

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

Agenda Item No. : **5F-1**
Revised

AGENDA ITEM SUMMARY

Meeting Date: February 24, 2009 [] Consent [X] Regular
[] Ordinance [] Public Hearing
Department: Palm Tran
Submitted By: Palm Tran
Submitted for: Palm Tran

I. EXECUTIVE BRIEF

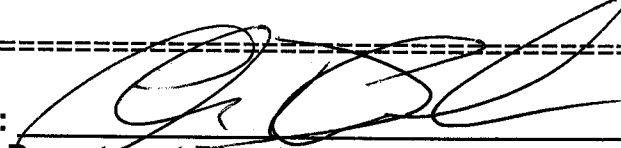
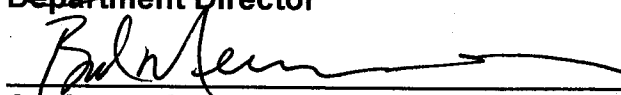
Motion and Title: Staff recommends a motion to:

- A) Approve Interlocal Agreement with the South Florida Regional Transportation Authority (SFRTA) to provide \$4,050,000 in Fiscal Year 2009 as Palm Beach County's share of SFRTA's net operating deficit and to provide for an additional \$2,670,000 to be paid to SFRTA within thirty (30) days after execution of this Agreement; and
- B) Deny request for an additional \$85,298 out of Contingency to offset SFRTA's deficit.

Summary: Palm Beach County is statutorily required to contribute \$1,565,000 annually to SFRTA's operating budget. SFRTA's FY 08 budget reflects a net operating deficit in excess of the statutory payments. Palm Beach County's share of these excess operating deficits is \$2,485,000. Additionally, Palm Beach County will pay \$2,670,000 to SFRTA upon or within thirty (30) days after execution of the Agreement, and to provide for SFRTA to reimburse Palm Beach County for Tri-Rail feeder bus service in the amount of \$666,666.66 annually. Palm Beach County has included this amount in its FY 09 budget. Additionally, the funds provided by Palm Beach County are not contingent upon SFRTA's receipt of a similar contribution from both Miami Dade and Broward Counties, but each County has entered into interlocal agreements with similar terms and conditions. In this regard, the SFRTA is seeking an additional \$85,298 from both Broward and Palm Beach Counties, above and beyond the \$6,720,000 as originally requested. This funding, already provided by Miami-Dade would be matched by FDOT and would provide SFRTA with an additional \$341,192 in funding for the current year. Should the Board choose to provide the additional \$85,298 to the SFRTA, the money would come out of the County's general contingency fund. Countywide (DR)

Background and Policy Issues: Palm Beach, Broward and Miami-Dade Counties and the Florida Department of Transportation (FDOT) have previously entered into interlocal agreements to cooperate in the funding of the South Florida Tri-County Commuter Rail Project. In 2003, the Florida Legislature amended Part 1 of Chapter 343, Florida Statutes creating the South Florida Regional Transportation Authority. Fifty percent (50%) of the operating funds are provided by FDOT and the remaining fifty percent (50%) is shared equally among the three participating Counties. Palm Beach County's contribution to fund the operations of SFRTA in excess of the sum set forth in Section 343.58(2), Florida Statutes (2003). Additionally, the interlocal agreement requires Palm Beach County to pay \$2,670,000 to SFRTA upon or within thirty (30) days after execution of the Agreement. The funds provided by Palm Beach County are not contingent upon SFRTA's receipt of a similar contribution from both Miami Dade and Broward Counties, but each County has entered into interlocal agreements with similar terms and conditions. In this regard, the SFRTA is seeking an additional \$85,298 from both Broward and Palm Beach Counties, above and beyond the \$6,720,000 as originally requested. This funding, already provided by Miami-Dade would be matched by FDOT and would provide SFRTA with an additional \$341,192 in funding for the current year. Finally, the interlocal agreement provides for SFRTA to reimburse Palm Beach County for commuter rail feeder bus services in the amount of \$666,666.66. Monthly payments for the rail feeder services are provided in the amount of 1/12th of the annual amount.

Attachments: Interlocal Agreement with SFRTA (2 copies)

Recommended By:  2/18/09
Department Director Date
Approved By:  2/18/09
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	200-	200-
Capital Expenditures					
Operating Costs	6,720,000				
External Revenues	(666,667)				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	6,053,333				
# ADDITIONAL FTE POSITIONS (Cumulative)	0				

Is Item Included In Current Budget? Yes X No

Budget Account No.: Fund: 0001 Dep't: 743 Unit: 5009/5010 Object: 8101
 Program:

Revenue: 1340.540.5007.4435

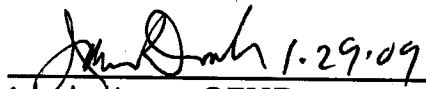
B. Recommended Sources of Funds/Summary of Fiscal Impact:

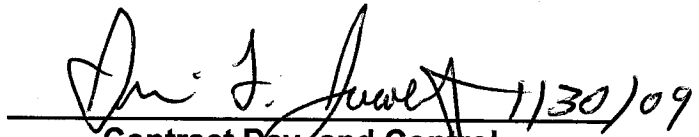
C. Departmental Fiscal Review:


 John Murphy, Finance Manager

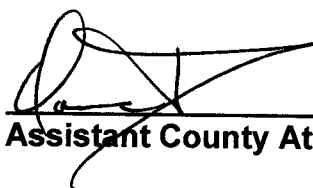
III. REVIEW COMMENTS

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


11/29/09 OFMB 11/21/09


1/30/09
 Contract Dev. and Control
 G. Jones 1/30/09

B. Legal Sufficiency:


2/2/09
 Assistant County Attorney

This Contract complies with our contract review requirements.
 The effective date is retroactive.

C. Other Department Review:

 Department Director

**INTERLOCAL AGREEMENT
BY AND BETWEEN PALM BEACH COUNTY
AND
THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY
RELATING TO THE FUNDING OF THE
SOUTH FLORIDA REGIONAL TRANSPORTATION PROJECT**

THIS AGREEMENT, is made and entered into this ___ day of _____, 2008 by and between the Board of County Commissioners of Palm Beach County, Florida, a political subdivision of the State of Florida, (hereinafter referred to as "Palm Beach County") and the South Florida Regional Transportation Authority (hereinafter referred to as the "SFRTA"), a body politic created and redesignated under Chapter 343, Florida Statutes.

WITNESSETH:

WHEREAS, on January 7, 1986, Broward County, Miami-Dade County, Palm Beach County (also referred to herein collectively as "the Counties" or the "Three Counties") and the Florida Department of Transportation (also referred to herein as "FDOT") entered into an Interlocal Agreement establishing the South Florida Tri-County Commuter Rail Organization ("TCRO"); and

WHEREAS, on July 9, 1986, Broward County, Miami-Dade County, Palm Beach County and the Florida Department of Transportation entered into an Agreement entitled "Interlocal Agreement Among South Florida Tri-County Commuter Rail Organization, consisting of Broward, Miami-Dade, Palm Beach Counties and Florida Department of Transportation relating to the South Florida Tri-County Commuter Rail Project" setting forth the parties' cooperative participation in the funding of the South Florida Tri-County Commuter Rail Project; and

WHEREAS, although the 1986 Interlocal Agreement did not contain a clear termination date, it was intended to establish the parties' duties and obligation regarding the development and financing of a commuter rail service project which was to operate for approximately five (5) years coincident with the reconstruction of the I-95/HOV corridor in the Counties; and

WHEREAS, in 1989, the Florida Legislature adopted Part 1 of Chapter 343, Florida Statutes, known as the Tri-County Commuter Rail Authority Act, which created the Tri-County Commuter Rail Authority ("TCRA"), and made it the successor and assignee of the TCRO, and vested in the TCRA all of the rights, assets, agreements, appropriations, privileges, and obligations of the TCRO; and

WHEREAS, the Florida Legislature further granted to the TCRA all powers necessary, appurtenant, convenient, or incidental for carrying out its purposes, including the ability to cooperate and contract with other governmental entities, including FDOT, the Federal government, and counties and municipalities for funding a commuter rail system; and

WHEREAS, in 2003, the Florida Legislature amended Part 1 of Chapter 343, Florida Statutes, known as the South Florida Regional Transportation Authority Act, created the South Florida Regional Transportation Authority ("SFRTA"), and made it the successor and assignee of the TCRA, and vested in the SFRTA all rights, assets, agreements, appropriations, privileges, and obligations of the TCRA; and

WHEREAS, Section 343.58(2), Florida Statutes (2003), provides that each county served by the SFRTA shall continue to annually fund the operations of SFRTA in an amount not less than \$1.565 million; and

WHEREAS, the parties now desire to enter into this Interlocal Agreement ("Agreement"), for the purposes of defining the parties' funding responsibilities and establishing the parties' expectation regarding the funding responsibilities of Palm Beach, Broward and Miami-Dade Counties from July 1, 2008 through June 30, 2009:

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, Palm Beach County and the SFRTA agree as follows:

1. INCORPORATION OF PREAMBLE. The parties acknowledge that the statements set forth in the Preamble to this Agreement are true and correct and incorporated into and made a part of this Agreement.

2. PURPOSE. The purpose of this Agreement is to establish a twelve (12) month Operational Funding ("Plan"), as shown on the attached Exhibit "A". The parties acknowledge that their funding obligations, as well as those of the other governmental entities shown on Exhibit "A", are subject to an annual appropriation by their respective governing bodies for the purposes described in this Agreement.

3. PROJECT. The parties acknowledge that SFRTA has been established by the Florida Legislature to own, operate, maintain and manage a commuter rail system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties.

4. FUNDING BY FDOT. SFRTA represents and warrants to Palm Beach County that FDOT has agreed to fund fifty percent (50%) of SFRTA's Net Operating Costs. The term "Net Operating Costs" shall have the same meaning as set forth in Section 341.303(4)(e), Florida Statutes. Said term is generally defined to include all operating costs of the project (*i.e.*, for the purposes of this Agreement the funding and operation of a commuter rail system in Broward, Miami-Dade, and Palm Beach Counties, less any federal funds, fares, or other sources of income to the project).

5. FUNDING OF NET OPERATING COSTS. Palm Beach County agrees to contribute \$4,050,000 to fund the operations of the SFRTA for the Term of this Agreement. As set forth in Section 343.58(2), Florida Statutes (2003), Palm Beach County will continue to annually fund the operations of the SFRTA in an amount not less than \$1,565,000, which sum is included in the \$4,050,000 referenced herein and set forth in Exhibit "A". SFRTA anticipates that the sums provided by each county, as described in Exhibit "A", shall be sufficient to fund fifty percent (50%) of its Net Operating Costs for the Term of the Agreement. SFRTA shall make good faith efforts to enter into interlocal agreements with Miami-Dade and Broward Counties with terms and conditions similar to those contained in this agreement, obligating each county to no less than the same funding obligations to which Palm Beach County is obligated under this Agreement or other arrangements under which each county will pay or obligates itself to pay the additional \$2,485,000 which sum is the difference between \$4,050,000 and \$1,565,000. If additional funding is required to fund additional SFRTA services, a supplemental agreement may be entered into with Palm Beach County during the term of this Agreement.

6. ANNUAL APPROPRIATIONS. Prior to receiving the funding identified in Exhibit "A", SFRTA shall submit to each of the Three Counties and FDOT, for their review and approval, an annual budget in a form acceptable to the Three Counties, with information regarding proposed expenditures and such other information requested by each county or FDOT. The annual budget submitted to Palm Beach County shall be in a form acceptable to Palm Beach County. Annual appropriation shall be subject to the Palm Beach County Board of County Commissioners' approval.

7. INVOICES. SFRTA shall present an invoice to Palm Beach on a form prescribed and approved by Palm Beach County for the entire amount of the Net Operating Costs portion per Exhibit "A" of this agreement payable on October 1, 2008. Palm Beach County shall endeavor to pay to SFRTA its share of the Net Operating Costs within thirty (30) days after receipt of an invoice and all supporting documentation needed to enable Palm Beach County's Clerk to perform pre-audit functions. Palm Beach County's share of the Net Operating Costs shall not exceed the sum identified as its contribution in Exhibit "A". All expenses submitted by SFRTA for reimbursement must fully comply with all applicable requirements imposed by the Federal Transit Administration (FTA) or the State of Florida pursuant to grant or funding agreements, Federal or State laws, or other regulations applicable to SFRTA or Palm Beach County for each itemized expense or they shall be disallowed for payment by Palm Beach County.

8. REIMBURSEMENT FOR FEEDER SERVICE EXPENSES. Palm Beach County shall receive reimbursement from SFRTA for Feeder Service expenses in an amount not to exceed the amount set forth in the attached Exhibit "B". Feeder Service is defined as any agreed upon means of bus and/or rail equipment used to transport SFRTA passengers to or from a SFRTA train station. Each of the Three Counties seeking reimbursement for feeder services will be required to submit quarterly itemized invoices to SFRTA, on a form approved by SFRTA, which shall be paid within 30 days of receipt. All expenses submitted by each of the Three Counties for reimbursement must fully comply with all applicable requirements imposed by the Federal Transit Administration (FTA) or the State of Florida pursuant to grant or funding agreements, Federal or State laws, or regulations applicable to SFRTA relating to the funding source for each itemized expense or they shall be disallowed for payment by SFRTA.

Palm Beach County will provide feeder services to meet SFRTA trains and provide connecting services with other Palm Tran fixed route transit services at each of SFRTA's stations located in Palm Beach County.

SFRTA and Palm Beach County will honor their respective ticket media for transfers between systems except on those routes, such as express routes or special service, excluded by agreement of the parties' representatives. SFRTA will honor Palm Beach County transit riders' transfer by allowing the purchase of a SFRTA ticket less the face amount paid to Palm Beach County for its fare and transfer. SFRTA will honor the monthly and/or weekly passes of the Three Counties' transit systems for riders' transfers to SFRTA without the need to purchase a transfer and will receive the same reduction as a transfer rider. In addition, SFRTA will require each of the Three Counties to agree to honor a valid SFRTA ticket as a transfer to that county's feeder system from a SFRTA station, and to allow passengers to ride that county's feeder system at no cost or to allow the rider to purchase a ticket and/or a transfer when taking a feeder system to a SFRTA station.

9. RECORDS. Both parties agree to provide requested reports and management information in a timely manner.

10. TERM. This Agreement shall commence on July 1, 2008, and shall continue for a period of twelve (12) months, until June 30, 2009.

11. TERMINATION FOR DEFAULT. SFRTA's failure to timely perform, as required by this Agreement, or to otherwise comply with this Agreement's terms or conditions shall constitute a default, and the Agreement may be terminated at the discretion of Palm Beach County. SFRTA agrees that termination of this Agreement by Palm Beach County shall not waive any right(s) which Palm Beach County may have had or has against SFRTA for the breach of any term(s) of this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, Palm Beach County's obligation to make any required payments shall be subject to the availability of funds and/or its legislative body's discretion not to fund its obligations under this Agreement for any fiscal year.

In the event a party to this Agreement either fails to appropriate or budget sufficient funds or is unable to appropriate or budget sufficient funds to meet all of its obligations under this Agreement, then this Agreement may be terminated upon ninety (90) days notice in accordance with the provisions of Section 20 of this Agreement.

12. FINANCIAL AUDITING. Both parties shall maintain such records, accounts, and financial records as are deemed necessary by both SFRTA and Palm Beach County to assure a proper accounting record. At reasonable intervals during regular business hours, the parties to this Agreement and their duly authorized representatives and certain Federal and State representatives with funding oversight shall have the right to audit, examine and make excerpts in transcripts from both parties' records with respect to matters covered under this Agreement.

In the event funds paid by a party to this Agreement are subsequently disallowed because of accounting errors or charges not in conformity with this Agreement, the party receiving said disallowed funds shall promptly refund such disallowed amounts to the other party.

13. MAINTENANCE OF RECORDS. All source documents for the National Transit Database (NTD) filing shall be subject to audit and shall be maintained by both parties for five (5) years following final payment under this Agreement. Both parties shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a period of five (5) years after termination of this Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of the five (5) years, the records shall be retained until resolution of the audit findings.

14. NO WAIVER. No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver.

15. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute the same Agreement.

16. ENTIRE AGREEMENT. This Agreement incorporates and includes all prior negotiations and understandings applicable to the matters contained herein. The parties agree that this Agreement constitutes the entire understanding and agreement between the parties and supersedes all other prior Agreements and representations whether written or oral.

17. MODIFICATION AND AMENDMENTS. This Agreement may not be changed, altered, or modified except by an instrument, in writing, signed by all parties against whom enforcement of such change would be sought.

18. DEDICATIONS. The parties do hereby acknowledge and agree that Palm Beach County has dedicated to the SFRTA the sum of \$2.67 Million in accordance with the requirements of Section 343.58(1), Florida Statutes (2003). Palm Beach County has agreed to transfer said sum to SFRTA in one lump sum, upon or within thirty (30) days after execution of this Agreement. Such funds are to be used as part of SFRTA's local match for one or more Federal grants which grants are awarded or based on the dedication of funds by any or all Three Counties.

19. EXHIBITS. All exhibits attached hereto contain additional terms of this Agreement and are incorporated into this Agreement as if actually set forth herein.

20. MAILING ADDRESSES. Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the mailing addresses set forth below, unless such addresses shall have been changed by written notice. For the present, the parties designate the following as the respective places for giving of notice:

For SFRTA:

Joseph Giuliatti
Executive Director
South Florida Regional Transportation Authority
800 NW 33 St., Suite 100
Pompano Beach, FL 33064

For Palm Beach County:

Chuck Cohen,
Executive Director
Palm Tran
3201 Electronics Way
West Palm Beach, FL 33407

21. CAPTIONS. The captions and section designations set forth in this Agreement are for convenience only and shall have no substantive meaning.

22. JOINT PREPARATION. 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.

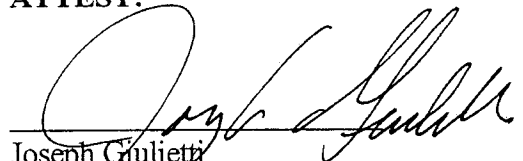
23. DISCRIMINATION. Neither party shall discriminate in its performance of this Agreement and each affirms that its employees and the members of the public using its services will be treated equally and without regard to race, sex, sexual orientation, color, religion, disability, handicap, age, marital status, national origin or ancestry.

24. FILING. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County and with the Clerk of the Circuit Court in and for Broward County.

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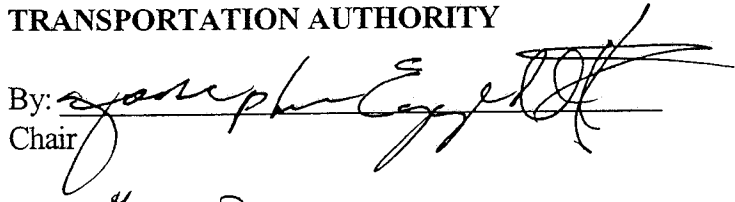
IN WITNESS WHEREOF, the parties have made and executed this Interlocal Agreement on the respective date under each signature.

ATTEST:



Joseph Giulietti
Executive Director

**SOUTH FLORIDA REGIONAL
TRANSPORTATION AUTHORITY**

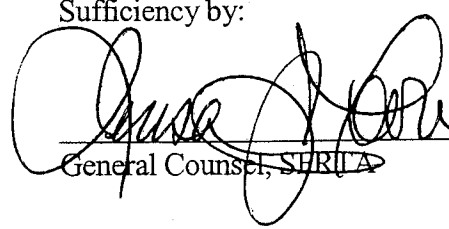
By: 

Chair

This 12th day of DECEMBER, 2008.

(SFRTA SEAL)

Approved as to form and legal
Sufficiency by:



General Counsel, SFRTA

ATTEST:

Dorothy H. Wilken, Clerk

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

By: _____
Deputy Clerk

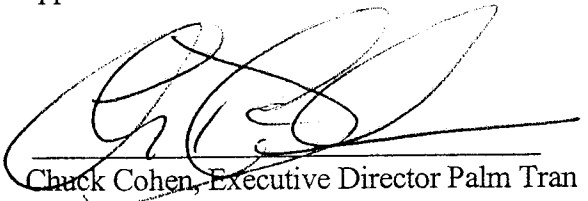
By: _____
Chair

This ___ day of _____, 2008

Approved as to Form
and Legal Sufficiency

Approved as to Terms and Conditions

County Attorney



Chuck Cohen, Executive Director Palm Tran

EXHIBIT A

FUNDING FOR NET OPERATING COSTS
Fiscal Year 2008-2009

FY 2008-2009

Total SFRTA Net Operating Expense	\$57,331,123
Total Train Revenue	<u>8,629,417</u>
Net Operating Deficit	\$48,701,706

Funding Sources:

FHWA	\$ 4,000,000
FTA	11,426,498
FDOT	15,622,020
Broward County	4,135,298
Miami-Dade County	4,135,298
Palm Beach County	4,050,000
Feeder Service	3,667,294
Capital Allocation	1,480,000
Other (Miscellaneous)	<u>100,000</u>
Unfunded Deficit	(\$85,298)

EXHIBIT B

REIMBURSEMENT FOR FEEDER SERVICE

	<u>FY 2008-2009</u>
BROWARD COUNTY	\$666,666.66
MIAMI DADE COUNTY	666,666.66
PALM BEACH COUNTY	<u>666,666.66</u>
TOTAL	\$2,000,000.00
