

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Susan Dean/797-1042 by Herb Hyman/797-1016

SUBJECT: Resolution

AFFECTED DISTRICT: Districts 1 and 2

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH LIMOUSINES OF SOUTH FLORIDA, INC. FOR BUS TRANSIT SERVICES FOR THE GREEN ROUTE.

REPORT IN BRIEF: The Town Council rejected staff's selection of Quality Transportation, Inc. and unanimously selected Limousines of South Florida, Inc. as the highest ranked firm to provide bus transit services for the green route by Resolution R-2005-265 and authorized staff to negotiate a contract for these services. The attached contract is a result of negotiations authorized by R-2005-265. The initial term of the contract is from November 1, 2005 to September 30, 2008. Thereafter, the contract may be renewed for two (2) additional one (1) year periods by mutual agreement of the parties. Contract extensions will be handled administratively subject to budgetary approval by the Town Council.

PREVIOUS ACTIONS: Resolution R-2005-265.

CONCURRENCES: This contract was negotiated by the Programs Manager and the Procurement Manager. The contract document was reviewed by the Town Attorney's Office.

FISCAL IMPACT:

Has request been budgeted? yes

If yes, expected cost: \$64,000.00/yr.

Account Name: Bus Transportation-Contractual Services

Account Number 001-0108-544-0306

Additional Comments: The cost is \$30.50/hr. Mr. Mark Levitt, President of Limousines of South Florida, Inc. has offered to provide service for the first month of the contract at no cost to the Town.

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Two (2) copies of contract

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH LIMOUSINES OF SOUTH FLORIDA, INC. FOR BUS TRANSIT SERVICES FOR THE GREEN ROUTE.

WHEREAS, the Town Council approved Limousines of South Florida, Inc. as the best qualified firm to provide bus transit services for the green route by Resolution R-2005-xxx; and

WHEREAS, staff negotiated a contract pursuant to Resolution R-2005-xxx; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with Limousines of South Florida, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Limousines of South Florida, Inc. for bus transit services for the green route which is attached hereto and identified as Attachment "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005

AGREEMENT

BETWEEN

LIMOUSINES OF SOUTH FLORIDA, INC

AND TOWN OF DAVIE

FOR OPERATION AND MAINTENANCE OF TRANSIT BUS SERVICE

THIS AGREEMENT dated the ____ day of _____, _____, and is between Quality Transport Services, Inc., a Florida corporation, hereinafter "Contractor" and the Town of Davie, a municipal corporation of the state of Florida, hereinafter referred to as "Town."

WHEREAS, Town desires to provide a community transportation service to allow residents access to a number of destinations through public transit: and

WHEREAS, Town has determined that it would be in the public interest to provide said transit services by contracting with a private transit service provider to operate said transportation service: and

WHEREAS, Town has selected Contractor for the operation and maintenance of the transit bus system which shall be known as the "Eastern Davie Transit Route."

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, Town and Contractor agree as follows:

ARTICLE 1
DEFINITIONS

- 1.1 "Agreement" means this Agreement as it may be modified from time to time.
- 1.2 "Contractor" means Limousines of South Florida, Inc, a Florida corporation.
- 1.3 "County" means Broward County, a political subdivision of the state of Florida.
- 1.4 "Town" means the Town of Davie, a municipal corporation of the state of Florida.

ARTICLE 2
CONTRACTOR'S SERVICES

2.1 Contractor agrees to provide all services necessary to provide for the day to day management, operation and maintenance of the public transportation services for the "Eastern Davie Transit Route" according to the Agreement between County and Town, a copy of which is attached to this Agreement and incorporated by reference as Exhibit "A." Contractor shall comply with every term, condition, duty and obligation set forth in Exhibit "A", including all attached exhibits to the Agreement.

2.2 Contractor shall provide free fare public transportation services (until such time as Town determines a fare to be appropriate), within the Town at the locations and according to the schedules set forth in Exhibit "A."

2.3 The established service shall be on a fixed route basis with designated intermediate stops a minimum of forty (40) hours per week and a minimum of five (5) days per week, provided however, the minimum hours of operation shall be reduced by eight (8) hours during any week in which Thanksgiving Day, Christmas Day, and New Years Day fall on a weekday. The public transportation service shall connect with regular County bus routes, as set forth on Exhibit "A."

The initial schedule for the "Eastern Davie Transit Route" is approximately twelve (12) hours per each weekday and eight (8) hours on Saturdays. The hours of operation may be amended from time to time at the discretion of the Town and County to respond to the needs of the community.

2.4 Beginning _____, 2005, Town and Contractor shall maintain a minimum average of five (5) passengers per revenue hour on each route operated by the Town and Contractor. In the event that Town and Contractor do not maintain such minimum average of passengers, County shall assist Town and Contractor to increase ridership which may include modification of the route, as set forth in Exhibit "A."

2.5 Vehicle(s) shall be operated by properly licensed operators ("vehicle chauffeurs") employed by Contractor. These employees shall provide full utilization of vehicle(s) to disabled passengers while in service.

2.6 Vehicle chauffeurs hired by Contractor shall issue County bus route timetables or other transit information to any passenger requesting such material.

2.7 Insofar as possible, scheduled service shall be coordinated with existing County bus service. It is the intent of the parties that Town's scheduled service shall not duplicate existing County bus service.

2.8 Contractor shall maintain the vehicle(s) provided by Town and County in accordance with manufacturer's standards and keep vehicle(s) in reasonable condition at all times, both inside and outside.

2.9 Contractor shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) at all times while the vehicle(s) provided herein are being utilized for public transportation and while utilizing any and all routes approved herein. To the extent that any terms of this Agreement are inconsistent with the ADA, the requirements of the ADA shall control.

2.10 Contractor shall at all times during this Agreement comply with the requirements of Broward County Ordinance 92-8, pertaining to the maintenance of a Drug Free Work Place Program.

2.11 Contractor shall at all time during this Agreement comply with all applicable requirements of the United States Department of Transportation and the Federal Transit Administration, which shall include, but not be limited to, regulations for drug and alcohol testing. To the extent that any terms of this Agreement are inconsistent with the United States Department of Transportation regulations, the requirements of the United States Department of Transportation shall control.

2.12 Contractor agrees that throughout the term of this Agreement that the Broward County Transit (BCT) logo and the County assigned identification number shall be conspicuously displayed on the rear of the vehicle(s) at all times.

2.13 Contractor shall maintain certain records of information and data in the format prescribed by County and shall furnish such records to County. Contractor will submit a copy to Town, on a monthly basis and shall include a hard copy of daily trip sheets, daily vehicle inspection check list, and all invoices and/or proof of repairs done during the reporting period at the time of the monthly invoice. The Contractor shall keep a daily log of complaints and shall send a weekly report detailing the complaints and the disposition of the complaints.

2.14 Contractor shall, at all times, have and maintain in proper working order a dedicated TTY number.

2.15 Contractor agrees to lock in the cost of service for the term of the contract.

ARTICLE 3
TOWN'S SERVICES

3.1 Town shall review all policies established by the Contractor relative to the public transportation services.

3.2 Town shall review the service planning, including adjustments to the routes, schedules and such other factors that affect the quality of service provided.

3.3 Town shall provide Contractor with bus route timetables prepared by Broward County Mass Transit Division sufficient to inform Town and County residents, visitors and passengers of service to be made available.

3.4 Town, in coordination with County, shall be responsible for designation of transit stops. It is understood that passengers will be able to board or depart from anywhere along the route as well as designated stops.

3.5 Town shall lease to Contractor two (2) wheelchair accessible, passenger vehicles, obtained from County, to be used in regular route service. Such vehicles shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations. The vehicles shall be leased to the Contractor for Ten Dollars (\$10.00) per year. Prior to acceptance of the vehicles by Contractor, Contractor, at its own cost, shall have the right to inspect, or cause to be inspected, the vehicles by a mechanic designated by the Contractor.

3.6 Town shall provide the manufacturer's warranties and maintenance shop manuals to the Contractor.

ARTICLE 4
TERM AND TIME OF PERFORMANCE

The term of this Agreement shall begin on _____, 2005 and shall remain in effect until September 30, 2008. The Town is under no obligation to extend or renew

this Agreement after its expiration. However, the term may be extended for up to two (2) additional one (1) year periods upon mutual written agreement.

ARTICLE 5 COMPENSATION

5.1 In return for services provided by Contractor and specified in this Agreement, the Town agrees to pay Contractor Limousines of South Florida, Inc. \$_____per hour, per vehicle in revenue service. Contractor agrees to waive the first month's costs. The funds shall be used by Contractor solely for the purpose of maintaining, operating and properly equipping the vehicle(s) and for no other purpose. Town shall not be responsible for payment of any other monies to Contractor under this Agreement.

5.2 Town shall hold the funds distributed by County to support the public transportation service and remit the applicable amount of such funds monthly to Contractor as they become due. Contractor shall submit invoices to the Town documenting hours of service provided by the Contractor during the preceding month together with such additional documentation which may be required by the Town (e.g., ridership statistics). Within thirty (30) days of receipt of such invoices, Town shall compensate Contractor pursuant to the terms set forth herein.

5.3 Should the Town decide to add new buses or reassign existing buses, the Contractor shall agree to charge the Town the same compensation as quoted in this Agreement.

ARTICLE 6 PERFORMANCE STANDARDS

6.1 The public transportation service described in this Agreement must begin operations on _____, 2005 and such service shall run according to the schedule set forth in Exhibit B. The schedule shall be followed unless otherwise agreed upon in writing by the parties.

6.2 Contractor shall complete one hundred percent of all scheduled trips on a daily basis, subject to delays which are attributable to vehicular accidents, traffic conditions, weather, or mechanical failure.

ARTICLE 7 PERSONNEL REQUIREMENTS

7.1 Contractor shall designate a Project Manager who will oversee the complete operation of the public transportation service and who will serve as the day to day liaison with the Town.

7.2 Vehicle chauffeurs employed by the Contractor during the term of this Agreement shall be properly licensed operators. The vehicle chauffeurs shall possess the qualifications as required by the State of Florida and the County. The vehicle chauffeurs shall be required to attend and successfully complete the County's training program prior to operating the vehicles. All drivers shall, during the term of this Agreement possess the following qualifications and adhere to the following standards. Contractor shall immediately dismiss any driver from performing services under this Agreement if driver fails to maintain said qualifications or standards as listed below:

- 7.2.1 Minimum age for drivers shall be 21 years.
- 7.2.2 Drivers must possess a valid Florida Chauffeur's license and attain a valid commercial driver's license as required by law.
- 7.2.3 Drivers shall have no more than three (3) moving violations or accidents (counted individually or combined) within a five (5) year period. Drivers shall have no history of a conviction for a DUI.
- 7.2.4 Drivers must be capable of speaking, writing and understanding the English language fluently.
- 7.2.5 Drivers shall operate the vehicle in a safe and timely manner.
- 7.2.6 Drivers shall be courteous to all passengers and the general public at all times and shall respond to passenger questions regarding the use of the subject service.
- 7.2.7 At all times while on duty, drivers shall wear clean and presentable uniforms which include a company shirt, appropriate length shorts, skirt or pants and closed toe shoes.

- 7.2.8 Drivers shall distribute or collect flyers, handouts, surveys, etc. as Town may request from time to time.
- 7.2.9 Drivers shall not accept gratuities.
- 7.2.10 Drivers shall assist passengers with disabilities with entering and exiting the vehicles.
- 7.2.11 Drivers shall not permit passengers smoke or play a radio in the vehicles (unless the passenger is using headphones with the radio). Driver's shall not wear headphones, talk on the phone (except for business purposes) nor engage in any activity which may interrupt concentration while driving.
- 7.2.12 Drivers shall not be convicted of a crime during the term of this Agreement.
- 7.2.13 Drivers shall not test positive for drug use on a drug test administered by a responsible testing facility or in cooperation with the drug testing program at Broward County or the Town of Davie.

ARTICLE 8
CONDITION AND MAINTENANCE OF THE VEHICLES

8.1 Contractor shall maintain the vehicles in accordance with manufacturer's standards.

8.2 Contractor shall supply any additional vehicles to provide back-up service within thirty (30) minutes in the event that one or more vehicles are out of service. All backup vehicles will be ADA accessible should they be necessary to continue service as outlined in this contract.

8.3 Vehicles shall be maintained in good condition, both operationally and in their appearance, and in accordance with the County's requirements. All vehicles shall be kept in good repair and condition both inside and outside, satisfactory to the Town at a minimum to the standards listed below:

8.3.1 Equipping of vehicles:

8.3.1.1 All vehicles shall conform to the standards required by the Americans with Disabilities Act (ADA).

8.3.1.2 All vehicles shall be equipped with all appropriate safety equipment to be provided by Contractor.

8.3.1.3 All vehicles shall be equipped with two-way communications to be provided by Contractor.

8.3.1.4 All vehicles shall have heating and air conditioning systems that are fully operative every day the vehicle is in service. The air conditioning system shall be of sufficient size and capacity to provide a cooling effect throughout the vehicle, with cold air blowing in all sections of the vehicle.

8.3.2 Maintenance of Vehicles

8.3.2.1 The interiors of the vehicles shall be cleaned at least once each day and the exteriors of the vehicles shall be cleaned at least once per week. The vehicles shall be exterminated for pests at least once each week. Contractor shall have a continuing obligation to ensure cleanliness of the vehicles, and Contractor shall perform additional cleaning and extermination for pests as circumstances may warrant.

8.3.2.2 All vehicles and equipment on vehicles shall be maintained in fully operational condition at all times during the term of this Agreement. Contractor shall cause all components of each vehicle, including its frame, graphic wrap, furnishings, mechanical, electrical, hydraulic, or other operating systems to be maintained according to recommendations. Contractor shall cause any vehicle damaged in an accident or otherwise to be repaired to be immediately, including the graphic wraps. Contractor shall, at its sole cost and expense, provide fuel, lubricants, parts and supplies as required for the maintenance and operation of all vehicles.

8.3.2.3 All vehicles shall be safe for operation on public streets and highways and shall meet all requirements of the Florida Department of Transportation Rule Chapter 14-90, "Minimum Requirements for Transit Coaches and System Equipment." All parts of the vehicles and equipment mounted on or in the vehicle shall conform at a minimum to all applicable federal motor safety standards.

8.3.2.4 Contractor shall initiate and maintain an effective safety and mechanical inspection program.

8.3.2.5 All vehicles shall be available for inspection by the Town prior to Contractor placing them in service and at any time thereafter at the Town's discretion. Town has the sole discretion to reject temporarily or permanently any vehicle which Town deems unacceptable for reasons of safety, disrepair or appearance.

ARTICLE 9 RECORD KEEPING, REPORTING AND AUDITING

9.1 Contractor shall maintain such records and accounts including property, personnel, and financial records as are deemed necessary by Town to ensure a proper accounting record. The system of accounting will be in accordance with generally accepted accounting principles and practices. All project records prepared by Contractor shall be owned by Town and made available to Town at no charge. Town may elect to authorize representatives to inspect, audit, and analyze the records of Contractor relating to the subject service. Town shall have the right to audit the books, records and accounts of the Contractor. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the project or according to the scheduled reporting periods.

9.2 Contractor shall record on a daily basis and report immediately to the Town all disruptions in service, late service, vehicle breakdowns, accidents, vehicles out of service and any other incident affecting service.

9.3 Contractor's Project Manager shall also document passenger complaints and describe any actions taken to resolve such complaints on a weekly basis. Contractor agrees to submit copies of such documentation to Town on a weekly basis.

9.4 Contractor shall maintain daily records of total passenger utilization and total mileage logged on the vehicles by route while performing the services under this Agreement. Project Manager shall provide accurate reports on ridership by route and by trip to Town on a monthly basis.

9.5 Town shall approve Contractor's forms that may be required in addition to those required by the County.

9.6 In the event funds paid to Contractor pursuant to this Agreement are subsequently disallowed by Town because of accounting errors or charges not in conformity with this Agreement, Contractor shall refund promptly to the Town such disallowed funds or such disallowed funds will be withheld from subsequent payment by Town to Contractor. No payment will be withheld or disallowed until Town has given Contractor written notice of the reason therefore and ten (10) days to correct, cure or otherwise reasonably satisfy Town. No more than the disputed amount will be withheld. Both Town and Contractor shall diligently pursue the resolution of any dispute regarding the accounting or charges referred to in this paragraph.

9.7 Contractor shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to the Agreement for a period of five (5) years after termination of this Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings.

ARTICLE 10 **PRE-SERVICE REQUIREMENTS**

The following items shall be delivered to the Town by Contractor at least two (2) days prior to the start of service and are subject to approval by the Town:

10.1 An operations manual for the subject services which describes all operations procedures and policies, including but not limited to the following:

- (A) Vehicle operating procedures
- (B) Communications operating procedures
- (C) Driver conduct rules and regulations
- (D) Safety procedures
- (E) Accident procedures;
- (F) Administration and reporting procedures; and
- (G) Other operating procedures and policies as required for proper operation of the subject service.

10.2 Job descriptions for drivers and administrative personnel.

10.3 Maintenance procedures for all vehicles.

10.4 Final system schedules.

10.5 Training procedures for drivers.

ARTICLE 11
INSURANCE

Contractor will comply with insurance requirements as set forth below:

11.1 Proof of insurance must be provided for Workers' Compensation, Commercial General Liability, Business Auto Liability, and Professional Liability. The Contractor shall carry in for at all times the insurance coverage and the Town and Broward County will be included as "Additional Insureds". Insurance requirements are as follows:

- A. Workers' Compensation- statutory
Policy must include Employers Liability: \$100,000 for each accident, \$500,000 disease (policy limit), and \$100,000 disease (each employee).
- B. Commercial General Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Policy shall include coverage for premises/operations; contractual liability; and independent contractors.
- C. Business Auto Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Policy shall include coverage for owned autos; hired autos; and non-owned autos.

11.2 Original certificates of insurance required herein shall be delivered to Town and County prior to the commencement of Contractor's performance. Contractor shall pay the premiums for all insurance required by this Agreement. Contractor shall cause all policies of insurance required by this Agreement to be renewed from time to time so that at all times the insurance protection required by this Agreement shall continuously exist. The policy shall not be canceled or materially changed without the giving of at least thirty (30) days prior written notice to Town and County, and in such event, a policy pursuant to the above terms must be substituted.

ARTICLE 12
INDEMNIFICATION

12.1 As to Town: Contractor agrees to indemnify, reimburse, defend and hold harmless the Town and, at Town's option, defend or pay for an attorney selected by the Town to defend the Town and Town's officers, agents and employees for, from and against all claims, actions or causes of actions, losses, damages, liabilities, costs and expenses, including reasonable costs, attorneys' and paralegals' fees, imposed on or incurred by the Town in connection with any and all loss of life, bodily injury, personal injury and damage to property which arises or relates, directly or indirectly, to the Contractor's use of any vehicle provided for in this Agreement and the Contractor's performance of the services set forth in this Agreement. To the extent considered necessary by the Town, any sums due Town under this Agreement may be retained by Town until all of Town's claims for indemnification, pursuant to this Agreement, have been settled or otherwise resolved and any amount withheld shall not be subject to payment of interest by Town.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by the Town. Nothing in this Agreement shall be construed as consent by the Town to be sued by third parties in any matter arising out of this Agreement or any other contract.

12.2 As to County : Contractor agrees to indemnify and hold harmless the County and County's officers, agents, and employees as prescribed in Exhibit "A".

ARTICLE 13
TERMINATION

13.1 This Agreement may be terminated for cause by action of Town upon thirty (30) days' written notice by the party that elected to terminate, or for convenience by action of Town Council upon not less than sixty (60) days' written notice. This Agreement may also be immediately terminated by Town upon such notice as Town deems appropriate under the circumstances in the event the Town determines that termination is necessary to protect the public health, safety, or welfare.

13.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of Town as set forth in this

Agreement, or breach of any of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.

13.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by Town deemed necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

13.4 In the event this Agreement is terminated for convenience, the financial assistance provided by the Town shall be prorated on a daily basis to the date the Agreement is terminated. However, upon being notified of Town's election to terminate, Contractor acknowledges and agrees that \$10.00 compensation paid by Town, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for Town's right to terminate this Agreement for cause or convenience.

13.5 Upon termination of this Agreement for whatever reason, Contractor shall return the vehicle(s) leased herein to the Town. Contractor shall return the vehicle(s) to Town in the condition they were received at the onset of this Agreement, normal wear and tear excepted. The Contractor's obligation to return the vehicle(s) to the Town in the condition they were received shall include the removal of any painting or wrapping of the vehicles for advertisement purposes. Any costs necessary to restore and /or prepare the vehicle(s) shall be the sole responsibility of the Contractor. Town shall have the right to inspect and to approve the condition of the vehicle(s) prior to acceptance and should the Town determine that the vehicle is not in the proper condition, Contractor shall at its sole cost and expense remedy any and all deficiencies identified by the Town.

13.6 Contractor shall receive one written warning for failure to provide bus service for any period of twelve (12) consecutive hours. A second failure to provide bus service for a period of twelve (12) consecutive hours, or, a grand total of twenty-four (24) hours over a one-month period, shall constitute grounds for immediate dismissal.

ARTICLE 14 **NOTICES**

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for

giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this article. For the present the parties designate the following:

For Town of Davie:

Town Administrator
Town of Davie
6591 Orange Drive
Davie, Florida 33314

For Broward County:
(Courtesy copies of
notices)

Director of Mass Transit Division
Broward County Mass Transit Division
3201 West Copans Road
Pompano Beach, Florida 33069

For Limousines of South Florida, Inc. :

Mark Levitt, President
Limousines of South Florida, Inc.
2595 NW 38 Street
Miami, FL 33142

ARTICLE 15
MISCELLANEOUS

15.1 NONDISCRIMINATION: Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. Contractor agrees to furnish Town with a copy of its Affirmative Action Policy or in the event that Contractor contracts with a third party for this service, such third party's Affirmative Action Policy shall be furnished to Town.

15.2 INDEPENDENT CONTRACTOR: Contractor is an independent contractor under this Agreement. Services provided by Contractor shall be subject to

the supervision of Contractor, and such services shall not be provided by Contractor or its agents as officers, employees, or agents of the Town. The parties expressly acknowledge that it is not their intent to create any rights in any third person or entity under this Agreement.

15.3 ASSIGNMENT AND PERFORMANCE: Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and Contractor shall not subcontract any portion of the work required by this Agreement except as authorized herein.

Contractor represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in this Agreement and to provide and perform such services to Town's satisfaction.

Contractor shall perform its duties, obligation, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance shall be comparable to the best local and national standards.

15.4 WAIVER OF BREACH AND MATERIALITY: Failure by Town to enforce any provision or modification of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

Town and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

15.5 COMPLIANCE WITH LAWS: Contractor shall comply with all federal, state, and local laws, codes ordinances, rules and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

15.6 SEVERANCE: In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Town or Contractor elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

15.7 JOINT PREPARATION: Preparation of this Agreement has been a joint effort of Town and Contractor and the resulting document shall not, solely as a matter

of judicial construction, be construed more severely against one of the parties than any other.

15.8 PRIORITY OF PROVISIONS: If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 15 of this Agreement shall prevail and be given effect.

15.9 APPLICABLE LAW AND VENUE: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

15.10 AMENDMENTS: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Town and Contractor.

15.11 PRIOR AGREEMENTS: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms or conditions contained herein shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 15.10 above.

15.12 INCORPORATION BY REFERENCE: The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibit "A" is incorporated into and made a part of this Agreement. Pursuant to the provisions appearing in Exhibit "A", when any obligation or duty in that document is one which is related to the public transportation service, Contractor agrees to fully comply with each and every such obligation and duty for and on behalf of the Town.

ARTICLE 16

FINES

16.1 A schedule of fines the Town will assess against the Contractor as a consequence of the Contractor's failure to conform to the customer service requirements as outlined in the Agreement are as follows:

- a) Failure to provide backup service within thirty (30) minutes in the event that one or more vehicles are out of service as set forth in Section 8.2 shall result in a fine of \$30.00 per hour of affected bus.*
- b) Failure to provide heat or air conditioning as required by Section 8.3.1.4 shall result in a fine of \$30.00 per hour per affected bus. *
- c) Failure to maintain vehicles in accordance with Section 8.3.2.2 shall result in a fine of \$15.00 per hour per affected bus.*
- d) Failure to maintain transit schedule within a 15 minute window, excluding acts of weather, road construction/closing, or driver illness shall result in a fine of \$6.00 per bus per affected bus.*
- e) Failure to notify the Town regarding any changes in schedules shall result in a fine of \$6.00 per hour per affected bus.*

*All fines shall be prorated for any portion less than one (1) hour.

(Intentionally left blank)

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the date set forth on the first page of this Agreement.

TOWN

TOWN OF DAVIE

Attest

BY: _____

Mayor

____ day of _____, 2005

Town Clerk

APPROVED AS TO FORM:

BY: _____

Town Attorney

CONTRACTOR

LIMOUSINES OF SOUTH FLORIDA, INC

BY: _____

Print

Witness _____

Name: _____

Title: _____

INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

PUBLIC TRANSPORTATION SERVICES

INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

PUBLIC TRANSPORTATION SERVICES

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

TOWN OF DAVIE, a municipal corporation organized and existing under the laws of the state of Florida, its successors and assigns, hereinafter referred to as "TOWN."

WHEREAS, public transportation services provided by COUNTY need to be supplemented to serve a greater number of people in TOWN; and

WHEREAS, public transportation resources are limited and must be used in the most efficient manner to maintain citizen support; and

WHEREAS, both COUNTY and TOWN agree that better public transportation to residents of TOWN is needed; and

WHEREAS, it is desirable to provide an alternative form of public transit service to the residents of the TOWN; and

WHEREAS, it is the intent of the parties that the alternative form of public transit shall not duplicate the existing mass transit system in COUNTY; and

WHEREAS, COUNTY and TOWN are willing to share the responsibilities and expense of providing an alternative form of public transit in TOWN; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and TOWN agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement** - means this document, Articles 1 through 10, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.
- 1.3 **BCT** - The Broward County Mass Transit Division

- 1.4 **Contract Administrator** - The Broward County Administrator, the Director of the Broward County Mass Transit Division, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with TOWN and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5 **COUNTY** - The Board as defined in Section 1.2 unless expressly provided otherwise.
- 1.6 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.7 **Notice To Proceed:** A written notice to proceed with the Project issued by the Contract Administrator.
- 1.8 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2
SCOPE OF SERVICES

SERVICES TO BE PROVIDED BY TOWN

- 2.1 TOWN shall provide public transportation services within the TOWN at the locations and according to schedules as contained in Exhibit "A," a copy of which is attached hereto and made a part hereof. The provision of transportation services may be performed by the TOWN through the use of its employees or the TOWN may enter into a contract with a third party to perform the services. In the event the TOWN contracts with a third party, the TOWN shall remain fully responsible hereunder and shall ensure that its contractor complies at all times with each and every term, condition, duty, and obligation set forth herein. Any changes to Exhibit "A" made by TOWN shall be effective only upon the written consent of the Contract Administrator. The services to be provided shall include the following:
- 2.1.1 If the TOWN determines a fare to be appropriate prior to beginning service under the terms of this Agreement, the TOWN may institute such fare; provided, however, that such fare shall never exceed half (½) of the fixed route full adult BCT fare. A public hearing shall be held prior to the institution of any proposed fare increase for any subsequent requests for fare increases. Service shall be provided a minimum of five (5) days a week, to certain locations and at scheduled intervals as on the attached Exhibit "A." The Contract Administrator shall be advised, in writing, via certified mail, prior to the imposition of any fare increase.
- 2.1.2 TOWN acknowledges and agrees that it shall not deviate or make changes to the service routes established in Exhibit "A", including but not limited to a decrease or increase in revenue service hours, without the prior written consent of the Contract Administrator. TOWN further acknowledges and agrees that compensation under this Agreement is as set forth in Section 5.1 and COUNTY will not compensate TOWN for any deviations or changes from the service routes established in Exhibit "A", without the prior written consent of Contract Administrator.
- 2.1.3 It shall be the responsibility of TOWN to obtain any necessary permission to access or encroach upon any private property for use as an origin and/or destination associated with this Agreement.
- 2.1.4 Within six (6) months after the start of service, TOWN shall maintain a minimum average of five (5) passengers per revenue service hour per vehicle operated by the TOWN. In the event that TOWN does not maintain such minimum average of passengers, at the TOWN's request, COUNTY shall assist TOWN to increase ridership, which may include a request for modification of the route, as set forth in Exhibit "A." It is understood and agreed between the COUNTY and

TOWN that TOWN's failure, after COUNTY's assistance, to maintain a minimum average of five (5) passengers per revenue service hour per vehicle shall constitute a breach of this Agreement, entitling the COUNTY to immediately terminate the same in accordance with the terms hereof and shall entitle COUNTY to pursue any and all other remedies provided under this Agreement or any remedies available to COUNTY at law or in equity. However, the performance standard/requirements of this Section may be waived, with written approval of the Contract Administrator, if BCT's fixed route service is replaced by community bus service.

- 2.1.5 Vehicle(s) shall be operated by properly licensed operators (Florida commercial drivers license minimum Class C with a passenger endorsement or, if air-brakes are applicable, a Florida commercial drivers license Class B with a passenger endorsement) employed by TOWN or its contractors. These employees shall provide full utilization of vehicle(s) to disabled passengers.
- 2.1.6 Florida commercial drivers licensed operators hired by TOWN or its contractors shall issue COUNTY bus route timetables or other transit information to any passenger requesting such material.
- 2.1.7 Insofar as possible, scheduled service shall be coordinated with existing COUNTY bus service. It is the intent of the parties that TOWN's scheduled service shall not duplicate existing COUNTY bus service.
- 2.1.8 TOWN shall maintain the vehicle(s) provided to it by COUNTY in accordance with manufacturer's standards and keep vehicle(s) in reasonable condition at all times.
- 2.1.9 TOWN shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) at all times while the vehicle(s) provided herein are being utilized for public transportation and while utilizing any and all routes approved herein. To the extent that any terms in this Agreement are inconsistent with the ADA, the requirements of the ADA shall control.
- 2.1.10 In accordance with Broward County Ordinance 92-8, TOWN certifies by means of Exhibit "B," which is attached hereto and incorporated herein by reference as if set forth in full herein, that it will have a Drug-Free Workplace Program. In the event the TOWN contracts with a third party to perform the services addressed herein, such contractor shall comply with the COUNTY's Drug-Free Workplace Program requirements.
- 2.1.11 TOWN agrees to participate in Broward County Mass Transit Division's drug and alcohol testing program, or establish and implement subject to Broward County Mass Transit's review and approval, its own drug and alcohol testing program that complies with 49 CFR Part 655. In the event the TOWN subcontracts all or part of the community bus services to a third party, a similar requirement including review and approval by the Contract Administrator must be included in any subsequent agreement. TOWN further agrees to certify, prior to the commencement of services under this Agreement and annually thereafter, compliance with current Federal Transit regulations to the Director, Broward County Mass Transit Division (a model format for certifying compliance is appended as Exhibit "D", attached).
- 2.1.12 TOWN agrees that throughout the term of this Agreement the Broward County Board of County Commissioners' official logo(s) and the COUNTY assigned identification number shall be conspicuously displayed on the rear of the vehicle at all times.
- 2.1.13 TOWN shall maintain certain records of information and data in the format prescribed by the COUNTY and shall furnish such records to COUNTY on a monthly basis, no later than the fifteenth (15) day of the following month.
- 2.1.14 TOWN shall at all times have and maintain in proper working order a dedicated TTY number.

- 2.1.15 TOWN shall be solely responsible to provide, during the term of this Agreement, sufficient vehicles and materials necessary to provide a high quality community bus service which shall include, but not be limited to, all the vehicles, equipment, personnel, training, labor, and materials necessary to provide the transportation, scheduling, dispatching, reporting, and monitoring of the community bus service required herein throughout the term of this Agreement. TOWN acknowledges and agrees that providing high quality community bus service requires TOWN to have an adequate and sufficient number of spare vehicles available.
- 2.2 Maintenance of Vehicles. TOWN shall have a continuing obligation to ensure cleanliness of the vehicles. TOWN shall perform additional cleaning and extermination for pests in the vehicles. All equipment on the vehicles shall be maintained in a fully operable condition at all times (by way of example, but not as a method of exclusion, "all equipment" shall include, but in no way shall be limited to, fully functioning air-conditioning system, turn signals, wheelchair lifts, etc.). TOWN agrees to maintain all vehicles in first class appearance and mechanical condition throughout the duration of this Agreement.
- 2.2.1 TOWN shall maintain all vehicles and equipment in accordance with a preventive maintenance schedule from the vehicle manufacturer which may be reviewed by the COUNTY. In addition, TOWN shall perform all necessary maintenance to ensure the continued and safe operation of all vehicles.
- 2.2.2 The COUNTY may conduct periodic inspections using its own or contracted service personnel to ensure compliance with all maintenance and cleaning requirements specified in this Agreement or in manufacturer's specification and any vehicle not determined by the COUNTY to be acceptable will be removed from service by TOWN and all deficiencies corrected immediately. At the COUNTY's request, TOWN shall take the vehicles to a location designated by the Contract Administrator for inspection.
- 2.2.3 TOWN agrees to allow such on-board surveys and/or inspections as may be requested by COUNTY. The COUNTY shall have the right to inspect the vehicles during the TOWN's regular hours or at any time in case of emergency to determine whether the TOWN has complied with and is complying with the terms and conditions of this Agreement. The COUNTY may, at its discretion, require the TOWN to effect repairs.
- 2.3 TOWN shall ensure that all personnel providing services pursuant to this Agreement comply with all applicable federal, state, and County regulations, laws, and licensing requirements prior to and at all times while operating TOWN's vehicle or performing any duties or functions relating to the requirements of this Agreement.
- 2.4 Safety and Security Reporting Requirements. TOWN shall notify the Contract Administrator as indicated below and shall submit a monthly report to the Contract Administrator summarizing the following:
- (a) TOWN shall notify the Contract Administrator with two (2) hours of the occurrence and provide a full incident report of any Major incident involving a transit vehicle. A Major incident involves one of the following conditions:
- A fatality
 - Where two or more people are transported for off-site medical care
 - Total property damage is equal to or in excess of \$25,000.00
 - An evacuation due to life safety reasons
- (b) A summary report of all Non-Major incidents involving a transit vehicle. A Non-Major incident involves one of the following conditions:

- Where one person is transported for off-site medical care
- Total property damage is equal to or in excess of \$7,500.00 but less than \$25,000.00
- All non-arson fires not qualifying as Major incidents

(c) All Crimes aboard transit vehicles and resulting arrests.

2.5 Minimum Standards. TOWN agrees to comply with the following minimum standards:

- (a) All vehicles shall be kept clean and orderly during all times of active service.
- (b) All accidents shall be reported immediately to the police
- (c) Vehicles shall not be operated if the top or interior lights or the headlights or taillights are not functioning properly. Likewise, a vehicle shall not be driven unless the brakes, steering mechanism, tires, horn, windshield wipers, and side and rearview mirrors are in good working order.
- (d) Advertising, if allowed by COUNTY, on any vehicle shall not obstruct the driver's view and shall not obstruct the vehicle's top lights or other lights. No vehicle shall have within it, or on its exterior, any sign which encourages, advertises for, or otherwise solicits tips.
- (e) All vehicles shall be equipped with rearview mirror and side mirrors on driver's and passenger's side
- (f) Speedometer shall be properly installed, in good working order, and exposed to the view of both the driver and the passenger(s).
- (g) The interior of the vehicle(s) shall be clean, sanitary, free from torn or damaged upholstery or floor coverings and from damages or broken seats.
- (h) Door hinges and latches shall be in good mechanical working order and all doors shall operate easily and close securely.
- (i) Vehicle(s) shall be structurally sound and operate with a minimum of noise, vibration, and visible exhaust fumes.
- (j) The body, fenders, doors trim and grill of the vehicle(s) shall be free from cracks, breaks and dents, and painted.
- (k) Vision shall be unobstructed on all four (4) sides of the vehicle(s).

SERVICES TO BE PROVIDED BY COUNTY

2.6 EQUIPMENT

2.6.1 Upon execution of this Agreement by the parties, COUNTY shall lease to TOWN four (4) wheelchair accessible, passenger vehicles to be used in regular route service as set forth in Exhibit "A". Such vehicles shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations. These vehicles shall be leased to the TOWN for \$10.00 each per year. Prior to the acceptance

of the vehicles by TOWN, TOWN, at its own cost, shall have the right to inspect, or cause to be inspected, the vehicle by a mechanic designated by the TOWN.

2.6.2 No later than January 4, 2004, COUNTY shall lease to TOWN an additional two (2) wheelchair accessible, passenger vehicles to be used in regular route service for the Pine Island Ridge Drive Segment as set forth in Exhibit "A." Service on this route shall commence on the earlier of the issuance of a Notice to Proceed or January 4, 2004. Such vehicles shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations. These vehicles shall be leased to the TOWN for \$10.00 each per year. Prior to the acceptance of the vehicles by TOWN, TOWN, at its own cost, shall have the right to inspect, or cause to be inspected, the vehicle by a mechanic designated by the TOWN.

2.6.3 COUNTY shall provide the manufacturer's warranties and maintenance shop manuals to the TOWN.

2.6.4 COUNTY shall provide TOWN with sufficient bus stop signs and sign posts to cover the route described in Exhibit "A." Bus stop sign installation shall be the responsibility of the TOWN and must comply with Roadway and Traffic Design Standards Index #11865, published by the Florida Department of Transportation. In the event, TOWN desires to supply its own signage at its own expense, such signage must be approved by COUNTY.

2.7 TECHNICAL ASSISTANCE

2.7.1 COUNTY shall provide Florida commercial drivers licensed operators hired by TOWN or its contractors with training in passenger relations, rules of the road, and transit system information. All Florida commercial drivers licensed operators shall be required to attend and successfully complete the COUNTY's training program prior to operating the vehicle(s) addressed herein. This requirement shall extend to any and all Florida commercial drivers licensed operators employed at any time during the term of this Agreement. In the event training is not available, the Contract Administrator may provide a written extension, not to exceed sixty (60) days from the date the driver begins operating the vehicles, for Florida commercial drivers licensed operators to attend and complete the COUNTY's training.

2.7.2 COUNTY shall assist TOWN staff with any aspect of planning and scheduling of public transit routing that TOWN might request.

2.7.3 COUNTY shall print and provide TOWN with bus route timetables sufficient to inform TOWN residents and passengers of service made available as described in Exhibit "A" or any modification thereto.

2.7.4 COUNTY shall assist TOWN in procuring bus shelters at no cost to TOWN that generate revenue, if TOWN requests.

2.8 TOWN acknowledges and agrees that the Contract Administrator, unless specifically authorized herein, has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

2.9 Non-compliance with the provisions of Section 2.1.4 shall constitute cause for termination of this Agreement by the COUNTY pursuant to Section 9.1. Additionally, all previous funds paid to TOWN hereunder shall be returned to COUNTY within ten (10) days of receipt by TOWN of the notice of termination.

ARTICLE 3
COMPLAINTS

- 3.1 TOWN is obligated to respond to complaints regarding the quality of service, whether patrons' complaints or on the COUNTY's own initiative or otherwise. Such response shall be provided by the TOWN verbally within two (2) calendar days of complaint and in writing within five (5) calendar days. The TOWN shall copy the Contract Administrator on all correspondence. At the request of the COUNTY, TOWN shall meet with the Contract Administrator to review any complaints or concerns and to promptly correct any deficiencies. The Contract Administrator's determination as to quality of operation or services shall be conclusive, and curative measures shall be implemented by TOWN as expeditiously as possible.
- 3.1.1 TOWN shall be required to resolve all written and oral complaints received from the public or the COUNTY. TOWN shall be required to conduct the necessary investigation, impose disciplinary action on employees where appropriate and respond in writing to each complainant with the results of such investigation and/or disciplinary action. Copies of all such correspondence shall be provided to the Contract Administrator on a weekly basis.
- 3.1.2 TOWN shall submit a monthly report to the Contract Administrator summarizing complaints and damage or other claims received during the preceding month as well as the resolution, if known, of such matters. In addition, TOWN shall prepare and furnish such other reports as the Contract Administrator may, from time to time, require.

ARTICLE 4
TERM AND TIME OF PERFORMANCE

- 4.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall remain in effect through September 30, 2006; the term may be extended for up to two (2) additional one (1) year periods upon written approval of the Contract Administrator, 90 days prior to the expiration of the then current term, and the consent of TOWN. If the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes.
- 4.2 Prior to beginning the performance of any services under this Agreement, TOWN must receive a Notice to Proceed from Contract Administrator.

ARTICLE 5
FINANCIAL ASSISTANCE

- 5.1 COUNTY agrees to pay TOWN, Twenty Dollars (\$20.00) per revenue service hour, per vehicle in revenue service under the terms of this Agreement, for the remaining term of the Agreement and an additional Twelve Dollars (\$12.00) per revenue service hour for the Pine Island Ridge Drive Segment as set forth in Exhibit "E," attached hereto and made a part hereof. TOWN shall submit its vehicle revenue service hour calculations on the form and pursuant to instructions prescribed by Contract Administrator as set forth in Exhibit "E", attached hereto and made a part hereof. The funds addressed herein shall be used by TOWN solely for the purpose of maintaining, operating, and properly equipping the vehicle(s) and for no other purpose. On the effective date of this Agreement, COUNTY shall pay TOWN, in advance, the anticipated amount due through the first quarter. All payments for subsequent quarters, if applicable, shall be paid in advance on a quarterly basis.
- 5.2 The name of the official payee to whom COUNTY shall issue checks shall be the TOWN of DAVIE.

5.3 METHOD OF BILLING AND PAYMENT

5.3.1 TOWN shall submit invoices for compensation, in advance, on a quarterly basis. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and include a list of all Florida commercial licensed drivers, including drivers' license numbers, for each individual permitted to operate the vehicles under this Agreement. Each invoice must be submitted on the form and pursuant to instructions prescribed by Contract Administrator as set forth in Exhibit "E," attached hereto and made a part hereof.

ARTICLE 6
CHANGES IN SCOPE OF SERVICES

- 6.1 Except for those changes permitted in Section 2.1 herein, any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 10.14 below.
- 6.2 Any appreciable changes in the level of services, as determined by the Contract Administrator's sole discretion, to be provided by TOWN as set forth herein shall only be implemented after COUNTY and TOWN have entered into a modified agreement describing the changed services. Nothing in this Agreement precludes the possibility of COUNTY once again providing public transportation services if ridership levels warrant expanded service.
- 6.3 The parties agree to renegotiate this Agreement if applicable federal, state, or local laws or revisions of said laws make changes in the Agreement necessary or desirable, as determined by the Contract Administrator.

ARTICLE 7
INDEMNIFICATION / GOVERNMENTAL IMMUNITY

7.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. TOWN is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 8
INSURANCE

8.1 The parties hereto acknowledge that TOWN is an entity subject to Section 768.28, Florida Statutes, and TOWN shall furnish Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of said agreement. The TOWN shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes. If TOWN contracts with a third party to provide the transportation service addressed herein, any contract with such third party shall include the following provisions:

Indemnification: TOWN's contractor agrees to indemnify, reimburse, defend, and hold harmless COUNTY and COUNTY's officers, agents, and employees for, from, and against all claims, actions, or causes of actions, losses, damages, liabilities, costs, and expenses, including, reasonable costs, attorney's and paralegal's fees, imposed on or incurred by COUNTY in connection with all loss of life, bodily injury, personal injury, damage to property occurring upon, or about or arising out of or relating to, the contractor's occupancy or use of the vehicle(s) to perform the services set forth herein.

Insurance: TOWN's contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, insurance of the types and amounts as set forth on Exhibit "C," a copy of which is attached hereto and incorporated herein by reference as if set forth in full, and shall name COUNTY as an additional insured.

Provisions Applicable to Insurance: At or prior to the commencement of contractor's performance pursuant to the provisions of any agreement with TOWN involving the vehicle(s) provided hereunder, contractor shall deliver the original certificate of insurance required herein to COUNTY. Contractor shall pay the premiums for all insurance required by this Agreement. Contractor shall cause all policies of insurance required by this Agreement to be renewed from time to time so that at all times the insurance protection required by this Agreement shall continuously exist. The policy shall not be canceled or materially changed without the giving of at least thirty (30) days' prior written notice thereof to COUNTY, and in such event, a policy pursuant to the above terms must be substituted.

ARTICLE 9 TERMINATION

- 9.1 This Agreement may be terminated for cause by action of the Board or by TOWN upon thirty (30) days' written notice by the party that elected to terminated, or for convenience by action of Board upon not less than sixty (60) days' written notice by Contract Administrator. This Agreement may also be terminated by Contract Administrator upon such notice as Contract Administrator deems appropriate under the circumstances in the event Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 9.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of COUNTY as set forth in this Agreement, or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 9.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 9.4 In the event this Agreement is terminated for convenience, the financial assistance provided by the COUNTY shall be prorated on a monthly basis to the date the Agreement is terminated. However, upon being notified of COUNTY's election to terminate, TOWN shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. TOWN acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by COUNTY, the adequacy of which is hereby acknowledged by TOWN, is given as specific consideration to TOWN for COUNTY's right to terminate this Agreement for convenience.
- 9.5 Upon termination of this Agreement for whatever reason, TOWN shall return the vehicle leased herein to the COUNTY. TOWN shall return the vehicle to COUNTY in the condition it was received at the onset of this Agreement, normal wear and tear excepted. The TOWN's obligation to return the vehicle to the COUNTY in the condition it was received shall include the removal of any painting or wrapping of the vehicle for advertisement purposes. Any costs necessary to restore and/or prepare the vehicle for return to COUNTY shall be the sole responsibility of the TOWN. COUNTY, through its Maintenance Transit Manager, shall have the right to inspect and to approve the condition of the vehicle prior to acceptance and should the Maintenance Transit Manager determine that the vehicle is not in the proper condition,

TOWN shall at its sole cost and expense remedy any and all deficiencies identified by the Maintenance Transit Manager.

ARTICLE 10
MISCELLANEOUS

10.1 OWNERSHIP OF DOCUMENTS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by TOWN, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by TOWN to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to TOWN shall be withheld until all documents are received as provided herein.

10.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of TOWN that are related to this Project. TOWN shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

TOWN shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to TOWN's records, TOWN shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by TOWN. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

10.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

TOWN shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. TOWN shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, TOWN shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

TOWN's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

TOWN shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

10.4 INDEPENDENT CONTRACTOR

TOWN is an independent contractor under this Agreement. Services provided by TOWN pursuant to this Agreement shall be subject to the supervision of TOWN. In providing such services, neither TOWN nor its agents shall act as officers, employees, or agents of the COUNTY. This Agreement shall not constitute or make the parties a partnership or joint venture.

10.5 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Director of Mass Transit Division
Broward County Mass Transit Division
3201 West Copans Road
Pompano Beach, Florida 33069

FOR TOWN:

Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314

10.6 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, TOWN shall not subcontract any portion of the work required by this Agreement except as authorized herein.

TOWN represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to COUNTY's satisfaction for the agreed compensation.

TOWN shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of TOWN's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

10.7 CONFLICTS

Neither TOWN nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with TOWN's loyal and conscientious exercise of judgment related to its performance under this Agreement.

TOWN agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding, related to performance under this Agreement, in which he or she is not a party, unless compelled by court process. Further, TOWN agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding related to the performance under this Agreement. The limitations of this section shall not preclude TOWN or any other persons from representing themselves in any action or in any administrative or legal proceeding related to the performance under this Agreement.

In the event TOWN is permitted to utilize subcontractors to perform any services required by this Agreement, TOWN agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

10.8 MATERIALITY AND WAIVER OF BREACH

COUNTY and TOWN agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

10.9 COMPLIANCE WITH LAWS

TOWN shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

10.10 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or TOWN elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

10.11 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent 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.

10.12 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 of this Agreement shall prevail and be given effect.

10.13 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida. By entering into this Agreement, TOWN and COUNTY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project.

10.14 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and TOWN.

10.15 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 10.14 above.

10.16 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A," "B," "C," "D" and "E" are incorporated into and made a part of this Agreement.

10.17 MULTIPLE ORIGINALS

This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2003, and TOWN, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, ____.

Approved as to form by
EDWARD A. DION, County Attorney
for Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Yasmi Govin
Assistant County Attorney

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF DAVIE FOR PUBLIC TRANSPORTATION SERVICES

TOWN

ATTEST:

DAVIE

TOWN OF

Town Clerk

By _____
Mayor

____ day of _____, 20____.

Town Manager

____ day of _____, 20____.

APPROVED AS TO FORM:

By _____
Town Attorney

YYG:dmv
8/05/03

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