

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: April 10, 2007

Consent     Regular  
 Ordinance     Public Hearing

Department: Palm Tran

Submitted By: Palm Tran

Submitted for: Palm Tran

**I. EXECUTIVE BRIEF**


**Motion and Title:** Staff recommends motion to approve: an agreement with SunFest of Palm Beach County, Inc. (SunFest, Inc) to provide shuttle service for the SUNFEST 2007 event in downtown West Palm Beach.

**Summary:** SUNFEST 2007 begins Thursday, May 3, 2007 and ends Sunday, May 6, 2007. The agreement specifies the payment obligations of SunFest, Inc. to Palm Beach County for passengers using the SUNFEST bus shuttle services at a rate of \$2.15 per boarding. The \$2.15 boarding fee also includes the price of the return trip. Palm Tran will designate a minimum of one (1) and a maximum of two (2) sites for pick-up.

Countywide (DR)

**Background and Policy Issues:** Palm Tran has provided bus services from designated Park-and-Ride lots to SUNFEST since 1999. Palm Tran reduced service days at one Park-and-Ride site and transported 5,588 riders for a total of 11,269 trips to and from SUNFEST 2006, a decrease of 6,541 riders from the 12,129 riders and 23,230 total trips to and from SUNFEST 2005. SunFest, Inc. desires to eliminate the necessity of its participants from paying individual fares when boarding Palm Tran SUNFEST shuttle buses. By having SunFest to reimburse the County for riders it will eliminate the need for paying individual fares in both directions to ride the shuttle and will reduce the time and operating costs involved with the acceptance and verification of individual fares. Participants are responsible for paying individual fares should they transfer from a SUNFEST shuttle route to another Palm Tran fixed route. Based on past usage, Palm Tran estimates that SunFest, Inc. will pay to the COUNTY \$12,014 for those riders that use the shuttle services. SunFest, Inc. will be responsible for expenses for parking lot rentals, police and traffic coordination, lighting, security and sanitation at the Park-and-Ride lots, ticket takers (if any), and all other on-site costs associated with providing safe, reliable and convenient transportation to and from SUNFEST 2007.

**Attachments:** Agreement between SunFest, Inc and Palm Beach County

Recommended By:  \_\_\_\_\_ Date: 3-16-07

Approved By:  \_\_\_\_\_ Date: 3/22/07

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2007	200-	200-	200-	200-
Capital Expenditures					
Operating Costs	\$12,014				
External Revenues	\$12,014				
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	\$0.00				
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				

Is Item Included In Current Budget? Yes XX No       
 Budget Account No.: Fund 1340 Dep't. 540 Unit 5110 Object 1401  
 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] 3-20-07*  
 3/20/07 OFMB *3/19*

*[Signature] 3/21/07*  
 Contract Dev. and Control  
 3/21/07

**B. Legal Sufficiency:**

*[Signature]*  
 Assistant County Attorney

**C. Other Department Review:**

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

**Agreement  
Between Palm Beach County  
and  
SunFest of Palm Beach County, Inc.**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "COUNTY" and SunFest of Palm Beach County, Inc. a Florida not-for-profit corporation authorized to do business in the State of Florida, whose principal offices are located at 525 Clematis Street, West Palm Beach, Florida, 33401, hereinafter referred to as "SUNFEST".

In consideration of the mutual promises contained herein, the COUNTY and SUNFEST agree as follows:

**ARTICLE 1 - COUNTY RESPONSIBILITIES**

COUNTY will provide, on a non-exclusive basis, public transportation service, which is open to the general public from no less than one (1) and no more than two (2) pre-designated satellite parking facilities or other sites designated by COUNTY to SunFest, a music, art and waterfront festival, (referred to herein as "Festival" or "SunFest") held in downtown West Palm Beach. The determination of routes, circulation patterns, hours of operation, passenger fare, location of stops and drop-off and pick-up points, bus arrival and departure times, the number and type of buses to be put into service, and all other matters related to the delivery of public transit services to the Festival reside solely in the COUNTY. The COUNTY will provide notice to the public of the public transportation services provided for the Festival. COUNTY may make any changes to the public transportation services contemplated hereunder as COUNTY deems appropriate, including the addition or deletion of buses.

**ARTICLE 2 - CONTRACT REPRESENTATIVES**

The COUNTY's representative/liaison during the performance of this Contract shall be Chuck Cohen, Palm Tran's Executive Director, whose telephone number is (561) 841-4210.

SUNFEST's representative/liaison during the performance of this Contract shall be Paul Jamieson, whose telephone number is (561) 837-8062.

**ARTICLE 3 - SUNFEST RESPONSIBILITIES**

SUNFEST, at its sole cost and expense, shall be responsible for:

- A. Securing remote parking facilities and making them available for COUNTY's use in the delivery of the public mass transportation services contemplated hereunder.

- B. Providing security at the remote parking facilities and at the drop-off/pick-up location(s) at the SunFest site in downtown West Palm Beach.
- C. Insuring that proper traffic control is provided on the route(s) to and from the SunFest drop-off/pick-up locations to allow efficient movement of buses. This includes the bagging of parking meters at locations determined by the COUNTY.
- D. Providing staff at remote parking locations, who will be responsible for the sale, issuance and collection of tickets representing the fare imposed by COUNTY for the public transportation services.
- E. Providing an official who will be stationed, at all times, at the bus drop-off and pick-up areas and who will work with COUNTY staff to resolve all issues arising during the hours that the buses are in operation
- F. Providing to COUNTY, for COUNTY's approval, on or before March 15, 2007, a list of the remote parking facilities which SUNFEST shall make available, a description of the parking lot security measures which SUNFEST shall implement, and a proposed plan for proper traffic control and the sale, issuance and collection of public transportation tickets.
- G. Providing supplemental advertising advising the public of the locations and times during which the public mass transportation services to be provided by Palm Tran will be made available. SUNFEST will obtain COUNTY's approval of the advertising copy and format prior to SUNFEST's placement of any advertising copy or ad.

#### **ARTICLE 4 - PAYMENTS TO COUNTY**

SUNFEST shall pay to the COUNTY two dollars and fifteen cents (\$2.15) per passenger boarding, for boardings occurring at Palm Tran approved remote parking facilities. The payment of \$2.15 per boarding includes the return transportation. SUNFEST shall remit payment in full to the COUNTY within thirty (30) days after receipt of invoice from Palm Tran for boardings occurring at the remote parking facilities.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by SUNFEST upon thirty (30) days prior written notice to the COUNTY with or without cause. This Contract may be terminated by COUNTY, with or without cause, or for any reason whatsoever, immediately upon notice to SUNFEST. In the event SUNFEST shall fail to satisfactorily perform the responsibilities described in Article 3 above or shall fail to provide adequate remote parking facilities, parking lot security, sufficient personnel to sell, issue or collect fares/tickets, or otherwise fail to perform in accordance with the terms and conditions of this Contract, the COUNTY may, in lieu of termination, contract for or perform the services with its own forces and SUNFEST will

compensate COUNTY for all such services at the rate of Fifty Dollars (\$50.00) per hour for each individual hour of service provided.

#### **ARTICLE 6 - FEDERAL AND STATE TAX**

- A. The COUNTY is exempt from payment of Florida State Sales and Use Taxes.
- B. The COUNTY shall be responsible for the payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract. SUNFEST shall be responsible for the payment of its own and its share of its employee's payroll, payroll taxes, and benefits with respect to this Contract.

#### **ARTICLE 7 - INDEMNIFICATION**

- A. SUNFEST shall save, defend, indemnify and hold harmless the COUNTY and Palm Tran, Inc., and their respective officers, directors, agents, servants, and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of SUNFEST, its agents, contractors, volunteers, servants, or employees in the performance of services under this Contract.
- B. SUNFEST further agrees to save, defend, indemnify, and hold harmless the COUNTY and Palm Tran, Inc., and their respective officers, directors, agents, servants and employees from and against any claim, demand or cause of action whatsoever kind or nature arising out of any conduct or misconduct of SUNFEST, its agents, contractors, volunteers, servants, or employees not included in the paragraph above and for which the COUNTY and/or Palm Tran, Inc., their respective officers, directors, agents, servants or employees are alleged to be liable.

#### **ARTICLE 8 - SUCCESSORS AND ASSIGNS**

The COUNTY and SUNFEST each binds itself and its partners, successors, executors, administrators and assigns to the other party to this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor SUNFEST shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer, servant or agent of the COUNTY or Palm Tran, Inc. nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY, Palm Tran, Inc. and SUNFEST.

#### **ARTICLE 9 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity

or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 10 - CONFLICT OF INTEREST**

- A. SUNFEST represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Part III of Chapter 112, Florida Statutes. SUNFEST further represents that no person having any interest shall be employed for said performance.
- B. SUNFEST shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence SUNFEST's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that SUNFEST may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by SUNFEST. The COUNTY agrees to notify SUNFEST of its opinion by certified mail within thirty (30) days of receipt of notification by SUNFEST. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by SUNFEST, the COUNTY shall so state in the notification and SUNFEST shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by SUNFEST under the terms of this Contract.

#### **ARTICLE 11 - EXCUSE**

COUNTY shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond its control or its subcontractors.

#### **ARTICLE 12 - PUBLIC RECORDS**

To the extent applicable, SUNFEST shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

#### **ARTICLE 13 - PERSONNEL AND VOLUNTEERS**

Each party shall be, in the performance of all responsibilities and activities under this Contract, independent from the other and not an employee, agent, volunteer, or servant of the other. Each party shall exercise control over the method, means and manner in which it and its employees and volunteers perform its responsibilities under this Contract. Each party represents that it has or will have secured, at its own expense, all personnel including volunteers, required to perform its obligations under this Contract.

**ARTICLE 14 - NONDISCRIMINATION**

SUNFEST warrants and represents that all of its employees and volunteers are treated equally during employment and that SunFest will be open and accessible to the public without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

**ARTICLE 15 - AUTHORITY**

SUNFEST represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct SunFest, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

**ARTICLE 16 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 17 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and SUNFEST agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

**ARTICLE 18 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the COUNTY's or SUNFEST's representative shall be mailed to:

As to the COUNTY:  
Palm Tran, Inc.  
Attn: Mr. Chuck Cohen, Executive Director  
3201 Electronics Way  
West Palm Beach, Florida 33407

As to SUNFEST:  
SunFest of Palm Beach County, Inc.  
Attn: Mr. Paul Jamieson, Executive Director  
525 Clematis Street  
West Palm Beach, FL 33401

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

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

ATTEST:  
Sharon R. Bock, Clerk & Comptroller

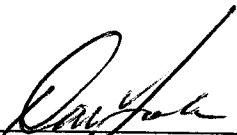
PALM BEACH COUNTY, FLORIDA, by its  
BOARD OF COUNTY COMMISSIONERS:

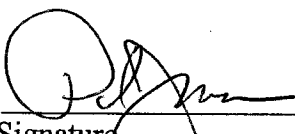
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Commissioner Addie L. Greene, Chairperson

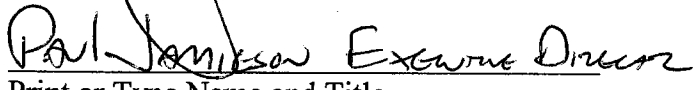
WITNESS:

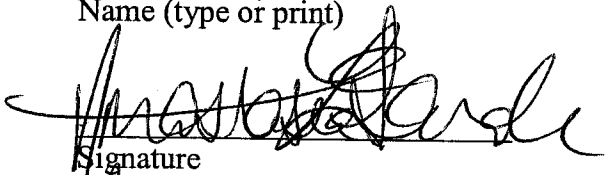
SUNFEST OF PALM BEACH COUNTY, INC.

  
\_\_\_\_\_  
Signature


By:   
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Name (type or print)

  
\_\_\_\_\_  
Print or Type Name and Title


  
\_\_\_\_\_  
Signature


(Corporate Seal)

  
\_\_\_\_\_  
Name (type or print)

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

  
\_\_\_\_\_  
County Attorney

  
\_\_\_\_\_  
Chuck Cohen, Executive Director  
Palm Tran