

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 15, 2019      ☒ Consent      ☐ Regular  
Department: Palm Tran      ☐ Ordinance      ☐ Public Hearing

I. EXECUTIVE BRIEF


**Motion and Title:** Staff recommends motion to approve: A two (2) year Agreement with Lakes of Delray, Inc. for the provision of transportation services on all Palm Tran fixed routes 70, 81 and 88 effective February 1, 2019, in the amount of \$231,458.30.

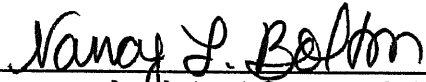
**Summary:** Lakes of Delray, Inc. has contracted with Palm Tran for bus service for its residents since the inception of the development in 1982. This agreement allows Lakes of Delray residents to ride Palm Tran Routes 70, 81 and 88 fare-free. Palm Tran fixed routes 81 and 88 serve Delray Beach on major arterials as they traverse east and west. Since the implementation of the Route Performance Maximization (RPM) Project, Palm Tran Route 70 no longer directly services the Lakes of Delray community but connects with Routes 81 and 88. This agreement includes a 3% rate increase pursuant to the agreement. District 5 (DR)

**Background and Justification:** The residents of Lakes of Delray have contracted with Palm Tran since 1982 through their homeowner's association, Lakes of Delray, Inc. The residents desire to eliminate the necessity of paying individual fares upon boarding Palm Tran buses. Palm Tran will receive \$231,458.30 over the life of this contract.

**Attachment:**

1. Agreement with Lakes of Delray, Inc. (2 copies)

Recommended By:  12/26/18  
Executive Director Date

Approved By:  1/9/19  
Assistant County Administrator Date

## II. FISCAL IMPACT ANALYSIS

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

<b>Fiscal Years</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Capital Expenditures</b>					
<b>Operating Costs</b>	\$109,685	\$164,528	\$54,843		
<b>External Revenues</b>	(\$77,153)	(\$115,729)	(\$38,576)		
<b>Program Income(County)</b>					
<b>In-Kind Match(County</b>					
<b>NET FISCAL IMPACT</b>	\$32,533	\$48,799	\$16,266		
<b>#ADDITIONAL FTE</b>					
<b>POSITIONS (CUMULATIVE)</b>					

**Is Item Included in Current Budget?**

Yes **XX**

No

**Does this item include the use of federal funds?**

Yes **XX**

No

**Budget Account No:** Fund 1340 Department 540 Unit 5101 Object 4435

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

Acceptance of these Agreement fees are in lieu of Lakes of Delray, Inc. paying individual fees per trip.

### C. Departmental Fiscal Review:

Carol Richmond 12/26/18  
Carol Richmond, Interim Director of Administrative Services

### III. REVIEW COMMENTS:

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

Paley Row 12/28/18  
OFMB

Contract Dev. & Control

### B. Legal Sufficiency

  
Assistant County Attorney

### C. Other Department Review

Department Director

**(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)**

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

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as "County"), and Lakes of Delray, Inc., a master association of thirty-seven condominium associations and a Florida non-profit corporation whose federal identification number is 59-2596584.

**WHEREAS**, the County, as part of its countywide public transit system (Palm Tran), has established routes in Delray Beach known as Routes 70, 81, and 88; and

**WHEREAS**, Lakes of Delray, Inc. desires to enter into an agreement with the County allowing Lakes of Delray, Inc.'s residents (who are condominium owners over the age of 55, hereinafter referred to as "Residents"), to use Palm Tran Routes 70, 81 and 88 on an individual non-exclusive fare-free basis; and

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

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

1. The Residents may utilize on a non-exclusive, fare-free basis, either Routes 70, 81 and 88 of the County's transit system (Palm Tran). At the time of boarding buses serving Routes 70, 81 or 88, Residents must present to the driver his/her Condo ID Card then in effect. The County shall, in accordance with the payment provisions described in paragraph 3 of this Agreement, make available to the Residents on an individual, non-exclusive, fare-free basis the public transportation services otherwise available to individuals utilizing Palm Tran Routes 70, 81 or 88.
2. The parties agree that there are a total of 1,408 units and that Lakes of Delray is fully developed, and that no additional units will be added, sold or leased.

3. Lakes of Delray, Inc. shall compensate County \$231,458.30 for the Route 70, 81 and 88 services described in the Agreement at a rate of Six Dollars and Eighty-Five Cents (\$ 6.85), per dwelling unit, per month, commencing on February 1, 2019 and ending on January 31, 2021. Accordingly, the County shall receive a monthly payment in the amount of \$9,644.10 for each month of this Agreement. The County will send an invoice to Lakes of Delray, Inc. for the total amount due each month and will also provide to Lakes of Delray, Inc. a separate invoice for each building served, based on the number of dwelling units contained within the building. Lakes of Delray, Inc. shall distribute the building invoices to each individual building's condominium association, which may remit payment to the County for the number of units in that building. The County's provision of separate invoices for each building and its acceptance of payment from a building condominium association does not, however, relieve Lakes of Delray, Inc. from the responsibility for payment of all sums due and owing to the County under this Agreement based on the total number of units (*i.e.*, 1408) benefitting from the services provided by the County.
4. This Agreement shall be in effect for a term of two (2) years commencing on February 1, 2019 and terminating on January 31, 2021, unless sooner terminated in accordance with the terms of this Agreement. The County's representative/liaison during the performance of this Agreement shall be Palm Tran's Revenue Administrator, whose telephone number is 561-812-5310. Lakes of Delray, Inc.'s representative/liaison during the performance of this Agreement shall be Stan Latopolski, whose telephone number is 561-435-1598.
5. The individual building condominium associations may remit to County at the address on the invoice, on a monthly basis, and within thirty (30) days of its receipt of a Statement of Billing, the sum owed to County for the transportation services provided for the current month. In the event the County shall not receive payment for an individual building condominium association within the thirty (30) day period, Lakes of Delray, Inc. shall immediately remit to County payment in full for any and all sums due and owing to the County.
6. The public transportation service may be rendered under County's existing routing system in accordance with the schedule for such services established by the County, as it may be amended from time to time by County, in its sole discretion.

Lakes of Delray, Inc. acknowledges and agrees that said services are subject to change by the County or may be eliminated in their entirety. Nothing contained in this Agreement shall be construed to expand or modify the County's obligations under the Americans with Disability Act or any other federal, state or local law or program, to require the provision of any service which the County would not otherwise be obligated to provide, or to limit the ability of the Board of County Commissioners to make changes to its public transportation system, including but not limited to its routes, fares, eligibility requirements and stops as it, in its sole discretion deems appropriate. All changes may be made solely at the discretion of the County. County will, however endeavor to make any changes in accordance with its established route change policy, which may be modified by County, in its sole discretion.

7. The residents of Lakes of Delray, Inc. may utilize other routes of the County's transit system. Residents using any transportation service or route other than Routes 70, 81 and 88 are responsible for payment of the fares established for usage of such service or route.
8. Lakes of Delray, Inc. shall save, defend, indemnify and hold harmless County, Palm Tran, Inc., and their respective officers, agents, employees and servants from and against any and all claims, liability, losses, and or causes of actions which are related to physical damage to Lakes of Delray, Inc.'s road network and which occurs as a result of the operation of the County's transit equipment upon Lakes of Delray, Inc.'s roadways, driveways and other adjoining paved surfaces, including but not limited to those owned, controlled or maintained by any individual building association; provided, however, that said agreement to save, defend, indemnify and hold harmless shall not apply to those intentional negligent acts or omissions of County. Lakes of Delray, Inc. represents that it has sustained no damage to its roadway network, including those roads owned, controlled or maintained by any individual building condominium association, resulting from the prior operation of Palm Tran buses or vehicles. Lakes of Delray, Inc. further warrants that its roadways are adequate for the purposes contemplated under this Agreement.
9. County and Lakes of Delray, Inc. each binds itself and its partners, successors, executors, administrators, transferors and assigns to the other party to this Agreement and to the partners, successors, executors, administrators, transferors

and assigns of such other party in respect to all covenants of this Agreement. Lakes of Delray, Inc. shall not assign, sublet, convey, transfer or otherwise encumber its interest in this Agreement, in whole or in part, without the prior written consent of the County.

10. Nothing contained herein shall be construed as creating any personal liability on the part of any officer, agent or employee of County, Palm Tran, Inc., or Lakes of Delray, Inc., nor shall it be construed as giving any rights or benefits hereunder to any other person or entity. County's obligations shall be strictly limited to those expressly set forth in this Agreement. This Agreement is not intended to be a third party beneficiary Agreement and confers no rights on anyone other than County, Palm Tran, Inc., or Lakes of Delray, Inc. The County shall have no obligation to any individual, Resident or other entity, association, or group who is in anyway associated with or might benefit from the terms of this Agreement. Nothing herein will constitute any imposition or acceptance of any obligation or liability not otherwise imposed by law upon County.
11. The County's performance and obligations under this Agreement are contingent upon an annual appropriation for the purposes described in this Agreement by the Board of County Commissioners.
12. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County.
13. No remedy conferred herein 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, in equity, by statute, or otherwise. No single or partial exercise by any party of any right, power, or remedy, shall preclude any other or further exercise thereof. Moreover, no waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted. Any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver. The modification of any term or provision may be accomplished only by a written amendment executed by both parties.

14. Nothing contained in this Agreement shall create an agency relationship between the parties or between Palm Tran, Inc. and Lakes of Delray, Inc. or any unit Resident or owner.
15. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. Should any provision of this Agreement be held invalid by a court of competent jurisdiction, such determination shall not affect the remaining portions of the Agreement.
16. The County is committed to assuring equal opportunity in the award of Contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, Lakes of Delray, Inc. warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

Lakes of Delray, Inc. agrees that no person shall on the grounds of race, color, religion, disability, sex, age, national origin, 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 it carries out under this Agreement.
17. The County has established the Office of the Inspector General in Palm Beach County Code as set forth in Sections 2-421 through 2-440, of the Palm Beach County Code, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed County Agreements, transactions, accounts and records, to require the production of records, and audit, investigate, monitor and inspect the activities of any entity contracting with the County, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation is a violation of Palm Beach County Code, Sections 2-421 through 2-440. Such violation is punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

18. Lakes of Delray, Inc. further agrees that it shall maintain in Palm Beach County, Florida, all records relating to this Agreement, including but not limited to any records pertaining to the issuance, distribution, tracking and use of any color coded decals issued to authorized users, for a period of at least five (5) years following the expiration of this Agreement. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Such records shall be made available to County, Palm Tran, Inc., and state and federal agencies, for the purpose of review, inspection, audit, and reproduction, during regular business hours, at Lakes of Delray, Inc.'s address identified in Section 22 of this Agreement.
19. This Agreement may be canceled by Lakes of Delray, Inc., with or without cause, upon sixty (60) business days prior written notice to County. This Agreement may be terminated by County, without cause and for convenience of the County, upon five (5) business days prior written notice to Lakes of Delray, Inc. In the event Lakes of Delray, Inc. fails to perform, or has breached any provision of this Agreement, and has failed to cure the failure or breach within ten (10) business days, or such additional time granted by County, from the date of the notice provided by County to Lakes of Delray, Inc. of the failure or breach, the County may immediately terminate this Agreement for cause upon written notice to Lakes of Delray, Inc.
20. The parties agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understanding other than those stated herein. No modification, amendment, or alteration shall be effective unless contained in a written document executed with the same formality and equality of dignity as this Agreement.
21. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, Lakes of Delray certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725,



When Contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, Lakes of Delray certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by Lakes of Delray, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

22. All notices required under this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the County, notices shall be addressed to:

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

If sent to Lakes of Delray, Inc., notices shall be addressed to:


Lakes of Delray, Inc.  
Attn: Stan Latopolski, Community Association Manager  
15055 Ashland Boulevard  
Delray Beach, Florida 33484

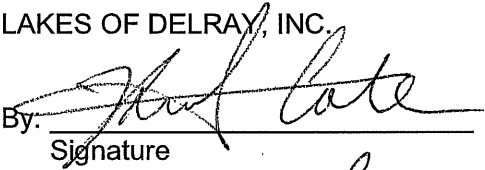
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**IN WITNESS WHEREOF**, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the County, and an officer of Lakes of Delray, Inc. with authority to bind the corporation has hereunto made and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

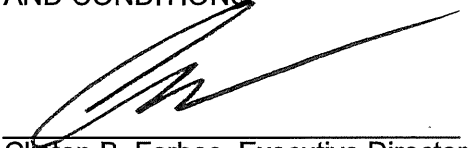
ATTEST:  
Sharon R. Bock, Clerk & Comptroller  
By: \_\_\_\_\_  
Deputy Clerk

PALM BEACH COUNTY, by its  
BOARD OF COUNTY COMMISSIONERS  
By: \_\_\_\_\_  
Mack Bernard, Mayor

  
Witness Signature  
STAN LATOPOLSKI  
Witness Name

LAKES OF DELRAY, INC.  
By:   
Signature  
HERBERT COLE  
Print or Type Name and Title  
(CORPORATE SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY  
  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS  
  
Clinton B. Forbes, Executive Director  
Palm Tran

ATTACHMENT C(1)

**CERTIFICATE**  
**(If Corporation)**

The undersigned hereby certifies that the following are true and correct statements:

1. That he is the Secretary of LAkes of DelRay Inc Corporation, a corporation organized and existing in good standing under the laws of the State of FLORIDA, hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as the 5 day of NOVEMBER, 2018, in accordance with the laws of the State of the state of incorporation of the Corporation, the Articles of Incorporation and the By-laws of the Corporation:

**RESOLVED**, that the Corporation shall enter into that certain Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation, a copy of which is attached hereto, and be it

**FURTHER RESOLVED**, that Herb Cole, the Secretary of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida or its state of incorporation if other, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

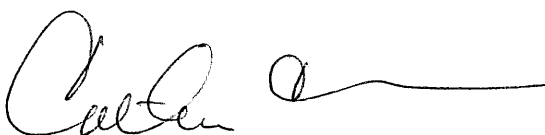
**IN WITNESS WHEREOF**, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 5 day of November, 2018

  
\_\_\_\_\_  
(Signature)

Herbert Cole  
\_\_\_\_\_  
(Print Signatory's name)  
It's Secretary

(CORPORATE SEAL)

SWORN TO AND SUBSCRIBED before me this 5<sup>th</sup> day of November, 2018, by the Secretary of the aforesaid corporation, who is personally known to me OR who produced \_\_\_\_\_ as identification and who did \_\_\_\_\_ take an oath.



Notary Signature



CATHERINE F CUNNION  
Commission # GG 189982  
Expires June 26, 2022  
Bonded Thru Budget Notary Services

Print Notary Name

**NOTARY PUBLIC**

State of Florida at Large

My Commission Expires: