

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date:	September 9, 2014	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
Department:	Palm Tran	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

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I. EXECUTIVE BRIEF

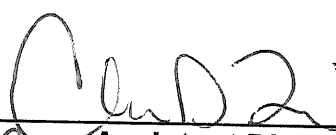
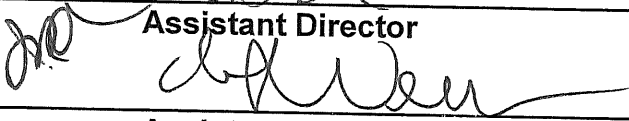
Motion and Title: Staff recommends motion to approve: a Funding Agreement in the amount of \$1,127,097 between the City of Boca Raton and the Board of County Commissioners of Palm Beach County, Florida (BCC) for enhanced bus service between the Boca Raton Tri-Rail Station, Florida Atlantic University (FAU), Palm Beach State College (PBSC), the FAU Research and Development Park campus, and Federal Highway for the three (3) year period of October 1, 2014 through September 30, 2017.

Summary: On December 7, 2010 the Board of County Commissioners of Palm Beach County, Florida (BCC) approved a three (3) year Agreement with the City of Boca Raton (R2010-2039) to provide funding for enhanced bus service on Route 94. On December 17, 2013, the BCC approved an Amendment (R2013-1849) extending the Agreement for one (1) year. This Funding Agreement extends that partnership for an additional three (3) years and provides the financial support necessary to allow Palm Tran to continue providing enhanced bus service during peak hours on Route 94 between the Boca Raton Tri-Rail Station, FAU, PBSC, the FAU Research and Development Park campus, and Federal Highway in Boca Raton. The total cost to operate this service is \$1,444,996. The City of Boca Raton will pay 78% or \$1,127,097 which is a 45% increase above that provided under the 2010 Agreement. Palm Tran will fund the remaining 22%. Base service for this route is sixty (60) minute frequency throughout the day; enhanced bus service increases service frequency to twenty (20) minutes during the morning and afternoon peak periods. District 4 (DR)

Background and Justification: Since 2007, and pursuant to previous Agreements (R2007-2302, R2009-0688, R2010-1934) with the South Florida Regional Transportation Authority (SFRTA), the City of Boca Raton, and through the use of Job Access Reverse Commute (JARC) grant funding, Palm Tran has been providing enhanced bus service between the Boca Raton Tri-Rail Station and the FAU/PBSC campus in order to better meet the twenty (20) minute frequency of SFRTA trains and the transportation needs for local students.

Attachment: Funding Agreement with the City of Boca Raton for Bus Service (3 copies)

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Recommended By:		8/27/14
	Assistant Director	Date
Approved By:		9/5/14
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Grant Expenditures					
Operating Costs	\$469,324	\$483,404	\$492,268		
External Revenues	(364,650)	(375,590)	(386,857)		
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	\$104,674	\$107,814	\$105,411		
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Proposed Budget? Yes No
 Budget Account No.: Fund 1340 Dep't. 540 Unit 5101 Object 4490
 Program _____ Reporting Category _____

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

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

III. REVIEW COMMENTS

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

[Signature]
 OFMB
 8/29

[Signature] 9/13/14
 Contract Dev. and Control
 9-2-14 *[Signature]*

B. Legal Sufficiency:

[Signature] 9/4/14
 Assistant County Attorney

C. Other Department Review:

 Department Director

FUNDING AGREEMENT
Between
THE CITY OF BOCA RATON
And
BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA
For

**THE FUNDING OF BUS SERVICE BETWEEN: THE BOCA RATON TRI-RAIL STATION;
THE FLORIDA ATLANTIC UNIVERSITY (FAU) AND PALM BEACH STATE COLLEGE (PBSC) CAMPUS; FAU REASEARCH AND DEVELOPMENT PARK; AND, FEDERAL HIGHWAY**

THIS FUNDING AGREEMENT is made and entered into this ___ day of _____, to commence effective October 1, 2014, by and between the CITY OF BOCA RATON, a, Florida municipal corporation, its successors and assignees, (hereinafter referred to as "City") and 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").

WITNESSETH:

WHEREAS, Palm Beach County has, pursuant to previous agreements with the City, been providing enhanced bus service between the Boca Raton Tri-Rail Station, the Florida Atlantic University (FAU) campus and Palm Beach County State College campus and Federal Highway; and

WHEREAS, the City and Palm Beach County each desires to continue the enhanced bus service for an additional three (3) years.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, **City and Palm Beach County** agree as follows:

ARTICLE 1 – SERVICES TO BE PROVIDED BY PALM BEACH COUNTY

1.1 Scope of Services: Palm Beach County, through its public transit system, Palm Tran, (referred to hereinafter as "Palm Tran") will continue to operate the enhanced service on Palm Tran Route 94, (which would otherwise be serviced by one (1) bus), by providing up to two (2) additional air conditioned, fully enclosed, ADA compliant and bike rack equipped buses (also referred to herein as the "Buses") that Palm Tran will operate weekdays on Route 94. Route 94 runs between the Tri-Rail Boca Raton Station on Yamato Road, the FAU Campus, the PBSC Campus, the FAU Research and Development Park (R&D) and Federal Highway.

1.2 Hours of Operation: Palm Beach County will endeavor to operate the Buses on a twenty minutes all-day service frequency on weekdays between the hours of 6:00 a.m. in the morning and 9:00 p.m. in the evening, excluding mid-day service which may be provided on an hourly or less than hourly basis as determined appropriate by Palm Beach County. The increased bus service, which is anticipated to be approximately the equivalent of one and one third (1/3) Buses for approximately 15.25 hours of additional service per day, may be amended upon the agreement of both City and Palm Tran to accommodate changes in usage patterns, the SFRTA Tri-Rail train schedule and school or work hours. The route is to be designed so as to enable the Buses to make regularly scheduled stops at designated locations within the assigned route and provide sufficient time for riders to meet out-bound trains.

1.3 Bus Route: The Buses will provide public transportation fixed route services between the Boca Raton Tri-Rail Station, the FAU Campus, the PBSC Campus, the FAU Research and Development Park (R&D) and Federal Highway (US 1). [referred to herein as the "Service" or "Bus Service"]. The bus route may be amended from time to time, at the discretion of Palm Beach County, with written notification to City. Alterations in Service are to be implemented in accordance with Palm Tran's policy regarding changes to service. If a public hearing is required to implement a service alteration or change in fare, then such may not be implemented until Palm Tran's Service Board or Palm Beach County's Board of County Commissioners, as appropriate, has concluded its public hearing process and approved the change.

1.4 Fares: The applicable Palm Tran fares or transfers will apply; except that on route 94 only FAU, PBSC, and Research Park students and for employees presenting valid I.D.s will not be charged.

1.5 Equipment Identification: The Buses will be identified as Palm Tran Route 94.

1.6 Signage: Palm Tran shall provide signage for each bus stop designating the stop as one on Palm Tran Route 94. Bus stops shall be identified and announced in accordance with Palm Tran's procedures for bus stop announcements.

1.7 Bus Stop locations: Bus stop locations may be changed, added or deleted by Palm Tran after consultation with the City.

1.8 Buses: If Palm Tran determines that it is necessary to remove a bus from the Service contemplated hereunder as a result of an incident or mechanical problem, Palm Tran will make a spare bus available from its fleet of public transit vehicles. Palm Tran will maintain a spare ratio that conforms to the Federal Transit Administration's (FTA) requirements applicable to it as an operator of a fixed route public transit system.

ARTICLE 2 – TERM OF AGREEMENT, PAYMENT, ETC.

2.1 This Agreement shall become effective as of October 1, 2014 upon execution by the parties. The term of this Agreement shall be for three (3) years from the effective date.

2.2 City agrees to contribute \$364,650 to fund the operations of the Bus Service contemplated hereunder for the initial year of this Agreement, \$375,590 during the second year and \$386,857 during the third year.

2.3 Payment of the annual amount for the initial year shall be made to Palm Beach County within ninety (90) days from the date of execution of this Agreement by both parties, and thereafter, on October 1 of each subsequent year, without invoice or other action by Palm Beach County.

2.4 The parties acknowledge that **City's** and **Palm Beach County's** obligations hereunder for the continuation of the Bus Service described in this Agreement, beyond the initial one (1) year term, is not assured. The continuation of this Agreement and each party's performance of its duties and obligations hereunder are subject to **Palm Beach County's** receipt of FTA grant funds and an annual appropriation by each party sufficient to fund the purposes of this Agreement. Each party's decision to appropriate is subject to their discretion and may be made for any reason or no reason at all.

2.5 No Waiver of Sovereign Immunity and No Obligation. to Third Parties. Nothing contained in this Agreement shall be construed as a waiver of either party's sovereign immunity as set forth in Section 768.28, F.S. Moreover, this Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the **City** or **Palm Beach County**. Nothing contained herein shall be deemed to constitute an imposition or acceptance of any obligation or liability, by either party, not otherwise imposed by the express and unequivocal language of this Agreement.

2.6 How Agreement Is Affected by Provisions Being Held Invalid. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would continue and be conformed to the terms and requirements of applicable law; provided, however, that if **City's** funding obligation or any other provision of this Agreement is found to be invalid which would cause there to be a lack of mutuality of obligation or remedy, then this Agreement shall terminate. Nothing contained herein shall cause **City** to be relieved of its obligation to compensate **Palm Beach County** for services rendered.

ARTICLE 3 — PROJECT COORDINATION AND RESPONSIBILITIES

3.1 **Palm Beach County** shall be responsible for the delivery and coordination of the Bus Service contemplated hereunder.

3.2 **City's** project Manager for this Agreement shall be the **City's** Municipal Service Director. **Palm Beach County's** Project Manager shall be **Palm Tran's** Executive Director or designee.

3.3 **Palm Beach County** shall work with and coordinate its efforts with the **City of Boca Raton** Transportation Management Initiative (TMI) to publicize and promote the Service. **Palm Beach County** efforts will include the development and distribution of marketing materials and promotional activities.

ARTICLE 4 — INSURANCE

4.1 Without waiving the right to sovereign immunity as provided by Section 768.28,

Florida Statutes, Palm Beach County acknowledges that it is self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence, or such limits that may change and be established by the Florida Legislature.

4.2 Worker's Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. Palm Beach County acknowledges that it is self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes.

4.3 When requested, Palm Beach County agrees to provide a Certificate of Insurance evidencing self-insurance and/or sovereign immunity status, which City agrees to recognize as acceptable for the above-mentioned coverages.

ARTICLE 5 - TERMINATION

5.1 If, through any cause within the reasonable control of **Palm Beach County**, **Palm Beach County** shall fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements, or stipulations which are material to this Agreement, **City** may thereupon give written notice to **Palm Beach County** of such default and specify what actions must be taken to cure said default and avoid termination hereunder. **Palm Beach County** shall have forty-five (45) days to cure said default or such additional period authorized by **City**. In the event that **Palm Beach County** shall not have cured said default to the satisfaction of **City** by such deadline, then this Agreement may be terminated by **City** upon notice of termination to **Palm Beach County**.

5.2 If, through any cause within the reasonable control of **City**, **City** shall fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements, or stipulations which are material to this Agreement, **Palm Beach County** may thereupon give written notice to **City** of such default and specify what actions must be taken to cure said default and avoid termination hereunder. **City** shall have forty-five (45) days to cure said default or such additional period authorized by **Palm Beach County**. In the event that **City** shall not have cured said default by such deadline, then this Agreement may be terminated by **Palm Beach County** upon notice of termination to **City**.

5.3 Termination for Convenience. Either party may terminate this Agreement, in whole or in part, for convenience, at any time, by giving forty-five (45) days written notice to the other of its intent to terminate for convenience.

5.4 In the event this Agreement is terminated, in whole or in part, by either party for any reason other than default by **Palm Beach County**, the **City** shall reimburse **Palm Beach County**, on a prorated basis, for the direct and indirect costs arising out of or related to the termination, including but not limited to labor and personnel costs that will be incurred by **Palm Tran**, for a period not to exceed four (4) months. Any remaining funds prepaid by the **City** will promptly be refunded by **Palm Beach County**.

ARTICLE 6 - CHANGES AND MODIFICATIONS

6.1 Upon the execution and delivery of this Agreement, it is understood and agreed that any and all previous agreements and understandings, both written and oral, between the parties are cancelled and have been superseded by this Agreement and that this Agreement embodies and sets forth all understandings between the parties.

6.2 Modifications to this Agreement must be made in the form of a written amendment signed by **City** and **Palm Beach County**.

ARTICLE 7 - NOTICES

7.1 Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, or other commonly accepted document carrier, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

For PALM BEACH COUNTY:

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

For CITY:

Attn: Dan Grippo P.E., C.E.M
Municipal Services Director - City of Boca Raton
201 W. Palmetto Park Rd.
Boca Raton, FL 33432

ARTICLE 8 - LAWS AND VENUE

8.1 Office of Inspector General. **Palm Beach County** has established the Office of the Inspector General pursuant to Sections 2-421 through 2-440 of the Palm Beach County Code, as they may be amended. The Inspector General's (IG) authority includes but is not limited to the power to review past, present and proposed Palm Beach County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the parties, their officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption, waste and fraud. Failure to cooperate with the IG or interfering or impeding an investigation is a violation of the Palm Beach County Code and pursuant to Section 125.69, F.S., punishable in the same manner as a second degree misdemeanor.

8.2 Non-Discrimination. **Palm Beach County** and the **City** agree that no person shall on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression or genetic information be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out related to the performance of this Agreement.

8.3 Venue. This Agreement shall be construed and interpreted according to the laws of the State of Florida and venue with respect to any litigation shall be in Palm Beach County, Florida, whether in state or federal court. The parties agree that each will submit to the jurisdiction of the Florida state or federal court in any action or proceeding arising out of or related to this Agreement and agree that all claims in respect to such action or proceeding may be heard and determined in Palm Beach County, Florida, the venue situs.

ARTICLE 9 — EXCUSABLE DELAYS

9.1 In the event the performance by **Palm Beach County** of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence, whether such occurrence be an act of God, common enemy or the result of war, labor unrest or dispute, riot, civil commotion or sovereign conduct, or any other act or event which **Palm Beach County** reasonably determines will interfere with its ability to perform, **Palm Beach County** shall be excused from performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof.

ARTICLE 10 — SUCCESSORS AND ASSIGNS

10.1 Subject to other provisions hereof, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

ARTICLE 11— JOINT PREPARATION

11.1 The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than the other.

ARTICLE 12 — CAPTIONS

12.1 The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

ARTICLE 13- NOTICE OF COMPLAINTS

13.1 The City will promptly notify **Palm Beach County** of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party or Palm Tran, Inc., or their respective officers, directors, employees, servants or agents is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 14 — ENFORCEMENT COSTS

14.1 All costs and expenses, including but not limited to reasonable attorney's 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.

ARTICLE 15 — NO AGENCY RELATIONSHIP

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

ARTICLE 16 — NO WAIVER

16.1 No waiver of any provision(s) 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.

ARTICLE 17 — ENTIRETY OF AGREEMENT

17.1 This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, THE PARTIES HAVE MADE AND EXECUTED THIS AGREEMENT EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE.

ATTEST:

Susan S. Saxton

(CITY SEAL)

CITY of BOCA RATON, FLORIDA, a Florida Municipal Corporation

By: Scott Kupie

This 12th day of August 2014

Approved as to form by:

[Signature]
City Attorney

ATTEST:

Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

Approved as to form and Legal Sufficiency

County Attorney

PALM BEACH COUNTY FLORIDA by its BOARD OF COUNTY COMMISSIONERS

By: _____
Mayor

This ___ day of _____, 2014

Approved as to Terms and Conditions

[Signature] For
Executive Director

City of Boca Raton



Incorporated 1925

RESOLUTION

87-2014

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A RESOLUTION OF THE CITY OF BOCA RATON
AUTHORIZING THE MAYOR AND CITY CLERK TO
EXECUTE AN AGREEMENT WITH PALM BEACH COUNTY
FOR THE PURPOSE OF PROVIDING FUNDING FOR THE
CONTINUATION OF ENHANCED BUS SERVICE ON PALM
TRAN ROUTE 94; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEALER; PROVIDING AN EFFECTIVE
DATE

WHEREAS, the City of Boca Raton desires to enter into an agreement with Palm
Beach County for the purpose of providing funding for the continuation of enhanced bus service
on Palm Tran Route 94; and

WHEREAS, such agreement has been prepared and a copy thereof is attached
hereto; now therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOCA
RATON:

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Section 1. That the Mayor and City Clerk be authorized to execute the agreement with Palm Beach County, a copy of which is attached hereto, together with such nonmaterial changes as may be acceptable to the City Manager.

Section 2. That expenditure in an amount not to exceed \$364,650 for the initial year, \$375,590 during the second year and \$386,857 for the third year, for a total amount not to exceed \$1,127,097, for the term of the agreement, is hereby authorized, subject to authorization of additional expenditures pursuant to the Procurement Code of the City of Boca Raton.

Section 3. If any section, subsection, clause or provision of this resolution is held invalid, the remainder shall not be affected by such invalidity.

Section 4. All resolutions or parts of resolutions in conflict herewith shall be and hereby are repealed.

Section 5. This resolution shall take effect 10 days after adoption.

PASSED AND ADOPTED by the City Council of the City of Boca Raton this 12th day of August, 2014.

CITY OF BOCA RATON, FLORIDA

ATTEST:

Susan S. Saxton
Susan S. Saxton, City Clerk

Susan Haynie
Susan Haynie, Mayor

JH

COUNCIL VOTE			
	YES	NO	ABSTAINED
MAYOR SUSAN HAYNIE	✓		
DEPUTY MAYOR CONSTANCE J. SCOTT	✓		
COUNCIL MEMBER MICHAEL MULLAUGH	✓		
COUNCIL MEMBER SCOTT SINGER	✓		
COUNCIL MEMBER ROBERT S. WEINROTH	✓		