

7/27/05

R2005 1914
AGREEMENT
BY AND BETWEEN
PALM BEACH COUNTY
AND
THE SCHOOL BOARD OF PALM BEACH COUNTY

THIS AGREEMENT is made and entered into this SEP 27 2005 day of SEP 27 2005, 2005, by and between Palm Beach County, a political subdivision of the State of Florida, by and between its Board of County Commissioners (referred to herein as "County") and the School Board of Palm Beach County by and through its School Board (referred to herein as "Board").

WITNESSETH

WHEREAS, the County has established a fixed route public transportation system throughout much of Palm Beach County; and

WHEREAS, County operates its public transportation system, known as Palm Tran, for the benefit, use and enjoyment of the general public; and

WHEREAS, Board has requested the County to make annual and semester bus passes available to certain of Board's students who desire to use Palm Tran as a means of transportation; and

WHEREAS, County is willing to make annual and semester bus passes available to certain of Board's students in accordance with the provisions of this Agreement; and

WHEREAS, County and the Board have determined to create and utilize a unique bus pass with digital photographs and magnetic encoding to be used as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein, the County and Board agree as follows:

Section 1. Incorporation of Facts: The facts set forth above, in the preamble to this Agreement, are true and correct and incorporated into this Agreement by reference.

Section 2. Purpose: The purpose of this Agreement is to set forth the various duties, rights and obligations of the parties regarding the County's provision of bus passes to certain

students of the Board and the Board's payment for, distribution and use of the bus passes.

Section 3. Representatives: The County's representative and monitor during the performance of this Agreement shall be Palm Tran's Executive Director, whose telephone number is (561)841-4200. The Board's representative and monitor during the performance of this Agreement is Robert Riley, whose telephone number is (561) 242-8309.

Section 4. Purchase of Passes: The Palm Tran bus passes, usable only upon its fixed route public transit system, may be purchased by the Board for use by the Board's middle school and high school students at a cost of Two Hundred Sixty Dollars (\$260.00) per pass for the 2005-2006 School Year and Two Hundred and Eighty dollars (\$280.00) per pass for the 2006-2007 School Year. After the beginning of the second semester, passes may be purchased at a cost of ~~One~~ One Hundred Thirty Dollars (\$130.00) per pass for the second semester of the 2005-2006 School Year and at a cost of One Hundred Forty Dollars (\$140.00) per pass for the second semester of the 2006-2007 School Year. Each school year normally commences in August and ends in May of the following year. Palm Tran's Executive Director may permit passes to be procured and used prior to August or after May for those students whose school year does not fall within the normal school year and may require an additional payment equivalent to the monthly pro rata cost of an annual bus pass should the duration of the school year exceed ten (10) months.

Section 5. Digital Images: An ID card with a digital image serves as the bus pass. Palm Tran will provide ID cards suitable for the Board to print the digital images that they will have captured using a technology and methodology acceptable to County, of those students who are to receive an annual bus pass (after January 1 of the next year, students will receive semester bus passes). The digital image of each student will also identify the student and the school the student is attending.

Section 6. Invoicing: County will invoice the Board for each ID card received by the Board under this Agreement. Within fifteen (15) days of the Board's receipt of each invoice, the Board will remit payment for the sum due and owing to the Palm Beach County Board of County Commissioners, c/o Palm Tran, 3201 Electronics Way, West Palm Beach, FL 33407, or to the address indicated on the invoice issued by Palm Beach County Finance.

Section 7. Audit: The County and Board agree to cooperate with each other in any audit relating to the passes which either shall perform. If incurred, adjustments will be invoiced or credited prior to June 30 of each year. Board will provide any other information related to the passes and their usage by students requested by Palm Tran.

Section 8. Refunds and Replacements: An ID card with a digital image serves as the bus pass. No passes which are lost, stolen, misplaced or destroyed by the Board or any student shall be replaced or the cost refunded; provided, however, that Palm Tran will refund to the Board, the sum equivalent to the monthly pro rata portion of any months remaining on any pass issued to a student who has withdrawn from school or who is no longer eligible for the continued provision of and use of the bus pass, upon the return of the pass to Palm Tran. Notwithstanding the above, should the Board request and Palm Tran agree to issue a replacement pass, the Board will compensate Palm Tran for the replacement pass at a cost of ten dollars (\$10.00), to offset administrative costs. A maximum of one replacement pass, at ten dollars (\$10.00), per student may be made. Should the student require a second replacement pass, the Board will pay twenty dollars (\$20.00) per month for any months remaining in the school year, including the month the second replacement pass is issued.

Section 9. Educational Rights and Privacy: If the provisions of Section 1002.22, Florida Statutes, and the Family Educational Rights and Privacy Act (FERPA), as amended, are applicable to the terms and conditions of this Agreement, the County will act in accordance with their provisions to the same extent it would any other state or federal law or regulation. Should the Board determine that the provisions of Section 1002.22, and FERPA are applicable to the public fixed route transit services provided hereunder, upon the request of County, the Board shall provide an opinion of counsel as to the application and effect of the provision of said Section and Act upon the County, including any action taken, requested of County or sought or proposed to be taken by County.

Section 10. No rights nor Interest Created: The Board acknowledges and agrees that neither this Agreement nor the provision, possession or use of a pass by any student creates any right, interest, license or permit in or to a pass in the Board or any student, parent, guardian, or any other person or entity to the continued use of the County's public transit system. Moreover, the County may revoke any pass issued hereunder to any student, for any reason whatsoever, with or without prior notice or a hearing of any kind, and neither the student nor the Board shall have any claim or cause of action, of any kind whatsoever, against County or Palm Tran.

Section 11. Middle and High School Students: The Board acknowledges and agrees that it shall not seek, request or endeavor, in any manner, to obtain a pass for any student who is not a middle or high school student. The Board further acknowledges and agrees that passes will not be provided to any student, regardless of grade level, who is eight (8) years of age or younger, unless such student is accompanied, at all times (*i.e.*, from boarding to disembarkation) by a parent who is a participant in Board's Teenage Parent Program. In such cases the student/parent's pass and the pass of the child of the student/parent shall indicate, in a manner acceptable to Palm Tran, the relationship and/or exception to the condition set forth

herein.

Section 12. Convenience: The Board acknowledges and agrees that the County is providing the bus passes solely for the convenience of the Board, and that the County has no duty or obligation to the Board or to any student which is in addition to, or different or distinguishable from that owed to the public at large.

Section 13. Compliance with Palm Tran Rules: The Board agrees that its students will be subject to and adhere to the rules attached hereto as Exhibit "A", which County may amend, in its sole discretion, from time to time. Board's students shall comply with all other rules, regulations, policies or laws regulating or pertaining to Palm Tran's passengers, as they may be adopted or amended from time to time. Board further acknowledges and agrees that any student may be removed from a Palm Tran bus, in the same manner that members of the general public may be removed, and may be temporarily or permanently refused service in accordance with Palm Tran rules, regulations, policies or procedures.

Section 14. Termination: This Agreement may be terminated by either party, with or without cause upon thirty (30) days notice to the other. In the event a party has failed to perform, observe, or has breached any provision of this Agreement, the other party may terminate this Agreement immediately upon written notice to the other party.

Section 15. No Agency Relationship: Nothing contained herein shall create an agency relationship between Board and County or Board and Palm Tran, Inc.

Section 16. Limit of Obligations: The County shall have no obligations to the Board, its students, or any other entity or person who is in anyway associated with or might benefit from the terms of this Agreement.

Section 17. Remedies: This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to construe or 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 18. 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 19. Captions: The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

Section 20. 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 21. 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 22. Entirety of Agreement and Modifications: The County and Board 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 23. Notice: All notices required under this Agreement shall be in writing and sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

Executive Director
Palm Tran
3201 Electronics Way
West Palm Beach, FL 33407-4618

and if sent to the Board shall be mailed to:

Director of Transportation
The School District of Palm Beach County
2275 Homewood Road
West Palm Beach, FL 33406

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

Section 24. 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 25. **Annual Appropriation:** the County's obligations under this Agreement are contingent upon an annual budgetary appropriation by County's Board of County Commissioners for the purposes described herein.

Section 26. **Limit of Obligations:** The County's obligations to Board shall be strictly limited to those expressly set forth in this Agreement. The County shall have no obligations to any person, student or entity who is in anyway associated with or might benefit from the terms of this Agreement and the usage of a bus pass. Nothing contained in this Agreement shall be construed as a waiver of the County's or Board's sovereign immunity except as expressly set forth in Section 768.28, Florida Statutes. Moreover, this Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the parties hereto. Nothing herein shall be deemed to constitute an imposition or acceptance by County or Board of any obligation or liability, not otherwise imposed by the express and unequivocal language of this Agreement.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the County and Board have hereunto set their hands the day and year above written.

Attest:

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: Judith C. Bock
Deputy Clerk

By: Tony Masnotti
Chairman



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SEP 27 2005

Attest:

PALM BEACH COUNTY SCHOOL
DISTRICT BY ITS SCHOOL BOARD

By: N/A
Clerk of the School Board

By: Arthur C. Johnson

(Title) Arthur C. Johnson, Supt.

Approved as to form
and legal sufficiency

Approved as to Terms and Conditions

By: [Signature]
County Attorney

By: Marc Installa
Executive Director, Palm Tran

Approved as to form
and legal sufficiency

By: Blair [Signature]
School District Attorney

* does not include JTA fingerprint
addendum

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