

3AA.1

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 5, 2006

Consent      Regular  
 Ordinance      Public Hearing

Department:

Submitted By: Palm Tran

Submitted for: Palm Tran

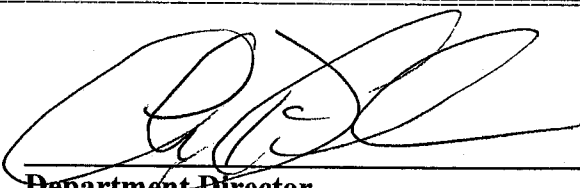
I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: An agreement with Lakes of Delray, Inc. for provision of transportation service (via Palm Tran Routes 70 and 81) to residents of Lakes of Delray at the per dwelling rate (1,408 units) of \$4.30 per month for the period February 1, 2007-January 31, 2008 and \$4.40 per month for the period February 1, 2008-January 31, 2009.

**Summary:** Lakes of Delray, Inc. has contracted for bus service for residents since the inception of the development of Lakes of Delray. The agreement rate of \$4.30 per dwelling unit per month during the first year of the proposed agreement represents a 2.5% increase over the contract for the prior year ending January 31, 2007 and the second year rate of \$4.40 per dwelling unit per month represents a 2.5% increase over the first year. Payments of the per unit rates are in lieu of residents paying individual fares into the fareboxes on Palm Tran Routes 70 and 81. The commencement date of this new agreement is February 1, 2007 and the termination date is January 31, 2009. District 5 (DR)

**Background and Policy Issues:** Palm Tran fixed Routes 70 and 81 serve Delray Beach on major arterials as they traverse east and west. Residents of Lakes of Delray have contracted with Palm Tran since February 1, 1993 through their homeowner's association, Lakes of Delray, Inc. Residents of Lakes of Delray desire to eliminate the necessity of paying individual fares upon boarding Palm Tran buses. This type of agreement benefits Palm Tran by providing a guaranteed revenue stream while reducing the overall operating cost of the route by reducing time associated with acceptance and verification of individual fares. Residents are responsible for paying individual fares should they transfer from Routes 70 and 81 to another route.

**Attachments:** Agreement with Lakes of Delray, Inc.

Recommended By:  \_\_\_\_\_ Date: 11-08-06  
Department Director

Approved By:  \_\_\_\_\_ Date: 11/29/06  
Assistant County Administrator

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2007	2008	2009	200-	200-
Capital Expenditures					
Operating Costs					
External Revenues	\$48,435.20	\$73,779.20	\$24,780.80		
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-	-0-	-0-		

Is Item Included In Current Budget? Yes XX No       
 Budget Account No.: Fund 1340 Dep't. 540 Unit 5101 Object 4435  
 Program     

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

**C. Departmental Fiscal Review:** *John Murphy, Finance Mgr*

**III. REVIEW COMMENTS**

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

*John D. [Signature]* 11-21-02  
 OFMB  
*OSTW* 11-21-06  
*DM* 11-21-06  
*[Signature]* 11/27/06  
 Contract Dev. and Control  
 This Contract complies with our contract review requirements.

**B. Legal Sufficiency:**

*[Signature]* 11/29/02  
 Assistant County Attorney

**C. Other Department Review:**

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

**AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF  
PALM BEACH COUNTY, FLORIDA AND LAKES OF DELRAY, INC.  
FOR THE PROVISION OF TRANSPORTATION SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as "County"), and the Lakes of Delray, Inc., a master association of thirty-seven condominium associations and a Florida corporation whose Federal I.D number is 59-2596584.

WHEREAS, the County, as part of its countywide transit system, has established routes in Delray Beach known as Routes 70 and 81; and

WHEREAS, Lakes of Delray, Inc. desires to enter into an agreement with the County allowing the Lakes of Delray, Inc. residents (who are condominium owners over the age of 55, hereinafter referred to as "Residents"), to use Routes 70 and 81 on an individual non-exclusive fare-free basis; and

WHEREAS, Residents using any transportation service or route other than Routes 70 and 81 are responsible for payment of the fare established for usage of such service or route; and

WHEREAS, the boundaries of the Lakes of Delray, Inc. development is Atlantic Avenue to the North, Kings Point to the South, Sims Road to the East and Jog Road to the West.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the County and the Lakes of Delray, Inc. do hereby agree as follows:

1. The Residents may utilize on a nonexclusive, fare-free basis, either Route 70 or Route 81 of the County transit's system (Palm Tran). At the time of boarding buses serving Routes 70 or 81, residents must present to the driver their Condo ID Card then in effect. The County shall, in accordance with the payment provisions described in paragraph 3 of this Agreement, make available to the Residents on an individual, non-exclusive, fare-free basis the transportation services otherwise available to other individuals utilizing Palm Tran.

2. The parties agree that there are a total of 1,408 units and that Lakes of

Delray is fully developed, and that no additional units will be added, sold or leased.

3. The Lakes of Delray, Inc. shall compensate County for the Route 70 and 81 services described in this Agreement at a rate of Four Dollars and Thirty Cents (\$4.30), per dwelling unit, per month, for the twelve (12) month period commencing on February 1, 2007 and ending on January 31, 2008, and thereafter at a monthly rate of Four Dollars and Forty Cents (\$4.40), per dwelling unit, for an additional twelve (12) month period commencing on February 1, 2008 and ending on January 31, 2009. Accordingly, the County shall receive a monthly payment in the amount of \$6,054.40 for each month of the first year of the Agreement and a monthly payment in the amount of \$6,195.20 for each month of the second year of the Agreement. The County will send an invoice to the Lakes of Delray, Inc. for the total amount due each month and will also provide to the Lakes of Delray, Inc. a separate invoice for each building served based on the number of dwelling units contained within the building. The Lakes of Delray, Inc. may distribute the building invoices to each individual building's condominium association which may remit payment to the County for the number of units in that building. The County's provision of separate invoices for each building and its acceptance of payment from a building condominium association does not, however, relieve the Lakes of Delray, Inc. for the responsibility for payment of all sums due and owing to the County under this Agreement based on the total number of units (*i.e.*, 1408) benefitting from the services provided by County.

4. This Agreement shall be in effect for a term of two (2) years commencing on February 1, 2007 and terminating on January 31, 2009, unless sooner terminated in accordance with the terms of this Agreement.

5. The individual condominium associations may remit to County at the address on the invoice, on a monthly basis, and within thirty (30) days of its receipt of a Statement of Billing from County, the sum owed to County for the transportation services provided for the current month. In the event the County shall not receive payment for an individual building condominium association within the thirty (30) day period, the Lakes of Delray, Inc. shall immediately remit to County payment in full for any and all sums due and owing to the County.

6. The transportation services may be rendered under County's existing routing system in accordance with the schedule for such services established by County, as it may be

amended from time to time by County, in its sole discretion. Lakes of Delray, Inc. acknowledges and agrees that said services are subject to change by the County. All such changes may be made solely at the discretion of the County. County will, however, endeavor to make any changes in accordance with its established route change policy.

7. The residents of the Lakes of Delray, Inc. may utilize other routes of the County's transit system. Residents using any transportation service or route other than Routes 70 and 81 are responsible for payment of the fares established for usage of such service or route.

8. The Lakes of Delray, Inc. shall save, defend, indemnify and hold harmless Palm Beach County, Palm Tran, Inc., and their respective officers, agents, employees and servants from and against any and all claims, liability, losses, and or causes of actions which are related to physical damage to Lakes of Delray, Inc.'s road network and which occurs as a result of the operation of the County's transit equipment on the Lakes of Delray, Inc.'s roadways, driveways and other adjoining paved surfaces, including, but not limited to those owned, controlled or maintained by any individual building association; provided, however, that said agreement to indemnify and hold harmless shall not apply to those intentionally negligent acts or omissions of County. The Lakes of Delray, Inc., represents that it has not sustained any damage to its roadway network as a result of prior operation of Palm Tran buses or vehicles, including those owned, controlled or maintained by any individual building association. The Lakes of Delray, Inc. further represents and warrants that its roadway system is adequate for the purposes contemplated under this Agreement.

9. The County and Lakes of Delray, Inc. each binds itself and its partners, successors, executors, administrators, transferors and assigns to the other party to this Agreement and to the partners, successors, executors, administrators, transferors and assigns of such other party in respect to all terms and provisions of this Agreement. The Lakes of Delray, Inc., shall not assign, sublet, convey or transfer its interest in this Agreement, in whole or in part, without the written consent of the County. Nothing contained herein shall be construed as creating any personal liability on the part of any officer, agent or employee of County, Palm Tran Inc., or the Lakes of Delray, Inc., nor shall it be construed as giving any rights or benefits to any individual or resident. County's obligations shall be strictly limited to those set forth herein. This

Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the parties to this Agreement. Nothing herein will constitute any imposition or acceptance of any obligation or liability not otherwise imposed by law upon County.

10. The County's performance and obligations under this Agreement is contingent upon an annual appropriation for transit purposes by the Board of County Commissioners.

11. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County.

12. The Lakes of Delray, Inc. will maintain, in Palm Beach County, Florida, adequate records to justify the Lakes of Delray, Inc.'s monthly notices to County identifying the number of dwelling units subject to the calculation described in paragraphs 2 and 3 of this Agreement. The County shall have access to such books, records and documents as required in this section for the purpose of inspection or audit during normal business hours.

13. The Lakes of Delray, Inc. warrants and represents that all of its employees and Residents are treated equally by Lakes of Delray, Inc. without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familiar status or sexual orientation.

14. Nothing contained herein shall create any agency relationship between the parties or the Lakes of Delray, Inc. and Palm Tran, Inc.

15. 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 construction, be construed more severely against one of the parties than the other.

16. This Agreement may be canceled by the Lakes of Delray, Inc. with or without cause, upon sixty (60) days prior written notice to County. This Agreement may be canceled by County, with or without cause, upon thirty (30) days prior written notice to Lakes of Delray, Inc.

17. Any costs or expenses, including reasonable attorney fees, associated with the enforcement of this Agreement shall be borne by the respective party incurring such costs or expenses.

18. All notices required under this Agreement shall be sent by certified mail, return receipt requested. Notices shall be mailed to the County at the following address:

Palm Tran, Inc.  
Attn: Executive Director  
3201 Electronics Way  
West Palm Beach, Florida 33407

Notices shall be mailed to Lakes of Delray, Inc. at the following address:

Lakes of Delray, Inc.  
Attn: Stan Latopolski Community Association Manager  
15055 Ashland Boulevard  
Delray Beach, Florida 33484  
(561) 495-1598

19. The parties agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated in this Agreement. No modification, amendment or alteration shall be effective unless contained in a written document executed with the same formality and equality of dignity as this Agreement.

**(Remainder of Page Intentionally Left Blank)**

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the County, and an officer of Lakes of Delray, Inc. with authority to bind the corporation has hereunto made and executed this Agreement, on behalf of Lakes of Delray, Inc., and each has set its hand the day and year above written.

ATTEST:  
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, BY ITS  
BOARD OF COUNTY COMMISSIONERS

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

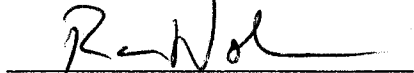
By: \_\_\_\_\_  
Chairperson

Witnesses:

Lakes of Delray, Inc

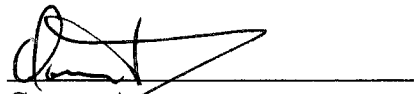
  
Signature


STAN LATOPOLSKI  
Name (type or print)

  
Signature

RON NOWAN  
Name (type or print)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

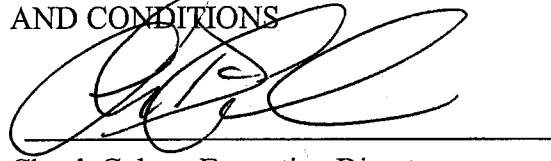
  
County Attorney

By:   
Signature

EDWARD WEST Pres.  
Print or Type Name and Title

(CORPORATE SEAL)

APPROVED AS TO TERMS  
AND CONDITIONS

  
Chuck Cohen, Executive Director  
Palm Tran