

**LEGISLATIVE ID**

**# 110406**

**AGREEMENT REGARDING THE DONATION OF BUSES  
TO THE CITY OF GAINESVILLE, FLORIDA**

**THIS AGREEMENT REGARDING THE DONATION OF BUSES** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between Palm Beach County, a political subdivision of the State of Florida, ( "County"), and the City of Gainesville a Florida municipal corporation ( "City") whose address is Post Office Box 490, Station 5, Gainesville, Florida 32602.

**WITNESSETH:**

**WHEREAS**, The City through its Regional Transit System ( "RTS") has advised County's Department of Surface Transportation, Palm Tran, that the City is in need of additional buses and desires to acquire such buses from County; and

**WHEREAS**, the City has represented that it will incorporate the buses into its public transit system and use them to promote the community interest and welfare by enhancing its public transit system; and

**WHEREAS**, County's Department of Surface Transportation ( "Palm Tran") has determined that the buses have no remaining durable useful life, are an uneconomical asset, and there is no longer a public transit need for the buses; and

**WHEREAS**, the City needs the buses to accomplish the purposes described above and has requested that the County convey the buses to it so that it may use the buses to accomplish the purposes described above; and

**WHEREAS**, the County has further determined that the buses are not needed for any County purpose and that the buses should be donated and conveyed to the City; and

**WHEREAS**, the County's Board of County Commissioners finds that the use that the City will make of the buses constitutes and will serve a valid public purpose.

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

1. Incorporation of Recitals: The foregoing recitals are true and correct and incorporated into and made a part of this Agreement.

2. Purpose: The purpose of this Agreement is to set forth the various duties, rights and obligations of the parties regarding the donation of the buses to the City and the City's use of the buses to promote the community's interest and welfare by utilizing the buses in its public transit system as contemplated in this Agreement.

3. Donation and Use: The County hereby agrees to donate and convey title to the buses to the City for the purposes described in this Agreement. The County shall retain an interest, as further described below, in the buses for a period of one (1) year from the date of execution of this Agreement. Thereafter, the conditions set forth in Section 3, upon the donation and use of the buses, shall expire and title shall be fully vested in the City. During said one (1) year period, the City shall use the buses to provide public transportation activities. Such activities and the City's use of the buses shall be made available to the general public without restriction or limitation. If, during said one year period, the City desires to use the buses for another "public purpose," that use must be pre-approved by the County's representative. If the City violates a use

condition during the one year period, then upon the request of the County, the City shall pay to the County the sum of Four Thousand Nine Hundred Dollars (\$4,900.00). This sum shall be remitted to the County within thirty (30) days of County's request. If, during said one year period, the City wants to dispose of the buses or convey them to another, the City must first obtain the County representative's approval to dispose of the buses or transfer their title. The City shall comply with any conditions imposed by County's representative on the disposal or conveyance of the buses, including but not limited to payment to County of the sum of \$4,900.00 or such lesser sum approved by County's representative, taking into account the condition of the buses, any diminishment of value that occurred while the buses were in the possession of the City, the time remaining in the one year period, and any other applicable factor identified in Section 16. If the City sells the buses after the expiration of the one year period, then the City may retain all proceeds derived from the sale.

4. Representative: County's representative during the one year period following the execution of this Agreement will be Palm Tran's Executive Director whose telephone number is (561) 841-4200, or designee. The City's representative during the one year period following the execution of this Agreement will be its Transit Director, whose telephone number is (352) 393-7852 or designee.

5. Transfer of Title: County will transfer title, relinquish possession and deliver the buses to the City at Palm Tran's main facility located at 3201 Electronics Way, West Palm Beach, Florida or such other location in Palm Beach County, Florida, on such date and time specified by County's representative. The City shall be solely responsible for

and shall bear all costs arising out of and related to the transfer of title and delivery of the buses to the City.

6. Acceptance of Buses “As Is” and Disclaimer of Warranty: It is understood between the parties that the County is donating the buses to the City “as is” and that no representations are made as to the maintenance, safety, operability or condition of the buses or any equipment associated therewith. No warranties are made of any kind or nature and none shall be deemed to be in effect, including but not limited to any warranty with respect to the design, condition, safety or operability of the buses, their quality or capacity, their conformity to or compliance with any requirement of law (whether state, federal or local), any rule, specification or contract pertaining thereto. No warranties are made regarding patent infringement, any latent defect or the buses’ fitness for any or a particular purpose. The City’s execution of this Agreement shall act as its acknowledgment and agreement that it has inspected and accepted the buses in their “as is” condition, that no representations or warranties have been made, and that it has not relied upon any statement or representation made by County or Palm Tran, Inc. or their respective officers, employees, servants or agents regarding the buses or any equipment that may or not may be located thereon.

County is not the manufacturer of the buses or any equipment associated therewith. County is not the agent of the manufacturer, and no warranty against patent or latent defects in material, workmanship, or capacity is given. The County does not warrant the buses or any equipment associated therewith as being fit for a particular purpose, or as having been maintained or adjusted to a certain condition, level or degree of safety, or as required by law. No oral or written statement, representation,

information or advice from County, Palm Tran, Inc. or any of their respective officers or employees whether given before or after delivery of the buses shall create a warranty, including any warranty as to maintenance, safety, operability or reliability, and the City expressly acknowledges that it is not entitled to rely on any such statement, representation, information or advice, is such was made or given.

**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, OR THE CITY'S USE OR OPERATION OF THE BUSES. 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.**

7. Buses to be transferred to the City:

Two (2) 2000 Gillig Low Floors:

Bus#	Desc:	VIN #	Mileage
PB0004	40' Bus	15GGD2115Y1071313	534,789
PB0019	35' Bus	15GGD211XY1071328	547,748

Nine (9) 2001 Gillig Low Floors:

Bus#	Desc:	VIN#	Mileage
PB0102	35' Bus	15GGB211511071341	578,053
PB0108	35' Bus	15GGB211411071346	558,506
PB0111	35' Bus	15GGB211X11071349	589,963
PB0110	35' Bus	15GGB211811071348	587,587
PB0116	35' Bus	15GGB211311071354	597,943
PB0117	35' Bus	15GGB211511071355	593,315
PB0120	35' Bus	15GGB211011071358	565,355

PB0105	35' Bus	15GGB211011071344	584,494
PB0107	35' Bus	15GGB211211071992	532,420

8. Discrimination Prohibited: The City agrees, warrants and represents that it will not discriminate in any activity related to this Agreement and that its actions, as they relate to the use of the buses, will be undertaken without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

9. Responsibility: The City shall be responsible for all costs of operation and maintenance of the buses.

10. Default: If the City is in default of its obligations under this Agreement, prior to terminating the Agreement, the County will provide the City with ten (10) days written notice to cure the default. If the City fails to cure the default within the ten (10) day cure period or such additional period as County may allow, the County shall deem the City to be in default of this Agreement and the City shall reimburse the County as described in Section 3 above.

11. Compliance with Law: The City agrees to abide by, and be governed by, all applicable federal, state, county, and municipal laws, including but not limited to, Palm Beach County's ordinances, as said laws and ordinances exist and are amended from time to time. The City's failure to comply with any provision of this Agreement may be deemed by the County to be an event of default by County.

12. Status: The City is merely a recipient of a donation from the County, and the City is not an agent, servant or employee of County or Palm Tran, Inc. The City

acknowledges and agrees that the County's sole activity hereunder is the donation of the buses and that County has no control over the actions and activities of the City.

13. Hold Harmless and Indemnification: If a claim or lawsuit is brought against County or Palm Tran, Inc., or their respective officers, servants, agents or employees, the City shall indemnify, save, hold harmless and defend the County and Palm Tran, Inc., their respective officers, servants, agents, and/or employees from and against any and all suits, claims, liabilities, losses, interest, attorney fees, costs and expense, including those associated with all appeals, judgments, and/or causes of action, of any type or nature whatsoever, arising out of or related, in any manner whatsoever to the City's acquisition, inspection, acceptance, possession, use, operation or maintenance of the buses, any intentional or negligent act or omission of the City, or The City expressly agrees that neither the County or Palm Tran, Inc. has a duty to the City, the public, any member of the public, any participant in any program of the City's, or any other third party to notify or correct any defect or condition which may exist or affect, in any way whatsoever, the City's use, maintenance or operation of the buses. The foregoing indemnification shall survive the expiration or termination of this Agreement and shall remain in effect at all times during which the City owns, possesses, uses or has an interest in the buses.

14. Venue: This Agreement shall be governed by the laws of the State of Florida and any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County, Florida.

15. Entirety of Agreement: This Agreement sets forth the entire agreement between the parties and supercedes all other negotiations, representations, or

agreements, either written or oral, relating to this Agreement. The Agreement may be modified and amended only by written instrument executed by the parties hereto.

16. No Third Party Beneficiaries Created: This Agreement is made solely and specifically among and for the benefit of the parties hereto and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

17. Encumbrances Prohibited: For a period of one (1) year from the date of execution of this Agreement, the City shall not assign, convey, transfer or otherwise encumber, in whole or in part, its interest in this Agreement or the buses donated hereunder unless it has first obtained the County's Representative consent thereto in writing. The County's representative's consent shall be governed by Section 3 of this Agreement. However, an assignment, transfer of title, conveyance or encumbrance may be permitted if the representative determines that the buses will continued to be used for the same purposes or purposes which are substantially similar to those identified in the recitals to this Agreement for the remainder of the one year period established in Section 3 and receives satisfactory assurance of such, or the condition of the buses has deteriorated or the buses damaged such that it may not reasonably be used as contemplated in this Agreement.

18. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. Mail. All notices shall be addressed to the following:

As to the County:

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

As to the City:

City of Gainesville  
Regional Transit System  
Jesus Gomez, Transit Director  
Post Office Box 490  
Gainesville, FL 32602  
(352) 393-7852

19. Waiver: No waiver of any provisions of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted. 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.

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

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.

22. 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.

**IN WITNESS WHEREOF**, the undersigned parties have signed this

Agreement on the date first above written.

**ATTEST:**

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

Sharon R. Bock, Clerk & Comptroller

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

By: \_\_\_\_\_  
Addie L. Greene, Chair

**WITNESSES:**

**City of Gainesville**

\_\_\_\_\_  
Name

By: \_\_\_\_\_  
Jesus Gomez, Transit Director

\_\_\_\_\_  
Signature

Attest:

\_\_\_\_\_  
Name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND CONDITIONS**

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

\_\_\_\_\_  
Chuck Cohen, Executive Director  
Palm Tran