

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	<b>April 7, 2009</b>	<input checked="" type="checkbox"/> [X]	<b>Consent</b>	<input type="checkbox"/> [ ]	<b>Regular</b>
		<input type="checkbox"/> [ ]	<b>Ordinance</b>	<input type="checkbox"/> [ ]	<b>Public Hearing</b>
<b>Department:</b>	<b>Palm Tran</b>				
<b>Submitted By:</b>	<b>Palm Tran</b>				
<b>Submitted for:</b>	<b>Palm Tran</b>				

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends a motion to approve: Interlocal Agreement with the City of Boynton Beach for the lease of four (4) wheelchair lift-equipped vans to be used to provide local transit service within the City of Boynton Beach for four (4) years from January 2, 2009 through January 1, 2013.

**Summary:** In the year 2000, the County obtained Federal funds for the purchase of four (4) wheelchair lift-equipped vans to be used by the City of Boynton Beach, Florida, for local specialized transit service within the City. By utilizing 100% Federal funds, the County purchased four (4) new vans. The City of Boynton Beach pays the County an annual lease fee of \$10.00 for the use of the vehicles. Countywide (DR)

**Background and Policy Issues:** Since 1995, the City of Boynton Beach has provided specialized transit service consisting primarily of shopping and nutrition trips from neighborhoods within the City that are not served by Palm Tran's regular fixed routes. The service utilizes four (4) wheelchair lift-equipped vans that were purchased for Boynton Beach using available federal funds. The vehicles have been consistently maintained and continue to be serviceable and in everyday use. The City wishes to continue to use the existing vehicles for their transit service. Palm Tran inspects the operation of this service annually and finds no problems with either the operations or maintenance program. Palm Tran counts the passengers transported on the Boynton system in its Federal reporting requirements and thus since the County's Federal apportionment is in part based on ridership, those passengers increase the County's annual apportionment.

**Attachments:** Interlocal Agreement with the City of Boynton Beach Florida (3 copies)

Recommended By: \_\_\_\_\_

Department Director

Date

Approved By: \_\_\_\_\_

Assistant County Administrator

Date


## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures					
Operating Costs					
External Revenues	<\$10.00>	<\$10.00>	<\$10.00>	<\$10.00>	
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<10.00>	<10.00>	<10.00>	<10.00>	
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Current Budget? Yes X No         
 Budget Account No.: / Fund 1340 Dep't. 540 Unit 5101 Object 6211  
 Program       

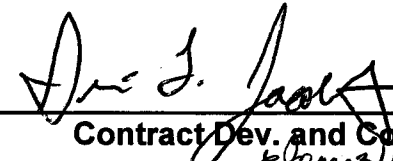
### B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:   
 John Murphy, Finance Manager

## III. REVIEW COMMENTS

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

 3-6-09  
 3/15/09 OFMB CN 3/2/09

 3/14/09  
 Contract Dev. and Control  
 E. Jones 3/10/09

### B. Legal Sufficiency:

This Contract complies with our  
contract review requirements.

 3/13/09  
 Assistant County Attorney

### C. Other Department Review:

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

R09-021

**INTERLOCAL AGREEMENT  
BETWEEN  
PALM BEACH COUNTY, FLORIDA  
AND  
THE CITY OF BOYNTON BEACH**

**THIS INTERLOCAL AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between Palm Beach County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners (referred to hereinafter as "County") and the City of Boynton Beach, a Florida municipal corporation, by and through its City Commission (referred to hereinafter as "City").

**WHEREAS**, on February 6, 2001, the parties entered into that certain Interlocal Agreement under which the County leased to the City five (5) transit coaches purchased by County through a United States Department of Transportation Federal Transit Administration grant; and

**WHEREAS**, the City of Boynton Beach has returned one (1) of the previously leased coaches to the County for disposal; and

**WHEREAS**, the City desires to enter into a new Interlocal Agreement (also referred to herein as "Agreement") to continue the lease and to operate the remaining four (4) coaches for an additional four (4) year period; and

**WHEREAS**, the County is willing to continue to lease the existing four (4) coaches currently used by City; provided, that, the City operate, maintain and use the coaches in accordance with the terms and conditions of this Agreement, the rules and regulations of the Federal Transit Administration and the U. S. Department of Transportation Federal Transit Administration Grant which provided the funds used by the County to procure the vehicles; and

**WHEREAS**, the City has agreed to operate the four (4) vehicles on a continuous basis during the term of this Agreement, and to use the coaches only to provide public transportation services.

**NOW, THEREFORE**, in consideration of the foregoing and the other mutual promises and covenants contained herein, the parties agree as follows:

**Section 1. Incorporation of Facts:** The facts set forth above in the preamble to this Agreement are true and correct.

**Section 2. Purpose:** The purpose of this Agreement is to set forth the various duties, rights, obligations and conditions of the agreement between the parties regarding the lease, operation, maintenance and use of four (4) County-owned transit coaches.

Section 3. **Representative:** The County's representative during the performance of this Agreement shall be the Executive Director of Palm Tran whose telephone number is (561) 841-4200. The City's representative during the performance of this Agreement shall be the City Manager, whose telephone number is (561) 742-6010.

Section 4. **The Project:** The County is the recipient of a grant, described in Section 5 below (referred to herein as "Grant" or "Grant Agreement"), authorized under the Federal Transit Act, as amended. The transit coaches leased hereunder are a part of the "rolling stock" identified in the Grant application. The acquisition of the rolling stock was funded, in part, through the Grant (No. FL-90-X386 Revised) described in this Agreement. The use of the transit coaches leased hereunder is also referred to as the "Federal Project" or "Project."

Section 5. **Receipt of Grant Agreement:** The City acknowledges receipt of a copy of the United States of America Department of Transportation Federal Transit Administration Grant Agreement FTA G-15, October 1, 2008 incorporating the terms of the Federal Transit Administration Master Agreement (FTA MA (15), October 1, 2008). City further acknowledges its receipt of all other award notifications from the FTA and/or the United States Department of Labor (DOL) containing special conditions or requirements applicable to the procurement, ownership, use, operation and maintenance of the vehicles. City acknowledges that it shall fulfill the obligations of the County, the FTA grant recipient, under the Grant as City's activities relate to the use, maintenance, operation or possession of the transit coaches. City shall act in conformity with the requirements of the Grant, and shall not take any act or fail to take any act which would cause the County to be in breach of any of County's obligations under the Grant.

Section 6. **Lease:** County will continue to lease to City four (4) twenty-five foot (25') El Dorado transit coaches procured by County for the purposes described in this Agreement for an additional four (4) year period. Said four (4) vehicles have been identified by the parties, accepted by the City, and described on the form attached as Exhibit A to this Interlocal Agreement. City will pay to County an annual lease fee of Ten Dollars (\$10.00) for all leased vehicles. The first payment shall be due immediately after the parties' execution of this Agreement. Thereafter, all payments shall be due and payable to County on or before the first day of each year of the remainder of the lease term. City will remit to County over the term of the lease a total lease fee in the amount of Forty Dollars (\$40.00).

Section 7. **Use and Operation of Transit Coaches:** The coaches shall be used and operated solely for the benefit of the general public, and to provide public transportation to the general public, on a non-exclusive basis. The vehicles shall be used solely for fixed-route or other specialized transit service approved by County. None of the transit coaches may be chartered or used in any type or form of charter service but may be used for incidental transportation services for the City of Boynton Beach; provided, that, such use does not interfere with the service approved by the County and is in compliance with the rules and regulations of the Federal Transit Administration, State and Federal laws and the Grant. The City shall operate and use the transit coaches by providing services on

certain Boynton Beach routes approved by the County's representative, as part of the County's public transit system. The vehicles may be used for other public transit services only if the City has obtained the prior written approval of the County's representative. The coaches shall be operated within the City's geographic limits or such other areas, approved by the County, so long as such areas are not outside of the County's geographic boundaries. The City shall advise the County's representative of any proposed alterations to the transit services, for which the transit coaches are utilized, including but not limited to routing, mode(s) of operation, hours of service or headways. Alterations in service shall be approved by the County's representative prior to implementation, in accordance with the County's policy regarding changes to services. If a public hearing is required to implement a service alteration or change in fare, then such can be implemented only after the Palm Tran Service Board or County's Board of County Commissioners (BCC), as appropriate, has concluded its public hearing process and approved the change.

**Section 8. Title, Risk of Loss and Registration of Vehicles:** Title to the transit coaches is vested in the County and shall remain vested in County during the term of this Agreement. County holds the title to the transit coaches in accordance with and subject to all conditions and requirements of the Grant. City agrees to use, operate and maintain the transit coaches in accordance with the terms, conditions and requirements of the Grant, this Agreement, and all other FTA requirements applicable to their use. City shall bear all risk of loss or damage to the transit coaches during the term of this Agreement, and upon the Agreement's expiration or earlier termination, City shall continue to bear such risk until the coaches have been returned to and accepted by County. County will register the motor vehicles leased hereunder and will maintain such registrations during the term of this Agreement. Each motor vehicle license plate will show that the holder of the registration and license is the County. City shall conduct, at its sole expense, any inspections or tests required for the renewal of any leased vehicle's motor vehicle registration. Notwithstanding the County's obligations hereunder, no liability will accrue to County if County shall fail to renew any registration in a timely manner.

**Section 9. Encumbrances:**

A. City shall provide and promptly pay for all labor, materials and equipment necessary for the provision of the general public transportation services described in Section 7. of this Agreement. City shall not grant any security interest in the transit coaches to any person, transfer its interest in this lease of the coaches, in whole or in part, to any other entity, nor shall it permit any lien, claim, or other encumbrance to be filed against the transit coaches or action to be taken against the County on account of any labor, service, good, material, or equipment furnished or installed upon any transit coach leased hereunder.

B. City shall not transfer, assign or sublease the vehicles nor allow any other entity to use or operate the vehicles, without first obtaining the written consent of the County. Moreover, County shall be made an intended third

party beneficiary to any sublease, assignment, use agreement, or other arrangement which grants or endeavor to grants, to any third party, a right to use, operate, occupy, possess or enjoy the transit coaches. If City shall enter into any type of arrangement with a third party, such arrangement shall provide that the County has the right to compel the City to enforce any of the City's rights under such arrangement, and the right to initiate any action, at law or in equity, directly against any sublessee, subcontractor, assignee, or any other party with an interest derived from or through the City's interests hereunder.

C. In addition, City shall require any sublessee, assignee, user, operator, and any other party to whom it gives permission to use, operate, occupy, possess, or enjoy the transit coaches to subrogate any rights or interest they may have in the transit coaches to the rights and interests of the County. No third party shall acquire any rights in the vehicles which exceed those granted to the City hereunder. The City represents and warrants to the County that it shall furnish a copy of this Agreement and the Grant Agreement to any third party to whom it conveys, attempts to convey or grants any interest in or right to use, operate, occupy, possess or enjoy the transit coaches.

D. City shall be responsible for and shall reimburse County for any and all costs and expenses incurred by County relating, in any fashion, to the enforcement of this provision. City shall not take any action which would adversely affect County's interest in the transit coaches or make the County liable to any other entity or third party.

**Section 10. Repairs and Maintenance:** The City is solely responsible for all service, repairs and maintenance of the transit coaches and all equipment located thereon. City shall maintain the transit coaches and equipment in accordance with the manufacturer's mechanical operating and maintenance standards, and State and Federal safety laws and regulations. All maintenance shall be performed in accordance with the manufacturer's suggested maintenance schedule by appropriately certified or accredited mechanics, at City's sole expense. Only parts (including tires) and equipment meeting the manufacturer's specifications shall be installed on the transit coaches. City shall insure that the transit coaches, and all transit stops, shelters and bus benches utilized by the coaches and/or authorized or permitted by City are fully accessible to the disabled, and that all are used, operated, equipped and maintained in conformance with the Americans with Disability Act of 1990, as it may be amended from time to time, and all federal rules and regulations implementing the Act.

**Section 11. Operators:** Each transit coach shall be operated only by safe, careful and legally qualified drivers having a proper license. All drivers will have and maintain a commercial driver's license and any other license or certification required by any law, rule or regulation relating, in any manner, to the operation of the transit coaches. City shall develop and implement a drug and alcohol testing program that is fully compliant with 49

C.F.R. Parts, 40 and 655, as they may be amended from time to time, and all other rules, regulations, and policies of the U.S. Department of Transportation, Federal Transit Administration. All drivers shall be selected, employed, controlled and paid by the City, and conclusively presumed to be the employees of the City. The parties agree that no liability shall inure to County as a result of any act or omission of City or its drivers.

Section 12. **Base Fare:** The City may establish a base fare for the service provided hereunder upon notice of such to the County. The City agrees that the elderly and the disabled will be permitted to board and ride the transit coaches at a rate of one-half the effective base fare. Any police officer wearing his/her uniform will be permitted to ride free. Children who met the age guidelines established by the County, as they may be amended from time to time, will be permitted to ride free. City shall not increase its base fare unless the increase has been approved by the County and a public hearing held as provided in Section 7 of this Agreement.

Section 13. **Routes:** The coaches leased hereunder will be utilized to provide specialized fixed route transit services approved by the County. One coach will be used as a spare or back-up vehicle.

Section 14. **Right of Continuing Control:** City acknowledges and understands that the County, as a recipient of the Grant, has a continuing obligation to the FTA to maintain, use and control the transit coaches. Accordingly, if at any time, the County shall determine, in its sole discretion, that the use of the coaches is not in accordance with the terms and conditions of this Agreement or the Grant Agreement, that the use does not comply with any state, federal, County, or municipal law, regulation or rule, that the use does not constitute a valid public purpose, or that the vehicles should be placed into service elsewhere in the County's public transit system, the City shall, upon the request of County, discontinue its use (including any use being made by a subcontractor, sublessee, assignee, and any other party with a right to operate, use, enjoy, or possess one or more vehicles), and immediately return the coaches to County, at a location so designated by County. No liability shall inure to County as a result of any such determination by it and/or the early termination of this Agreement.

**Section 15. Notice of Accidents, Injuries and Suits:**

A. In the event any of the transit coaches furnished hereunder are involved, directly or indirectly, in an accident or any passenger or waiting passenger sustains an injury to property or person, including death, the City agrees to immediately notify its insurer and County of such accident or injury. Upon the request of County, the City will provide all information relative to the accident or injury, including but not limited to the date, time, place, and circumstances, the names and addresses of the people involved, the owners of property damaged, description and value of property damaged, and the name and address of the driver and any witness.

B. City shall promptly notify and deliver to County, copies of any and all papers, notices, summonses, processes and any other document whatsoever, served upon or delivered to it or its agents or employees in connection with any claim, suit, action or proceeding at law or in equity commenced or threatened against City and/or County arising out of or related to the ownership, maintenance, use or operation of any transit coach.

C. The City agrees to fully cooperate with the County or Palm Tran in any investigation either may conduct, the defense of any claim or suit in which the County or Palm Tran is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Section 16. **Standard of Care:** The City shall cause the transit coaches to be operated with reasonable care and precaution to prevent loss and damage because of negligent or reckless use, abuse, fire, theft, collision, or injury to persons or property.

Section 17. **Compliance with Rules, Regulations, etc.:** The City and its drivers shall comply with all regulations now or hereafter implemented, promulgated or adopted by the County, U.S. Department of Transportation Federal Transit Administration, Florida Department of Transportation, and any other governmental entity regulating the use, maintenance and operation of the transit coaches and/or their operators. The City shall have in effect during the term of this Agreement, a System Safety Plan which shall be fully compliant with Florida law and shall be implemented in accordance with the rules and regulations of the Florida Department of Transportation. The transit coaches shall not be used in violation of any federal, state, county or municipal statute, law, ordinance, rule or regulation applicable to their operation.

Section 18. **Americans with Disabilities Act:** City shall insure that the vehicles (including all transit stops, shelters and/or benches utilized by the coaches and/or authorized or permitted by City) are accessible to the disabled, and that they are operated, equipped, and maintained in conformance with the Americans with Disabilities Act of 1990 (ADA), as it may be amended from time to time, and all federal rules and regulations implementing the Act. City shall indemnify and hold harmless, to the fullest extent of the law, County from any and all liability which may or shall inure to County, as a result of County's ownership of the vehicles or the City's use, operation, or maintenance of the transit coaches, including County's role as the public entity operating a fixed route system, or as a result of any failure on the part of the City, its officers, employees, servants, agents, contractors or any other party acting on behalf of or under the authority of the City, to comply with the ADA, its implementing rules and regulations or this Agreement.

Section 19. **Inspections:** The City agrees that the transit coaches and the areas where they are operated, kept, or maintained, and all parts' inventories, insurance policies, maintenance and complaint records or logs, and all other records, shall be available for inspection by the County or Palm Tran at any time during normal business hours. City shall also make the transit coaches available to County or its contractors, for the installation of



any equipment deemed necessary for public transportation services by County, or upon County's request, City shall install, at its sole cost and expense, any transit related equipment provided to City by County. City shall also make the coaches available, on at least an annual basis, for inspection by the Florida Department of Transportation and shall take all necessary acts to facilitate their inspection and to obtain a satisfactory result. Notwithstanding the foregoing, the City is solely responsible for the operation and maintenance of the transit coaches and all equipment located thereon. City acknowledges that County has no obligation to furnish or install any transit-related equipment. Rather, such duty or obligation is vested solely with the City during the lease term. Nothing contained in this Agreement shall be construed to relieve the City of its obligations under this Agreement.

Section 20. **Condition of Vehicles:** The City will, at all times and at its sole expense, keep the transit coaches in good working order, condition and repair, and shall upon expiration of this Agreement, or its earlier termination, deliver the transit coaches and all transit-related equipment to County, in the same condition as received, less reasonable wear and tear, and free from collision and damage. This obligation shall include the removal and replacement of any paint not compatible with County's color scheme for its transit vehicles. All costs to restore and return the coaches to County shall be borne solely by City. County shall have the right to inspect the coaches prior to their return. If County shall refuse, in its sole discretion, to accept the condition of the vehicles, City shall immediately, at its sole cost and expense, undertake and remedy all deficiencies noted by County.

Section 21. **Disclaimer of Warranty:** It is understood between the parties that the County is not the manufacturer of the transit coaches or equipment associated therewith, nor the agent of the manufacturer, and that no warranty against patent or latent defects in material, workmanship, or capacity is given. The County does not warrant the transit coaches and equipment furnished hereunder as being fit for a particular purpose. No oral or written advice from County or any of its officers or employees whether given before or after delivery of the vehicles shall create a warranty, and City is not entitled to rely on any such advice or information.

NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE GIVEN. ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. COUNTY SHALL NOT BE LIABLE FOR ANY GENERAL, SPECIAL, DIRECT OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS, SAVINGS OR OTHER CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES ARISING OUT OF THIS AGREEMENT. COUNTY SHALL NOT BE LIABLE FOR ANY CLAIM FOR DAMAGES, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY OR PROPERTY DAMAGE, BASED UPON A CLAIM IN CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY OR BREACH OF WARRANTY.

**Section 22. Hold Harmless and Indemnification:** To the extent permitted by law, the City agrees to protect, defend, reimburse, save, indemnify and hold the County, Palm Tran, Inc., their successors or assigns, and their respective directors, officers, employees, servants and agents, free and harmless at all times from and against any and all suits, actions, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature arising out of City's use, possession, operation or maintenance of the transit coaches, and whether directly or indirectly caused, occasioned or contributed to, in whole or in part, by reason of any act, omission, fault or negligence whether active or passive, of City or anyone under its direction or control, or on its behalf. City's hold harmless and indemnity obligations shall apply to the fullest extent permitted by law, but shall not apply to liability caused solely by the negligence or willful misconduct of the County. City's obligations hereunder shall include and encompass any liability which may inure or accrue to County under the Florida Dangerous Instrumentality Doctrine as a result of County's retention of title to the leased vehicles.

**Section 23. 13(c)Responsibility:** City further agrees that it shall be responsible for any and all costs and expenses, including but not limited to employee benefits, salaries, attorneys' fees and costs, which either party may be responsible for under the Labor Agreement Between Florida Transit Management, Inc., and its assignees and the Amalgamated Transit Union Local Division 1267 dated July 29, 1975 (commonly known as and also referred to herein as the "13(c) Agreement"), and/or responsible for by virtue of the terms and conditions of any U.S. Department of Labor certification or the application of 49 U. S. C. Section 5333(b) as it may be amended from time to time, to the funding, acquisition, operation, maintenance or use of any transit coach provided hereunder, including any reduction or cessation of use and the expiration of this Agreement.

**Section 24. Insurance:** The City agrees to insure the transit coaches for fire, theft, bodily injury and death, property damage, collision and liability and to maintain such coverage during the term of this Agreement and any renewal thereof in accordance with the following requirements:

A. All insurance policies shall be issued by companies authorized to do business in the State of Florida. City shall furnish certificates of insurance to the County's representative prior to its receipt of the transit coaches. The certificates shall clearly indicate that the City has obtained insurance of the type, amount, and classification as required for strict compliance with this section, and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County's representative. Compliance with the foregoing requirements shall not relieve the City of its liability and obligations under this Agreement.

B. The City shall maintain during the life of this Agreement, and any renewal thereof, comprehensive automobile liability insurance in the minimum amount of five hundred thousand dollars (\$500,000.00) per occurrence to protect the City from claims for damages for bodily and personal injury, including death,

as well as from claims for property damage, which may arise from the lease, use, maintenance or operation of the transit coaches, whether such use, maintenance or operation be by the City or by anyone directly or indirectly employed by the City. Upon the request of County, City shall increase the policy limits and/or expand the coverage, if the County determines, in its sole discretion, that such is necessary.

C. The City shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees, or shall provide proof of adequate self-insurance.

D. All insurance other than Workers' Compensation to be procured and maintained by City shall specifically include the County and Palm Tran, Inc., and their successors or assigns as "additional insureds."

In no event, shall anything contained herein act as a waiver of the immunities granted to cities and counties under the Florida Constitution and Section 768.28, Florida Statutes.

**Section 25. Effective Date, Term and Renewal:** This Agreement shall take effect upon January 2, 2009, and shall remain in full force and effect for a period of four (4) years, expiring on January 1, 2013, unless sooner terminated as provided herein.

**Section 26. Default and Termination:** Should the City decide to discontinue the public transportation services contemplated hereunder, the City will notify the County of such discontinuance, at least sixty (60) days prior to the effective date of the discontinuance, and deliver the transit coaches to County, in the manner and to the place specified by County, no less than five (5) days after discontinuance of service. The County may terminate this Agreement with cause immediately upon three (3) days written notice to the City. The County may terminate this Agreement for its convenience and/or without cause upon notice to the City at least sixty (60) days prior to the effective date of the termination. Notwithstanding anything set forth in this section, nothing contained herein shall affect or diminish, in any manner, the County's right to immediately terminate this Agreement under Section 14 of this Agreement. No liability will accrue to County for termination under said Section 14 or termination for convenience or without cause. City acknowledges that no damage shall accrue to it as a result of the termination of this Agreement and hereby releases and expressly waives any claim or cause of action that it has, had or might have against the County for County's termination of the Agreement regardless of the reason for termination.

**Section 27. Compliance with Federal Regulations:** The City agrees to abide by all U.S. Department of Transportation - Federal Transit Administration (FTA) regulations and requirements regarding federally assisted projects and grants, and agrees to rectify any deficiencies found by the County or federal review compliance officials upon notice of such deficiencies from the County or federal review compliance officials, including all such

regulations or requirements adopted after the execution of this Agreement.

**Section 28. Preparation of Certifications, Documents and Reports:** Should the County be required by the FTA or the U.S. DOT or any other agency of the federal government to provide any certifications, documents or reports related in any manner to the Project, the City will cooperate and assist the County with the preparation of such certifications, documents or reports, or prepare and furnish any such certifications, documents or reports requested by County. The City shall provide any and all reports, documents or surveys required for the National Transit Database referenced by the Federal Transit Act, as amended, and the implementing rules and regulations of the FTA. These reports shall include, but are not limited to, random surveys of selected fixed-route trips, daily accounting of revenue and non-revenue hours and miles, passenger counts, and any other information deemed necessary by County for the complete performance of the National Transit Database (NTD) Report required by the FTA. City shall provide such information, data or reports on a monthly basis. City shall submit the information, data or reports, in the form required by County, on or before the 10<sup>th</sup> day of each month for the immediately preceding month. Upon County's request, City agrees to cooperate and assist County with the preparation and filing of any additional material relating to County's Complementary Paratransit Plan or the provision of paratransit services. City shall immediately provide County with all information and documentation needed for inclusion in the Plan.

**Section 29. Interest of Members or Delegates to Congress & No Influence:**

A. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

B. The City certifies that to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the Grant, or a loan or

cooperative agreement, the City shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying," in accordance with its instructions.

3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction as imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Section 30. Labor Provisions for Non-Construction Contracts:**

A. Overtime Requirements: City shall not require or permit any laborer or mechanic, in any work week in which he or she is employed to work on the Project, to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty hours in such work week.

B. Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clauses set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5, the City shall be liable for the unpaid wages. In addition, the City shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clauses set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5 in the sum of \$ 10.00 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5.

C. Withholding for Unpaid Wages and Liquidated Damages: County shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any monies payable on account of work performed by City, such sums as may be determined to be necessary to satisfy any liabilities of City for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b)(2) of 29 C.F.R. Section 5.5.

D. Non-Construction Grants: The City shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Agreement for all laborers

and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, County shall require the City to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available for inspection, copying, or transcription by authorized representatives of the U.S.D.O.T. and the Department of Labor, and the City will permit such representatives to interview employees during working hours on the job.

E. Subcontracts: The City shall insert in any subcontracts the clauses set forth in subparagraphs A. through E. of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The City shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs A. through E. of this section.

Section 31. **Charter Service:** City shall comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," (*i.e.*, it must not interfere with or detract from the provision of mass transportation.)

Section 32. **School Bus Operations:** In accordance with 69 U.S.C. 5323(f) and 49 C.F.R. Part 605, City shall not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions.

Section 33. **Energy Conservation:** The City agrees to comply with mandatory standards and policies relating to energy which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 34. **Clean Water:** The City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et. seq.* The City agrees to report each violation to the County and understands and agrees that the County will, in turn report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. The City agrees to include this requirement in any subcontract exceeding \$100,000.00 financed in whole or in part with Federal assistance provided by the FTA.

Section 35. **Access to Records:**

A. The City agrees to provide County, the FTA, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the City which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The City agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The City agrees to maintain, in Palm Beach County, Florida, all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the City agrees to maintain same until the County, the FTA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

Section 36. **Federal Changes:** City shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the County's Grant Agreement with the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. City's failure to comply shall constitute a breach of this Agreement.

Section 37. **Recycled Products:** The City agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

Section 38. **No Federal Government Obligation:**

A. City and County acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of any underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities of the County, City, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from an underlying contract.

B. The City agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Section 39. Program Fraud and False or Fraudulent Statements:**

A. The City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Upon execution of this Agreement, the City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA assisted project for which this Agreement is being performed. In addition to other penalties that may be applicable, the City further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the City to the extent the Federal Government deems appropriate.

B. The City also acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under 49 U.S.C. Section 5307, the government reserves the right to impose the penalties of 18 U.S.C. Section 1001, and 49 U.S.C. Section 5307 (n)(1) on the City to the extent to the Federal Government deems appropriate.

C. The City agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Section 40. Civil Rights:**

The following requirements apply to this Agreement:

A. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the City agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the City agrees to comply with applicable Federal implementing regulations and any other implementing requirements FTA may issue.

B. Equal Employment Opportunity: Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42



U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the City agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract compliance programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The City agrees to take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the City agrees to comply with any implementing requirements FTA may issue.

Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the City agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the City agrees to comply with any implementing requirements FTA may issue.

Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the City agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the City agrees to comply with any implementing requirements FTA may issue.

C. The City agrees to include the above-stated requirements in each subcontract financed, in whole or in part, with Federal assistance provided by FTA, modified only as necessary to identify the affected parties.

**Section 41. Incorporation of FTA Terms:** This Agreement contains certain standard terms and conditions required by U.S. DOT. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1 E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The City shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause the County to be in violation of FTA terms and conditions. City

will immediately remedy any deficiencies found by County or federal review compliance officials upon notice of such deficiencies.

**Section 42. Privacy Act:** The City agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. Section 552a. Among other things, the City agrees to obtain the express consent of the Federal Government before the City or its employees operate a system of records on behalf of the Federal Government. The City understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The City agrees to include these requirements in each subcontract, to administer any system of records on behalf of the Federal Government, financed in whole or in part with Federal assistance provided by FTA.

**Section 43. Disadvantaged Business Enterprises:**

A. It is the policy of the U.S. Department of Transportation and County that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed, in whole or in part, with federal funds. County is committed to the implementation of 49 C.F.R. Part 26 through its approved Disadvantaged Business Enterprise Program. Consequently, the DBE requirements of 49 C.R.R. Part 26, as amended, apply to this Agreement, and to the extent applicable, City agrees to comply with current U.S. DOT regulations at 49 C.F.R. Part 26, including any amendments that may be made to those regulations during the term of this Agreement.

B. The City and any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The City shall carry out the applicable requirements of 49 C.R.R. Part 26 in the award and administration of DOT assisted contracts. Failure by the City to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the County deems appropriate.

**Section 44. Transit Employee Protective Agreements:** The City agrees to carry out the transit operations work on the underlying contract in compliance with the terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees providing services or employed under this Agreement, and to meet the employee protective requirements of 49 U.S.C. 5333(b), and DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL applicable to County's Grant Agreement with the FTA related to this Project. The City agrees to carry out the work in compliance with the conditions stated in the DOL letter, and further agrees that it shall extend and provide to

its transit employees the same protections afforded to employees of Palm Tran under the 13(c) Agreement, a copy of which has been received by the City.

**Section 45. Minimum Requirements/Incorporation of FTA Terms:** All limits or standards set forth in the Grant Agreement are minimum requirements. In the event the standards or requirements of this Agreement exceed those of the Grant Agreement, City shall comply with the requirements of this Agreement. Moreover, all contractual provisions required by FTA, as set forth in Circular 4220.1 E, as it may be revised from time to time, are hereby incorporated into this Agreement by reference. Notwithstanding anything contained herein to the contrary, all FTA mandated terms and conditions, including those which the County becomes subject to under future grants from the FTA, shall be deemed to control in the event of any conflict or inconsistency with the provision of this Agreement. The City shall not perform any act, fail to perform any act, or refuse to comply with County requests which would cause County to be in violation of any FTA term, condition or requirement. City's failure to comply with any such FTA term, condition or requirement shall be deemed a material breach of contract.

**Section 46. Notice of Changed Conditions:** City agrees to notify County of any change in its ordinances or of conditions or events that may affect its ability to use the transit coaches in accordance with the terms of the Grant Agreement and this Agreement.

**Section 47. Drug and Alcohol Testing:** City agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 40 and 655, as they may be amended or replaced from time to time; to produce any documentation necessary to establish its compliance with parts 40 and 655; and to permit any authorized representative of the U.S. DOT or its operating administrations, the State Oversight Agency of the State of Florida, or County to inspect the facilities and records associated with the implementation of the drug and alcohol testing program and to review the testing process. The City agrees further to certify annually its compliance with Parts 40 and 655 before a date to be set by County's representative and to submit Management Information System (MIS) reports before a date to be set by County's representative (before March 15). City shall certify compliance by using the "Substance Abuse Certification in the Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements", which is published annually in the Federal Register.

**Section 48. Maintenance and Availability of Records:** The City shall maintain all records pertaining to the use, operation, maintenance, etc. of the transit coaches for at least three (3) years. Such records shall be made available to the County, the U.S. Office of Inspector General and the U.S. DOT and FTA. The City further agrees to comply with the requirements of Chapter 119, Florida Statutes.

**Section 49. Prohibition of Discrimination:** The City represents and warrants that it will not discriminate in its performance of this Agreement and that its employees and members of the general public utilizing this public transportation will be treated equally and without regard to race, sex, sexual orientation, gender identity or expression, color, religion,

disability, handicap, age, marital status, national origin or ancestry.

Section 50. **Assignment:** Neither this Agreement nor any interest herein shall be assigned, transferred or otherwise encumbered, in whole or in part, by City without the prior written consent of County. Moreover, City shall not convey, assign or otherwise encumber the lease granted hereunder or any lesser interest arising out of the lease, except as expressly permitted in Section 9 of this Agreement.

**Section 51. No Agency Relationship:**

A. Nothing contained herein shall create an agency relationship between City and County, or City and Palm Tran, Inc.

B. City acknowledges and affirmatively represents, warrants and asserts that it is familiar with the terms and conditions of this Agreement, and that in the performance of the Agreement and/or in any other act, relationship or role that it has or may have with the County or Palm Tran, Inc., related to or arising out of the Agreement, that it is and shall at all times be an independent contractor and not an agent or servant of the County or Palm Tran, Inc. City acknowledges that it has no authority, either express or implied, to hold itself out as a servant or agent of the County or Palm Tran, Inc. or to represent that it is an agent or servant of the County or Palm Tran, Inc. City agrees that it shall not convey or suggest, in any manner whatsoever, to any person or entity (*i.e.*, third party), that it has any authority, either real or apparent, to act for or on behalf of or as agent of the County or Palm Tran, Inc. Accordingly, City shall at no time claim, assert, infer or suggest, in any way whatsoever, in any public or private statement whether made in any public meeting, deposition, interrogatory, hearing, trial or appeal, that it is an agent or servant of the County or Palm Tran, Inc., or that the County or Palm Tran, Inc. has control over City's day-to-day operations or the conduct of its business, employees, officers, servants or agents.

C. City affirmatively acknowledges and represents that it, in the performance of this Agreement and without the direction or control of County or Palm Tran, Inc., will select, hire, train, place, supervise, discipline, terminate, compensate and reward its employees; that it has determined the manner by which it will perform, including the site(s) from which the work will be performed; and that the facility it will utilize to perform will be owned and controlled by it and under its care and control.

Section 52. **Remedies:** This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement 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.

Section 53. **Enforcement Costs:** Any costs or expenses, including reasonable attorney fees, associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to this Agreement.

Section 54. **No Waiver:** No waiver of any provisions of 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.

Section 55. **Captions:** The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

Section 56. **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 constraint, be construed more severely against one of the parties than the other.

Section 57. **Severability:** Should any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement.

Section 58. **Notice:** All written notices required under this Agreement shall be sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

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

And, if sent to the City shall be mailed to:

City Manager  
City of Boynton Beach  
100 East Boynton Beach Boulevard  
Boynton Beach, FL 33435

Each party may change its address upon notice to the other.

Section 59. **Entirety of Contract and Modifications:** The County and City agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. No modification, amendment or alteration in the terms or conditions contained herein shall be effective

unless contained in a written document executed with the same formality and equality of dignity herewith.

Section 60. **Survivability:** Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement, shall survive its expiration or earlier termination.

Section 61. **Execution:** This document shall be executed in four (4) counterparts, each of which shall be deemed an original.

Section 62. **Filing:** A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

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

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on the day and year first written above.

ATTEST:  
Sharon R. Bock, Clerk & Comptroller

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

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

By: \_\_\_\_\_  
Chairman

ATTEST:

CITY OF BOYNTON BEACH

By: Janet M.  
Clerk



By: Jerry Taylor  
Mayor

APPROVED AS TO FORM:

[Signature]

CITY ATTORNEY

Approved as to Form  
and Legal Sufficiency

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

Approved as to Terms  
and Conditions

[Signature]  
Chuck Cohen, Executive Director  
Palm Tran