITC Property.

2.5. **Temporary ITC Constructed at No Cost to County.** Transit Village agrees to construct the Temporary ITC at no cost to the County.

2.6. **Preparation of Temporary ITC Construction Plan.** As soon as practicable Transit Village shall submit the Temporary ITC Construction Plan to the County Project Manager for comment and subsequent approval. Transit Village shall submit all material amendments or modifications thereto, promptly following their preparation, to the County Project Manager for review and approval. The County's review of the Temporary ITC Construction Plan shall be limited to its review of conformity to the approved Temporary ITC Site Plan and to the extent applicable, the Construction General Conditions attached as Schedule 6 to the Agreement as applicable to the Temporary ITC Property as the context may require.

3. CONSTRUCTION PHASE FOR THE TEMPORARY ITC

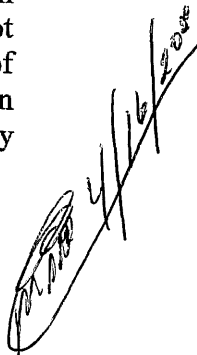
3.1. Transit Village's Construction Rights and Obligations.

3.1.1. Transit Village shall construct the Improvements for the Temporary ITC Property in accordance with the Approved Temporary ITC Site Plan, Temporary ITC Building Permits, City's building code and all other laws, rules, regulations, orders, codes, and requirements of all governmental authorities having jurisdiction over Transit Village or the Temporary ITC Property and the requirements of Schedule 6 of the Agreement as applicable to the Temporary ITC Property as the context may require. Any requirement or obligation of Transit Village set forth in Schedule 6 of the Agreement may be performed in whole or part by the Transit Village or a Temporary ITC Contractor, architect, Temporary ITC Engineer, or another party designated by Transit Village to fulfill with or without conditions. In the event that Transit Village determines that any requirement or obligation of Transit Village set forth in Schedule 6 of the Agreement is not applicable it shall obtain the approval of the County Project Manager pursuant to the Review and Resubmit Process. In the event that Transit Village chooses to assign in whole or part any or all of the requirements and obligations of Schedule 6 of the Agreement, it shall notify the County in writing.

3.1.2. Transit Village shall be responsible for timely payment of all applicable permitting, licensing, utility connection and similar fees and charges in connection with the design and construction of the Improvements for Temporary ITC Property.

3.1.3. Work shall be performed in accordance with the New ITC Construction Plan.

3.2. **Approvals Upon Completion.** Upon completion of construction of the Improvements to the Temporary ITC Property, Transit Village shall deliver a Certificate of Completion and/or, if applicable, a Certificate of Occupancy to the County. Upon receipt of the Certificate of Completion, and/or, if applicable, a Certificate of Occupancy, the County shall have ten (10) business days to perform all required inspections and reviews to ensure that the construction was in accordance with the Temporary ITC Construction Plan. Upon completion of such review, the County shall advise Transit Village of any items not constructed in accordance with the Temporary ITC Construction Plan or issue a Notice of Acceptance. If the County advises Transit Village of any items not constructed in accordance with the Temporary ITC Construction Plan, Transit Village shall promptly

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replace or otherwise bring into compliance such items at its cost and the County shall then reinspect. Upon completion of such replacement and/or repair and reinspection by County, the County shall send Transit Village a Notice of Acceptance and the Transit Village's obligations with respect to construction of the Temporary ITC shall then terminate. The Notice of Acceptance shall be issued by the County within five (5) business days of its inspection or reinspection, if applicable, in which all items requested to be repaired have been repaired by Transit Village.

3.3. **Interim Inspections.** During construction, Transit Village may request inspections by the County Project Manager to determine if Transit Village is constructing in accordance with the Temporary ITC Construction Plan.

3.4. **Bonding and Other Financial Assurances for the Temporary ITC.**

3.4.1. **255.05 Bond for Temporary ITC Construction.** No later than twenty (20) days prior to the commencement of construction of the Temporary ITC by Purchaser, and as a condition to the commencement of construction, Purchaser shall furnish a Construction Bond pursuant to Florida Statutes 255.05 in the amount of 100% of the construction cost of the Temporary ITC Construction, naming Temporary ITC Contractor as Principal and, if and as applicable, the County and/or the City as dual obligees. Such Construction Bond shall incorporate by reference the applicable terms and conditions of the construction contract for the Temporary ITC Construction.

3.4.2. **Requirement for Surety.** Any surety company for any bond required by Section 3.4.1 shall be currently listed with the United States Department of Treasury for an amount greater than the contract amount. The Temporary ITC Contractor, or Transit Village, as appropriate, at the time of its execution of the contract, shall provide, with its Contract Bond(s), a copy of such surety company's current valid Certificate of Authority issued by the United States Department of the Treasury under SS 31, U.S.C. 9304-9308.

3.5. **Temporary Staging on County Property.** If requested by Transit Village, with reasonable advance notice to the County and provided same is otherwise available for use, the County shall provide Transit Village at no cost, a license agreement to use its vacant land holdings on the "North County Block", to provide space for temporary storage, construction activities and temporary parking for SFRTA patrons. Transit Village shall indemnify, defend and hold harmless County from and against any claim, action, suit and/or liability arising from or out of Transit Village's use and occupation of any such property which Transit Village uses. Transit Village shall provide insurance coverages to the County for any activity performed on the North County Block to the same extent as required for activities to be performed on the ITC property and/or the Temporary ITC Property. Contemporaneous with Transit Village's use, Transit Village shall perform the work required by the City for landscaping and restriping in accordance with the City's code sufficient for the City to issue a Certificate of Completion, and/or, if applicable a Certificate of Occupancy. To the extent required for any Government Approval or Permit application, the County will promptly execute any required consent submitted to the County by Transit Village for said use, landscaping and/or restriping. All such work shall be accomplished at no cost to the County.

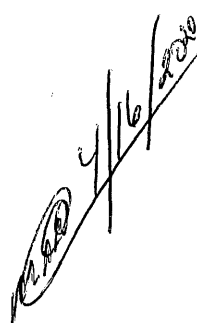
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3.6. **Closing Date.** Section 7.3.1.4 of the Agreement is hereby amended to read as follows:
7.3.1.4 Notwithstanding anything contained in the Agreement, Amendment No. 1 or this Amendment No. 2, the Purchaser shall obtain the County's approval of the Pre-Closing Plans, obtain Building Permits and complete the Closing not later than August 13, 2022.

3.7. **Palm Tran Request To Make The Temporary ITC Site Permanent.** Transit Village recognizes that the County and Palm Tran are discussing and studying Palm Tran's request to make the Temporary ITC Site permanent, which may require Transit Village to surrender a portion of the Lease, modify the Agreement with the County, and obtain other concessions from the City; however, Transit Village has been advised by County Staff that the County is still discussing this request internally and externally with their consultants and the City and further that additional agreements between the County and the City may be required.

Should this request be finalized and subsequently presented to Transit Village, Transit Village as part of this COOP agrees to reasonably cooperate and to discuss same with the County and the City so that equitable agreements can be considered by all parties for approval by their respective governing boards. In no event will Transit Village seek monetary compensation from County for County's use of the Temporary ITC Property on a permanent basis. Unless and until these agreements are timely presented and formally adopted, Transit Village will proceed with the temporary relocation of Palm Tran to the Temporary ITC Property.

G:PREM/Dianne/Transit Village/TV COOP-03.9.20

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IT WITNESS WHEREOF, the parties have caused this Amendment NO. 2 to the Agreement and ITC Continuity Of Operations Plan and to be executed in their respective names on the dates set forth below.

Signed, sealed, and delivered
in the presence of:

As to Purchaser

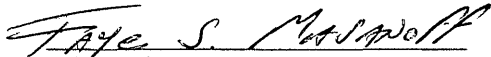
Date of Execution by Purchaser:



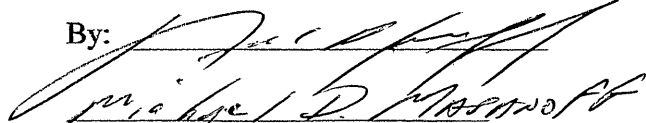
April 16, 2019

Witness Signature

TRANSIT VILLAGE, LLC
"Purchaser"


Print Witness Name

By:


Print Signatory's Name

Its:

Masmanoff

ATTEST:

Date of Execution by County:

SHARON R. BLOCK
CLERK & COMPTROLLER

_____, 2019

By: _____
Deputy Clerk

**PALM BEACH COUNTY, a political
subdivision of the State of Florida**

By: _____
, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

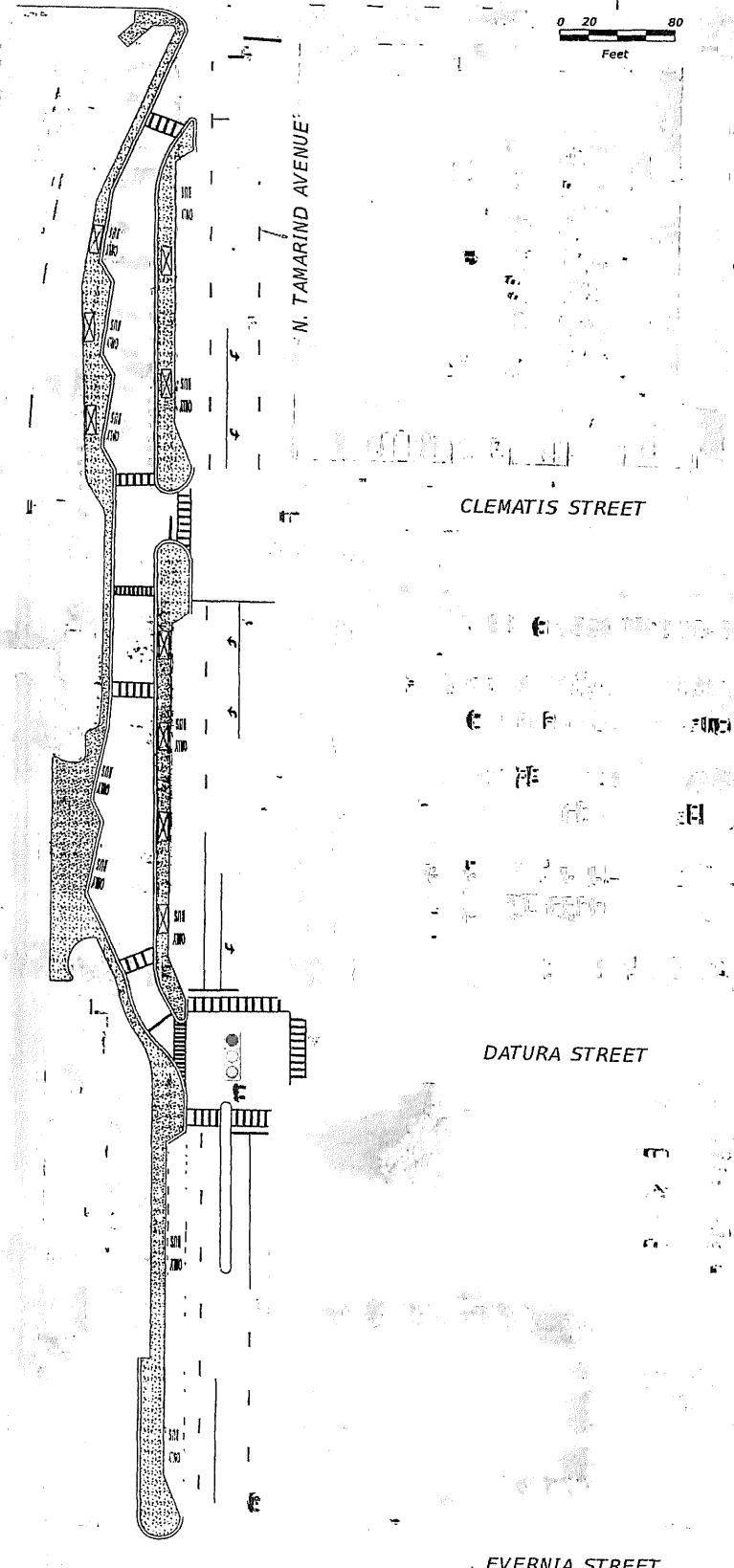
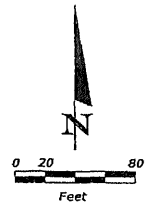
By: 
Department Director

EXHIBIT "A"
PALM TRAN PLAN


Handwritten signature and date: 9/14/2020

ATTACHMENT A: Proposed ITC Relocation

BANYAN BOULEVARD



LEGEND

 BUS SHELTER (7' X 20')



**N. TAMARIND AVENUE
BUS TRANSFER CONCEPT** A-1

ATTACHMENT 3
August 14, 2012 Agenda Item
11 pages

10:30am Time Certain

5I-2

Agenda Item #:

T/SA 5-2
m, s opposed
as amended

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 14, 2012 [] Consent [X] Regular
[] Ordinance [] Public Hearing
Department: Facilities Development & Operations R-2012-1158

I. EXECUTIVE BRIEF

Motion and Title: Staff requests board direction on the approval of an Agreement for Purchase and Sale ("Agreement") with Transit Village, LLC ("TV") for certain interests in the County owned real property commonly known as the Wedge and located within the City of West Palm Beach's Transit Oriented Development (TOD) District, subject to FTA and FDOT approval of the terms of this Agreement.

Summary: In response to the Board's concerns expressed at the July 10th meeting, TV has agreed to increase the purchase price from \$100,000 to \$3.6 Million which is equal to the price the County paid for the property. The acquisition was funded by a Federal grant and local match in the following amounts: FTA \$2,880,000 (80%), FDOT \$361,500 (10%), West Palm Beach \$180,750 (5%), and County \$180,750 (5%). This Agreement requires FTA and FDOT approval of all terms of the Agreement as a precondition to closing of the sale of the property. FTA and/or FDOT could condition their approval upon repayment of the grant funding. As a condition of TV offering to increase the purchase price, TV required the Agreement to be modified to transfer responsibility for grant repayment from TV to the County up to the amount of the purchase price. While TV does not believe repayment will be required, TV is protecting itself against having to pay twice. Some Board members also questioned the intensity of the Project. At this revised purchase price, TV does not want to further reduce the proposed development intensity. Pursuant to the Agreement, TV will develop a transit oriented development ("Project") over and adjacent to the County's Intermodal Transit Center (ITC). TV has six (6) years to commence construction (interim milestones apply) on the Project of; 1) 12,500 sf of civic uses, 2) 400,000 sf of commercial/office, 3) 375 hotel rooms, 4) 150 residential units (student/workforce/market), 5) 150 luxury residential units and 6) 75,000 sf of amenity retail. The four critical objectives of the Request for Proposals (RFP) leading up to the Agreement were to; 1) protect the operation of the ITC, 2) ensure that County would not assume any financial risk or liability associated with the development of the Project, 3) ensure that the Project would not consume more than its share of the public infrastructure available for, or otherwise burden, the remainder of the development of the TOD, and 4) fulfill the County's obligations to the South Florida Regional Transportation Authority (SFRTA) with respect to parking. The Agreement is legally sufficient and can be approved today to move this project forward. The appraised values ranged from \$350,000 to negative \$5,000,000 under the sales comparison approach and both appraisals deemed the Project infeasible utilizing the discounted sell-out/land residual valuation approach. **This Agreement must be approved by supermajority vote (5 Commissioners). (FDO) Countywide (HJF)**

Background & Policy Issues: In early 2010, the County issued a RFP for the development of a TOD project to be constructed on the County-owned Wedge property and site of the operating Intermodal Transit Center (ITC).

(Continued on Page 3)

RECEIVED

Attachments:

1. Summary of Key Business Terms
2. History of West Palm Beach TOD and RFP for Wedge Property
3. Purchase and Sale Agreement with Transit Village LLC
4. Letter dated June 19, 2012, from Treasure Coast Regional Planning Council
5. Letter dated June 19, 2012, from Southeast Florida Regional Partnership
6. Letter dated June 20, 2012, from South Florida Regional Transportation Authority
7. Letter dated June 21, 2012, from FDOT
8. Letter dated June 25, 2012, from the City of WPB
9. Letter dated June 13, 2012, from Urban Land Institute (ULI) Southeast Florida/Caribbean

AUG 20 2012

Recommended By: [Signature] Department Director Date: 8/8/12

Approved By: [Signature] County Administrator Date: 7/12/12

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u> * </u>	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:	Yes	_____	No	_____	_____
Budget Account No:	Fund _____	Dept _____	Unit _____	Object _____	_____
		Program _____			

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

* The purchase price is \$3.6 Million. The amount ultimately realized by the County will depend upon whether FTA and/or FDOT require grant repayment. At a minimum, the County should not have to repay the City and County portion of the grant funding (10% or \$361,000). All funds received must be used for the costs of administration of this Agreement and for other transit purposes.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

<p>_____</p> <p>OFMB</p>	<p><i>[Signature]</i></p> <p>8/9/12</p>	<p>_____</p> <p>Contract Development and Control</p>	<p><i>[Signature]</i></p> <p>8-10-12 B. [Signature]</p>
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B. Legal Sufficiency:

_____ 8/9/12

Assistant County Attorney

C. Other Department Review:

Department Director

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

Background & Policy Issues (Cont'd)

The RFP was structured to be conducted in two phases; 1) pre-qualifications and general project scope, and 2) detailed project scope and supporting documentation. In February 2010, the County received only one response. Because the developer, Transit Village LLC (TV) was determined by the Selection Committee to be qualified and submitted a proposal which was responsive to the RFP requirements, the Board directed that Staff commence negotiations with TV rather than completing Phase 2 of the RFP process. However, because much of the information that would have been submitted in Phase 2 of the RFP process and have been vetted through the continuation of the competitive process was not obtained as part of the Phase 2 RFP process; negotiations have been protracted as Staff attempted to secure the information and to develop appropriate agreement terms to not only address the County's real estate interest but provide protections to the operation of the existing ITC.

Staff returned to the Board on two occasions since the commencement of negotiations for direction on specific business terms and provided written updates to the Board on several other occasions. Some of the Agreement terms are consistent with County standards, but others are not. The key terms of the Agreement are explained in plain-English in Attachment #1 to this Item. Provisions which contain risk for the County or otherwise deviate substantially from County standards have been italicized and underlined. Altogether, the Agreement represents the best set of terms that Staff was able to negotiate and the Agreement is legally sufficient. The Board can approve this Agreement today to move forward with this Project.

The RFP was issued after approximately four (4) years of discussion by the Board. That discussion started with deciding whether the County should participate and then determining to what extent it would participate and then ultimately issuing an RFP for a portion of the TOD – the Wedge. A summary of the history of the Board's involvement in West Palm Beach Transit Oriented Development and the subsequent development of the RFP for the Wedge Property is included in Attachment #2 to this item. Staff's position has consistently been that while it supports the concept of a transit oriented development, the County should only undertake such an effort pursuant to a specific TOD District wide development plan and not allow for the development of the Wedge in advance of the remainder of the TOD or at a minimum without a plan for the entire TOD being in place.

The City of West Palm Beach Community Redevelopment Agency (CRA), the City of West Palm Beach and Treasure Coast Regional Planning Council (TCRPC) initiated this effort, and the Florida Department of Transportation (FDOT), the Metropolitan Planning Organization (MPO) and the South Florida Regional Transportation Authority (SFRTA) participated in this process. All of our governmental partners were presented with the Agreement and any letters or comments received prior to this item being finalized are included as attachments.

Attachment 1
Transit Oriented Development – Wedge Property
Summary of Key Business Terms
Updated August 7, 2012

1. Intensity of Development

At the January 24, 2012 Board meeting, the Board directed staff to work with TV to reduce the intensity and traffic impacts of the proposed development. The Board was made aware of TV's subsequent revision to the intensity of its Project on February 14, 2012. A comparison of the reduced intensity is illustrated in the following table:

Use	RFP Response	Revised Proposal
Apartment Units	120	150 (+30)
Luxury Condo. Units	40	150 (+110)
Hotel	400 rooms	375 rooms (-25)
Community Center	125,000 sq. ft.	12,500 sq. ft. (-112,500)
Office	600,000 sq. ft.	400,000 sq. ft. (-200,000)
Retail	175,000 sq. ft.	75,000 sq. ft. (-100,000)

The various objectives of the RFP and underlying purpose for selling the property require that the development potential of the site be realized to the maximum extent practical. To assure that realization, the Agreement requires that not less than 90% of the total density/intensity nor greater than 110% of the total density/intensity stated above be included in TV's Site Plan Application to the City of West Palm Beach. County review of that application for compliance with this contractual commitment, as well as the Traffic Circulation Plan and Level 1 Plan, will be required in advance of TV's submission of the application to West Palm Beach.

2. Agreement Milestones and Timing

The Agreement provides up to six (6) years for TV to commence construction, and no milestone for completion of construction. TV has contractually committed to continuously construct the entire project to completion.

The contractual milestones are as follows:

- Obtain FTA, NEPA, FDOT, City and SFRTA approval by the end of Year 2 from the execution of this Agreement.
- Submit application for site plan approval to the City of West Palm Beach within 1 year from receipt of the above approvals.
- Obtain all governmental approvals within 2 years from receipt of the above approvals.

- Obtain building permits and complete the closing within 5 years from the execution of this Agreement. It should be noted that closing cannot occur until after all the above milestones have been met.
- Commence construction one year after closing or within 6 years from the execution of this Agreement; whichever is first.

In addition, one or any combination of the milestones will be extended for up to a total of one (1) year in the event of unreasonable governmental delay when implementing regulatory responsibilities. This includes actions of governmental entities such as FTA, EPA, SFWMD, State of Florida Department of Health, and the City of West Palm Beach. This includes the County acting in a regulatory capacity (if any) but does not include the County when administering the terms of the Agreement.

The County would have the right to terminate the Agreement if TV does not meet timing milestones.

3. Purchase Price

TV has agreed to increase the purchase price from \$100,000 to \$3.6 Million which is equal to the price the County paid for the property. The acquisition was funded by a Federal grant and local match in the following amounts: FTA \$2,880,000 (80%), FDOT \$361,500 (10%), West Palm Beach \$180,750 (5%), and County \$180,750 (5%). This Agreement requires FTA and FDOT approval of all terms of the Agreement as a precondition to closing of the sale of the property. FTA and/or FDOT could condition their approval upon repayment of the grant funding. As a condition of TV offering to increase the purchase price, TV required the Agreement to be modified to transfer responsibility for grant repayment from TV to the County up to the amount of the purchase price. While TV does not believe repayment will be required, TV is protecting itself against having to pay twice.

Staff obtained two appraisals of the Property. The values ranged from \$350,000 to negative \$5,000,000 under the sales comparison approach and both appraisers deemed the project infeasible utilizing the discounted sell-out/land residual valuation approach. The Property Review Committee (PRC) reviewed the appraisals and the previously proposed sales price (\$100,000) and found the stated sales price to be reasonable and market oriented.

4. Financial Guarantees

- 4.1 The bonding requirements for the Intermodal Transit Center (ITC) Modifications would be as follows: a) a F.S. Section 255.05 performance bond for 100% of the cost of the required improvements on County property, in addition to b) all requirements of Section 4.2 below.
- 4.2 The financial assurances for the Envelope Construction would be as follows: a) payment and performance bond by TV's Contractor(s) in the amount of 100% of the value of the improvements and b) developer guarantee by TV consisting of a bond, letter of credit or other form of security reasonable acceptable to the County covering 100% of the cost of the improvements. The bonds and developer's guaranty would both be provided 20 days prior to commencement of construction.

4.3 The financial assurances for the Commercial Construction are as follows: a) developer guarantee in the amount of 100% of the value of the shell for the Commercial Construction and b) a bond, letter of credit or other form of security in the amount of \$1,000,000. The \$1,000,000 is not sufficient to complete construction of the remainder of the project, so the \$1,000,000 would be acting more as an incentive to complete construction.

In 4.2 or 4.3, if TV's developer obligation is met via a letter of credit, the Agreement allows for that obligation to be reduced by an amount equal to 80% of the value of materials and work in place. At the end of the one year warranty period, the remaining 20% would be returned to TV. The reduction in the developer obligation would be made after certification by TV, field observation by the County Project Manager and the formula contained in the Agreement. No risk assessment would be performed by the County prior to the reduction which may (or may not) be a cause for the actual completion cost exceeding the amount of money remaining in the third party guarantee in the event that TV defaults.

TV would be permitted to modify the form of financial assurance for the developer guarantee mid project.

5. Traffic Circulation Plan

Traffic engineers representing TV, County and commercial property owners nearby the Wedge Property collaborated to analyze local traffic conditions resulting from the full development contemplated under this Agreement. The Traffic Circulation Plan (Exhibit "D" of the Agreement) documents the technical and methodological assumptions, uses and densities/intensities assumed by TV, and project-related traffic volumes that were collectively relied upon to perform the analysis. The Traffic Circulation Plan also identifies an estimated \$1,000,000 in contractually required improvements to the surrounding roadway network and intersections that would be necessary to sustain appropriate traffic operations for the Intermodal Transit Center (ITC) and nearby private properties upon completion of TV's development proposal. Additionally, the Traffic Circulation Plan provides for enforcement of projected conditions into the future by establishing: 1) parameters for conversion to uses/intensities/densities having an equivalent or lesser amount of traffic generation than has been assumed and 2) the process for requesting changes that could/would have a material impact on traffic operations.

6. Road Impact Fees

Language has been incorporated into the Traffic Circulation Plan (Exhibit "D" of the Agreement) indicating that the cost of improvements made necessary by the Traffic Circulation/Operations Study would not be eligible for Road Impact Fee credits, provided that the approved project is constructed at the intensity level assumed in the traffic study and no changes are made to the background traffic assumed for the remainder of the TOD. If the volume of traffic to be generated by the project is ultimately less than that which was included in the Traffic Circulation/Operations Study or the assumed background traffic is lessened after Agreement approval, TV may seek a determination through the normal process and be subject to whatever protocols are in place at that time for receiving an impact fee credit only for those funded improvements which would not have been required if the changed conditions had been known and analyzed at the time of Agreement approval.

7. Australian Ave Right of Way Acquisition

Representations were previously made that the Agreement would require the County to acquire, including pursuing condemnation if necessary, right of way at an estimated cost between \$100,000 (immediate land area only) and \$1,000,000 (all inclusive) for TV to construct a northbound right turn lane on Australian Avenue approaching Clearwater Place. Upon further review, County Traffic staff has determined that this improvement can be implemented by converting the easternmost northbound through lane on Australian Avenue between Okeechobee Boulevard and Clearwater Place to an exclusive right turn lane. The two remaining northbound through lanes on Australian Avenue would be sufficient to accommodate existing and forecasted traffic volume and maintain acceptable traffic operations. This alternative approach to delivering a turn lane would be implemented at the County's sole expense since: 1) existing right turning movements on Australian Avenue at Clearwater Place warrant the turn lane, 2) estimated costs are consistent with improvements that are installed as part of annual operating expenditures, and 3) the County would have complete discretion in the design and timely delivery of this alternative turn lane improvement.

8. Workforce/Affordable Housing Requirement

The RFP required construction of at least 20 workforce/affordable housing units. TV originally agreed to construct 20 units, but has now agreed to construct not less than the greater of 12.5% of the total number of residential units included on the Site Plan or 20 units. With the currently proposed intensity this would require construction of 38 workforce/affordable units. TV may, at its option, make a payment of \$81,500 per required workforce/affordable housing unit to the County in lieu of the obligation to construct workforce/affordable housing units. The only exception to the requirement to pay would be if the County consents to the recording of a restrictive covenant before the Closing such that TV would be prohibited from building any residential units on the property and TV is unable to have the restrictive covenant removed through remediation or otherwise. The County agrees to not voluntarily record a restrictive covenant and to only allow the recording of the restrictive covenant if required by a federal or state agency having jurisdiction. While TV has advised the County it intends to construct the units on the property and to remediate any environmental contamination on the property so that this could be accomplished and Staff believes that the contamination is reasonably capable of being remediated, Staff does not believe that TV should be relieved of the obligation to pay the requirement if the units are not constructed on the property for any reason.

9. Preparation of Construction Plan and Constructability Report

The Agreement would require TV to prepare a Construction Plan for County approval prior to commencement of construction. The County shall have an initial review period of 60 days to review the Envelope Construction plan which shall be submitted by TV no later than 120 days prior to its intended construction start date. The Envelope Construction Plan includes the following key elements (Agreement requires additional items, but only certain elements are illustrated here):

- Engineer's Constructability Report which is a report prepared, signed and sealed by TV's structural engineer; a) attesting that the design of the Envelope provides structural stability to allow for continuous operation of the ITC, b) describing the design intent of the Envelope construction as it relates to providing the protection to the ITC during and after construction to permit safe and continuous operation of the ITC, c) attesting to the adequacy of structural protection located outside of the Envelope to be safely and continuously used during the Commercial Construction and d) attesting to the structural ability to construct the Improvements contained in the Commercial construction based on the design of the Envelope;
- Identification of all staging and prosecution of all site and structural work activities to be undertaken within and above the ITC to ensure continuous operation of the ITC;
- Identification of location(s) for employee and contractor parking on and off-site;
- Identification of any on-site locations for staging and/or storage of materials;
- Identification of any engineering and operational assumptions which were submitted to the insurer with respect to the insurance policies;
- Identification of the means/methods, specifications, shop drawings and/or other documents and all physical and/or operational details relating to the contractor's actions to comply with the requirements of the insurance policies issued for the work;
- Schedule for the work; and
- ITC Continuity of Operations Plan (COOP) including the details as to extent and duration of work to be performed within the ITC and operational accommodations being requested by TV which impact the ITC operations.

While the Agreement contains extensive pre-construction and construction requirements to protect ITC operations from the impacts of the Project, enforcement of these terms is practically difficult and the legal remedies are not immediate (the same time frames as the impacts to operations). The Board must understand and be comfortable that the value of the project, the pre-construction contractual requirements and the un-written commitment of the developer is sufficient to move forward. If the Board does not think that is sufficient, then this or any vertical development above the ITC is likely not viable.

TV would be required to submit an updated Construction Plan prior to the start of the Commercial Construction which updates the previously approved Envelope Construction Plan.

The Agreement provides that TV shall be responsible for up to \$25,000 of the County's costs associated with third party reviewers of the Construction Plan and Constructability Report, but Staff believes this amount to be inadequate to cover its costs and believes that the actual costs to be 3-4 times this amount.

10. ITC Deviations

Contained within the Agreement is a Level 1 Site Plan showing changes that TV would make to the existing ITC. These modifications have been thoroughly reviewed by the County for impact to the operation of the ITC and determined to be acceptable. ITC Modifications are defined as changes to the

Level 1 Site Plan contained in the Agreement, more specifically: 1) changes to the ingress and egress entrances and exit for Palm Tran vehicles, 2) the parking garage entrance and exits, 3) vehicular and pedestrian surfaces within the ITC, 4) the Palm Tran emergency exit, 5) pedestrian egress and access points from the Envelope/Commercial construction on to the ITC, and/or 6) any other change that impacts the Traffic Circulation Plan.

Any questions or claims concerning what constitutes a deviation from the Level 1 Plan, and/or the approval/denial of a requested ITC Deviation, would be submitted to the County Administrator for resolution. The County Administrator would render his/her determination which shall be considered final and conclusive unless TV files a written protest. In the event of a written protest, the County Administrator would reconsider the request after which the County Administrator's decision on the protest shall be considered final and TV's sole remedy would be to file a cause of action in court.

11. Review of Plans

TV may obtain approval of any item specifically required by the Agreement (including requests for changes) by submitting such request through the Review and Resubmit Process defined in the Agreement. The County would have the greatest of the following durations to review requests for approval; 1) 10 business days, 2) the time frame submitted in the request, 3) the period reasonably requested by the County not exceeding 20 business days if requested within 5 days of receipt of the Request, or 4) a longer period that is agreed to by the TV ("Review Period"). At any time prior to the expiration of the Review Period, the County may request an additional 20 business days to complete its review which TV would be required to grant. If the County requests any further 20 business day extensions on the same request, they must be approved by TV.

After the County has submitted its comments and TV has responded, the County would have a subsequent Review Period to consider the resubmitted request.

If the County does not respond to the initial request or any subsequent resubmitted request, TV would provide the County with a 5 business day notice to respond, and if the County fails to respond, the County approval would be deemed to have been approved.

Requests for ITC Deviations would be made separate from non-ITC deviation requests. To the extent that there is an inconsistency and/or conflict between an ITC Deviation and any other request, the terms of the approved ITC Deviation would prevail and the inconsistent or conflicting portion of any other approval in conflict would be null and void.

The Review and Resubmit Process may continue as many times as TV determines necessary until TV has received the requested approval or elects to terminate the Agreement (termination of the Agreement for this reason can only occur pre-closing).

12. County Agreement and Project Managers

The County would designate the Director of the Property and Real Estate Management Division as the County Agreement Manager. Notwithstanding any other specific provision in the agreement, the

Agreement Manager shall: 1) be the County's single point of contact on all matters relating to the Agreement but for those solely assigned to the County Project Manager, 2) have the sole authority and responsibility to grant any administrative approval or make any modification to the Agreement identified as administrative throughout the Agreement, but for those which require the approval of the FDO Director pursuant to Ordinance and/or PPM, and 3) may agree to ITC Deviations. The Agreement Manager would have the ability to seek Board approval on items delegated including changes in the range of allowable intensity/density and/or modifications to the Traffic Circulation Plan.

The County Project Manager will be the Director of the Capital Improvements Division or his/her designee and shall be the single point of contact on the specifically designated construction tasks identified in the Agreement to the extent that any approval does not require an ITC Deviation or other change to the terms of the Agreement.

The Agreement does provide for TV to fund whatever level of involvement TV desires by the Project Manager during the Review and Resubmit Process, and payment for that involvement shall be at the same rate that the County charges County departments.

Staff believes that administration of this Agreement will be very time consuming, will require substantial Division and Department Head level input and review and is likely to impact work on other projects.

13. Exposure for Damages

The Agreement includes language that indicates that in the event of a County default (failure or refusal to perform any term, covenant, or condition of the Agreement) and after a cure period, TV may 1) terminate the Agreement if prior to closing, or 2) seek specific performance as its sole remedy and waives its rights to seek damages.

14. Land Acquisition Grant Repayment

The County utilized \$3.6 Million in Federal grant funding from the Federal Transit Authority (80%) with the Florida Department of Transportation (10%), the City of West Palm Beach (5%) and the County (5%) providing local matching funding. TV acknowledges the existing grant restrictions and covenants and takes full responsibility for complying with those requirements. However, in the event that repayment of grant funding is required by any of the three agencies, the County will be obligated to use the proceeds of the \$3.6 Million Purchase Price to fund repayment. In the event repayment exceeds the Purchase Price, TV will have the option to repay the excess amount or the County will have the right to terminate the Agreement.

15. Assignment and Vertical Subdivision

The Agreement acknowledges that TV is permitted to create a special purpose entity in which control would remain with the Purchaser to hold title to, develop, and operate the Property, and that TV may assign any and all rights it possesses to the special purpose entity. TV may also be permitted to admit or remove members or transfer ownership between its members as long as Michael Masanoff remains a

manager of the entity. Any other change in ownership prior to closing shall require the County's approval.

Post closing, TV claims it will need the ability to transfer ownership of portions of the development (vertical subdivision) in order to construct, market and sell the project. The Agreement requires all future owners to be subject to the requirements of the Agreement, particularly compliance with the Traffic Circulation Plan. However, compliance enforcement (and potentially property management) will become the responsibility of the County unless a strong property, condominium association or equivalent mechanism is established and funded and has the authority to enforce compliance and take action against those not in compliance. Language was added to the Agreement to address the need for a recorded declaration of covenants (or equivalent instrument) to be agreed upon by TV and the County prior to closing.

G:\PREM\AGENDA\2012\08-14\TOD attachment 1.docx

ATTACHMENT 4
June 19, 2018 Agenda Item 5C-5
10 pages

5C-5

Agenda Item #: MCB/PB 7-0 R-2018-0956

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: June 19, 2018 [] Consent [X] Regular [] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 1 to the Agreement for Purchase and Sale with Transit Village, LLC. (R2012-1158)

Summary: The February 27th workshop on the Downtown West Palm Beach County Facilities Master Plan update addressed the City's proposed extension of Fern Street across the railroad tracks to Clearwater Drive and the anticipated negative impacts upon Palm Tran operations at the Intermodal Center. As such, Staff recommended that the Board postpone consideration of Transit Village's (TV) extension request until the City and County reach an agreement on the Fern Street crossing. Staff requested a workshop between the Board and the City Council, but the Mayor declined. Instead, Staff will make a presentation to the City Council on June 25th. However, it appears unlikely that the County and City will reach an agreement on the crossing at any time soon, if at all. Staff will continue to raise objections to the extension/crossing with SFRTA and FDOT unless and until the City obtains a traffic report demonstrating that the crossing will not impact Palm Tran operations. The Agreement with TV requires TV close by August 13, 2018, and TV has advised it is unable to meet that deadline. This Amendment No. 1 provides TV with a 2-year extension to August 2020. Staff also recommended that as consideration for the extension, TV convey a .4 acre outparcel at the corner of Tamarind and Datura at no cost to the County, and that TV agree to extend the time frames for Staff review of TV's submittals during the review process. TV will not agree to convey the outparcel, but instead has agreed to construct four (4) additional Workforce Housing units for a total of 42 units and has further agreed to subject all 42 units to the rules, regulations and requirements of the County's Workforce Housing Program. In addition, TV has agreed to involve Staff earlier in the design process and to coordinate review of Schematic Drawings and Design Development which addresses Staff's concerns regarding insufficient time to review. Approval of Amendment No. 1 will allow TV to continue with design and development of this project. (PREM) District 7/Countywide (HJF)

Background and Policy Issues: Continued on Page 3.

Attachments:

- 1. Location Map
2. Attachment #3 to 2/27 BCC Workshop
3. Amendment #1 to Purchase and Sale Agreement

Recommended By: [Signature] Army Wolf Department Director 5/30/18 Date

Approved By: [Signature] County Administrator 6/12/18 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes _____	No _____		
Does this item include the use of federal funds?		Yes _____	No _____		
Budget Account No:	Fund _____	Program _____	Dept _____	Unit _____	Object _____

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

No fiscal impact associated with this Amendment No. 1.

Fixed Assets Number _____

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 6/11/18
 OFMB AK 9/6/18
GL

[Signature] 6/17/18
 Contract Development and Control
 6/7/18 *[Signature]*

B. Legal Sufficiency:

[Signature] 6/11/18
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

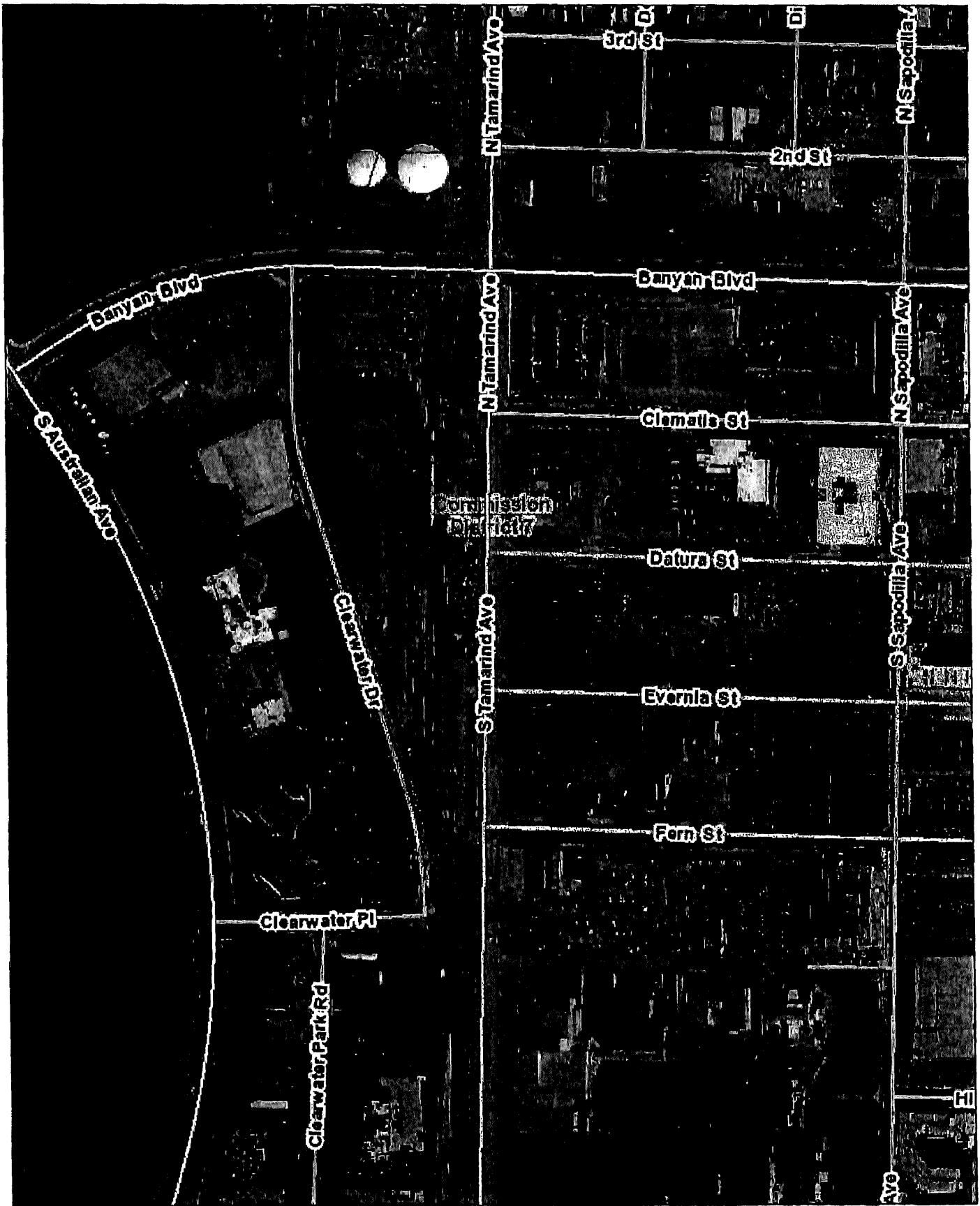
Background and Policy Issues: Attached is a copy of Attachment 3 to the February 27, 2018 Workshop Agenda Item on the Downtown West Palm Beach County Facilities Master Plan. This attachment provides a detailed discussion of the issues associated with the City's proposed extension of Fern Street across the railroad tracks to connect with Clearwater Drive, as well as an analysis of Transit Village's request for a 2-year extension of the deadline for closing.

While Staff would prefer to resolve the crossing issue prior to agreeing to extend the closing with Transit Village, it is unlikely that the City will do anything but continue its efforts to obtain approval of the crossing. Tying an extension of the closing date to the crossing issue will further delay, if not end, Transit Village's project. As the Transit Village project is supported by SFRTA and FDOT, and the SFRTA has provided a letter saying it will not support a crossing at Fern Street for various reasons, the probability of the crossing actually getting permitted seems very low.

Staff also previously recommended that approval of Transit Village's requested extension be conditioned upon Transit Village conveying the .4-acre outparcel at Tamarind and Datura to the County at no cost. Transit Village has indicated that its partners will not agree to convey the outparcel at no cost. Instead, Transit Village has agreed to construct an additional four (4) Workforce Housing units and to make all 42 units comply with the County's Workforce Housing Program rather than the City's program. County Administration supports the substitution of increased Workforce Housing.

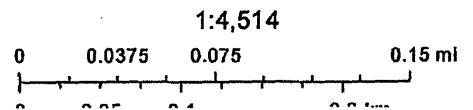
The Agreement with Transit Village requires Transit Village to submit, not less than 120 days prior to closing, plans for construction of the improvements and maintaining continuity of Palm Tran's operations to County for County's review and approval. The Agreement also requires a kick off meeting to discuss the level of involvement of the County's Project Manager in reviewing building plans and to prepare a County Project Manager Work Plan.

To date, Transit Village has not set up a kick-off meeting, and Transit Village is only in the preliminary stage of designing its improvements. Design of a project of this complexity can easily take 12 – 18 months. With an extension only to August 2020, Staff is concerned that design review requests will be submitted late and there will be intense pressure to complete reviews quickly. Changing economic and financial conditions could compound this pressure. Staff attempted to negotiate additional time in which to conduct reviews. Transit Village wanted any additional time used by Staff to extend the closing date. As a result, Staff changed its approach and required Transit Village to schedule a kick-off meeting as soon as reasonably practicable, deliver the County Project Manager a Work Plan within 60 days of the kick-off meeting, and to require that Transit Village provide 60 days notice of when it will deliver Schematic Drawings and a Design Development Package for County's review and approval. Staff believes that this will help ensure that County Staff has adequate notice and can schedule workloads to meet review timeframes required under the Agreement. This approach will also allow Staff to provide comments during the design process increasing the ability of TV to address those comments as the design proceeds and reducing the probability of a major design disputes (or at a minimum eliminating the ability of TV to claim it is too late to address) just prior to closing.



May 30, 2018

Location Map
Attachment 1
199



1:4,514

ATTACHMENT 2

Attachment #3 to 2/27 BCC Workshop

Pages 1 to 5

ATTACHMENT 3

Wedge Property and the Proposed Fern Street Crossing

Background: The County's Intermodal Transit Center (ITC) operates from the Wedge Property and was strategically situated on a local road and adjacent to the passenger rail line to facilitate a multimodal transit option for the downtown and region. The facility is largely the result of a 1992 Interlocal Agreement between the City and County, whereby the County bought the majority share of the property from CSX for \$3.6M and the City committed to: 1) a one-time five percent (5%) capital cost contribution, 2) 50% funding support for ongoing facility operations, and 3) convey a piece of City-owned property to the County toward assembling the site for development of the ITC.

In 2009, the County held a grand opening for the ITC. The ITC has remained in continuous operation ever since. In 2010, at the request of the City and contrary to County Staff's several recommendations against same, the Board directed County Staff to issue a RFP to Lease or Purchase the Wedge Property for development of a Transit Oriented Development in support of transit ridership. Transit Village, LLC (TV) was subsequently the sole RFP respondent. TV's project will include development of an office building(s), residential units, a Hotel and supporting retail space. This development will be built over the top of the existing ITC.

The forecasted traffic volumes on Australian Avenue, Banyan Boulevard, Clearwater Drive and Clearwater Place was thoroughly evaluated during the RFP award process to ensure that Palm Tran's operations would not be unduly impacted by TV's development. Clearwater is the sole means of access to the Intermodal Transit Center (ITC), which is a critical hub for Countywide Palm Tran operations. The introduction of additional vehicular traffic onto Clearwater has significant potential to adversely impact Palm Tran's arrival to and departure from the ITC and hence destinations remote from the ITC.

In 2012, the Agreement for Purchase and Sale of the Wedge Property with TV was approved by the Board of County Commissioners, including an exhibit devoted to traffic limitations and operational assurances. That exhibit and the study related thereto, both of which have been provided to City Staff on multiple occasions, did not contemplate a Fern Street crossing of the SFRTA/FDOT rail corridor connecting to Clearwater Drive.

Subsequent Planning Actions:

October 2016 - TV receives conceptual approval from the City of West Palm Beach for between \$80M-\$120M in tax increment financing assistance.² This approval of TIF was the latest of three actions by the City that demonstrate the City's changing planning policies, unpredictable and/or inconsistent treatment of the County relative to the Downtown.³

² It is the understanding of County Staff that the current amount of tax increment financing being discussed is \$25M-\$35M.

³ First, the City funding assistance for the development of the Wedge when the City has previously indicated that no funding assistance was available to support such a development when such assistance would have resulted in additional revenues to the County. Second, the City required the County to "pay" for the Ballpark land despite it

November 2016 - The Board grants TV a one year time extension to August 14, 2018 for fulfillment of TV's contractual obligation to secure Building Permits and close. In that Board item, County Staff indicates that the City had been unwilling to provide the County any financial support for this and other projects within the Government Hill/TOD areas. At that same meeting, the County Staff advised the Board that the City was evaluating the possibility of adding another railroad crossing at Fern Street despite being well aware of the County's concerns regarding traffic capacity on Clearwater and the County's requirements for uninterrupted travel of the Palm Tran busses along Clearwater to and from the ITC. The City subsequently communicated that it had not been decided to pursue a crossing at Fern Street.

March 2017 - City commences a multifaceted Mobility Study aimed at alleviating vehicular congestion and encouraging modes of transportation other than passenger vehicles in the downtown. That study has identified an additional gateway to and from the downtown as a potential means to relieve existing traffic. An additional vehicular connection would immediately result in the redistribution of existing vehicular traffic; thereby reducing vehicular volume on the links and key intersections of the existing Okeechobee Boulevard and Banyan Boulevard gateways to the downtown.

April 2017 – FDO Staff becomes aware that the City is pursuing the possibility of an extension of Fern Street between Australian Avenue to the west and Tamarind Avenue to the east as the additional road connection to the downtown. The extension of Fern Street would include crossing the SRFTA/FDOT rail corridor and connecting to Clearwater Drive and Clearwater Place to ultimately reach Australian Avenue. The County Engineer and Director FDO immediately notified a representative of City Administration that FDO is to serve as the County's representative on the subject and should be invited to all meetings, copied on all correspondence relative to same and/or participate no different than any other property owner and/or stakeholder.

June 2017 – Although the focus of the Charrette was Okeechobee Boulevard, graphic and verbal representations of the proposed Fern Street Crossing were made throughout same. FDO voiced its concerns with the proposal to both City Staff and City consultants that were in attendance.

August 2017 – During a public meeting of the City's Downtown Action Committee (DAC) for the Okeechobee Business District, City Staff stated that an application for the proposed Fern Street Crossing had been submitted to FDOT's Central Office following the Okeechobee Boulevard Charrette. City Staff later informed FDO staff of: 1) that having been a misstatement, 2) having received direction to make application "since it received an overwhelming amount of support from the public," 3) intentions to meet with stakeholders following submission of the City's application, and 4) intention to meet with FDO and Palm Tran Staff in September to obtain feedback on City ideas for potential transit improvements.

December 2017 – County Staff obtains a copy of the City's application to the State of Florida Department of Transportation (FDOT) for the proposed Fern Crossing from FDOT after prior requests for same to City Staff were not fulfilled. Upon review, County Staff discovers that: 1) the

achieving mutual redevelopment objectives. Third, the City permitted the 4th DCA at a suburban format with insufficient parking after requiring the County to fund the re-design of the Health Department to an urban intensity.

City estimates traffic volumes of 13,410 average daily vehicle crossings; 2) non-motorized traffic improvements would generate additional crossing volume (thereby heightening direct interactions with Palm Tran vehicles in route to/from the ITC), 3) the City's Fern Street Extension Final Feasibility Study was completed on May 26, 2016 and memo of findings from an evaluation of rail crossing traffic completed on March 31, 2017 without any prior coordination with or even mention of to County Staff, and 4) there is no mention of or findings relative to the County's traffic study that was prepared in collaboration with City Staff to evaluate the implications of the Transit Village project on the Wedge Property for ITC/Palm Tran operations. It should also be noted that County Staff understands that FDOT would require the closure of 2 existing rail crossings elsewhere in the City as a pre-condition of allowing the proposed Fern Crossing. Although no crossings are identified in the City's application, the City does have crossings it could close and hence the initiative remains technically viable. Jack Stephens, executive director of SFRTA, indicated in his January 26 letter that SFRTA was not aware of any application for approval of an additional crossing, that SFRTA must be included in the approval process and that SFRTA does not support an additional at grade crossing at Fern Street. While Mr. Stephens' position is helpful in shedding light on how difficult it will likely be to obtain approval of this proposed crossing, we have all seen how many times the impossible becomes reality. The only action which would provide some level of certainty, would be for the City to formally abandon their efforts. In his February 1st letter, Mr. Green has indicated that the City is unwilling to do so. Recently, both the County Engineer and Palm Tran have reviewed the potential impacts of the crossing upon traffic using Clearwater Drive and believe those impacts are likely to be material. Letters from the Traffic Division and Palm Tran are attached (Attachments 4 & 5).

At roughly the same time in December that FDO Staff learned that the City was continuing to pursue the proposed Fern Street Crossing, FDO Staff discovered that City Staff expressed to Palm Tran and the MPO/TPA the City's interest in relocating Palm Tran routes from the ITC to another location in the downtown. Just last week Staff was informed that the City has issued a RFQ for developers to submit their concepts for redevelopment of the City's Tent Site, including relocation of the ITC to the Tent Site. While Staff was not consulted prior to issuance of the RFQ and has not been provided with details on what or how many routes the City proposes to relocate, if the City desires to relocate a significant number of routes, such relocations could call into question the continued viability of the ITC in its current location, as well as TV's project. Palm Tran has indicated that it will not support relocating the ITC, but is in the process of evaluating measures to improve efficiencies of existing routes and transfers, which could result in 1 or 2 buses no longer routing through the ITC.

January 2018 – County Staff receives a written request from TV for an additional 1 year extension of the deadline for closing (from August 13, 2018 until August 13, 2019). TV is claiming that it is entitled to the requested extension as a result of governmental delay. Staff does not agree, as at the time of the last extension the only milestone/deadline remaining was to obtain building permits and close. To Staff's knowledge TV has not yet completed its project design, and has therefore not submitted an application for building permits. TV has been pursuing tax increment financing assistance from the City, which has been a lengthy process. However, such financing is not a milestone to which governmental delay is applicable under the County's agreement with TV. Even when construed in a light most favorable to TV, the agreement with TV only allows for 1 year of cumulative extensions for governmental delay and TV has already received a 1 year extension.

Summary

It is unfortunate for all parties that it has taken so long for TV to get to this point. However, County Staff warned at the outset that this project would require 5-7 years to obtain all required approvals and permits. TV and Mr. Massanoff have invested more than a decade and significant financial resources to move this project forward. Staff agrees that TV will not be in a position to close by the current deadline. The City and SFRTA have both indicated their continuing support for TV's proposed development and TV's extension request. Staff's concerns regarding an extension are the result of actions taken by the City which call into question the routes, operations and functionality of the ITC. Specifically, those actions are the discussion of relocating the ITC in whole or in part, and the proposed Fern Street crossing. Until such time that the City formally changes its position on the proposed crossing and the location of the ITC, Staff is hesitant to recommend that the Board extend TV's contract. However, without the extension the project will be placed on hold at best. If the Board desires to grant a further extension, Staff would recommend that such extension be conditioned upon the following:

1. The City and County enter into a formal agreement documenting the City's agreement to not construct the Fern Street crossing until such time that the ITC has been relocated at the City's expense, or the City obtains a traffic study acceptable to the County demonstrating that the proposed crossing will not adversely impact Palm Tran operations. The most effective and quickest way to resolve this is to have a workshop between the County and City Commissions.
2. In consideration for receiving a further 1 year extension, TV convey TV's .4 acre parcel at the corner of Tamarind and Datura to the County at no cost to the County.
3. TV agreeing to extended time frames for County Staff review of TV submittals during the Review Process.

The Agreement between the City and County would allow the City to continue exploring the viability of the proposed crossing and potential for relocating the ITC, while providing the County assurances that the ITC will not be impacted by traffic or need to be relocated at County expense.

Charging TV for the extension is what a private property owner would typically require from a developer. What should be recognized here is that the purchase price TV agreed to pay the County was based upon TV being faced with extraordinary development costs, almost all of which TV has found a way to be relieved of. As things have worked out, TV in essence already received a substantial subsidy from the County. Now Mr. Masanoff is looking to recover his investment in the .4 acre parcel; which was never a part of the TOD/TV transaction, Mr. Masanoff's argument against having to pay for the extension is that the Wedge property was acquired with 80% Federal, 10% FDOT, 5% City and 5% County funding, such that the County has only a minimal investment in the property. TV's proposed project is a transit oriented development of the type encouraged by FTA, and FTA approved both the structure of the transaction and the purchase price. Requiring TV to pay for the extension is in essence a repayment to the County of grant funding assistance provided by others and contrary to efforts of FTA, SFRTA and the City to provide TV's project as much funding assistance as possible. This will be an extremely expensive project to develop; and TV asserts that all of the governmental financial assistance is essential for the project to be

economically viable. Staff believes the issue of whether to charge for the extension is a policy decision for the Board.

In any event, Staff does not recommend buying the .4 acre parcel from TV. While acquisition of this property would round out the County's holdings in the Evernia/Datura block, purchasing this property would require a roughly \$1.5-\$2M transfer from General Fund Contingency. Setting off the value of the property as a credit against the purchase price for the Wedge property as Mr. Masanoff proposes, would both require FTA approval and would likely require encumbering the .4 acre parcel with Federal restrictions which would limit the County's ability to use the property. In addition, this would result in an indirect transfer of funds from Palm Tran to the General Fund.