

AGREEMENT
between
BROWARD COUNTY
and
PALM BEACH COUNTY
for
JOINT PURCHASE
TRANSIT FARE INTEROPERABILITY

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and

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TRANSIT FARE INTEROPERABILITY

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

and

PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "PALM BEACH,"

RECITALS:

WHEREAS, BROWARD and PALM BEACH both operate public transportations systems; and

WHEREAS, Miami-Dade County ("MIAMI-DADE") contracted for the design, fabrication, installation and maintenance of an automated fare collection system on its transit vehicles commonly referred to as "EASY Card" which is a contactless smartcard system which allows for electronic payment of transit fare; and

WHEREAS, MIAMI-DADE designed the EASY Card system to allow for future integration with other transit providers in the region; and

WHEREAS, South Florida Regional Transportation Authority ("SFRTA") entered into a Participation Agreement dated March 26, 2010 with MIAMI-DADE to permit SFRTA to use the EASY Card as a method of cashless fare collection on SFRTA's fixed route service and for patron transfers between the fixed-route service of MIAMI-DADE and SFRTA; and

WHEREAS, BROWARD and PALM BEACH plan to enter into a phased agreement for integration with MIAMI-DADE and SFRTA that will permit the use of the

EASY Card on select transit routes that intersect with the MIAMI-DADE public transit system and SFRTA commuter trains during a pilot phase and provide for the expanded use of the EASY Card on their transit vehicles provided that the pilot phase is successful and there is adequate available funding; and

WHEREAS, BROWARD and PALM BEACH, in addition to the integration with MIAMI-DADE and SFRTA, desire to implement a mobile ticketing system that will allow their transit customers to order, pay for, obtain and validate transit fares from any location and at any time using mobile phones or other mobile electronic devices; and

WHEREAS, BROWARD and PALM BEACH desire to use a joint procurement process, as permitted by the Federal Transit Administration, in an effort to more efficiently and cost effectively purchase the equipment, software, and services needed to implement the integration with MIAMI-DADE and SFRTA and to implement a mobile ticketing system ("Transit Interoperability System"); and

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

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** – The term "Agreement" shall mean this Agreement among BROWARD and PALM BEACH.
- 1.2 **Board** - The Board of County Commissioners of Broward County, Florida.
- 1.3 **BCT** - The term "BCT" shall mean the Broward County public transportation system.
- 1.4 **Joint Procurement** – The term "Joint Procurement" shall mean the method of contracting, as permitted by the Federal Transit Administration ("FTA"), in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity.
- 1.5 **Palm Tran** - The term "Palm Tran" shall mean the Palm Beach County public transportation system.
- 1.6 **Party(ies)** – The term "Party" shall mean either Broward County or Palm Beach County and the term "Parties" shall mean Broward County and Palm Beach County.

- 1.7 **Project Manager** – The term "Project Manager" shall mean the person designated in writing by each of the Parties. The primary responsibilities of the Project Manager are to coordinate and communicate with the Parties and to manage and supervise execution and completion of the terms and conditions of this Agreement. In the administration of this Agreement, as contracted with matters of policy, all Parties may rely on the instructions or determinations made the by Project Manager; provided, however, that such instructions and determinations do not change the scope of services.
- 1.8 **Transit Interoperability Systems** – The term "Transit Interoperability Systems" shall mean the equipment, software, and services necessary for BROWARD and PALM BEACH to implement the integration with MIAMI-DADE and SFRTA and to implement a mobile ticketing system that will allow BROWARD and PALM BEACH transit customers to order, pay for, obtain and validate transit fares from any location and at any time using mobile phones or other mobile electronic devices.

ARTICLE 2

PURPOSE AND SCOPE

- 2.1 The purpose of this Agreement is to define the rights and obligations of the Parties in the Joint Procurement of a Transit Interoperability system.
- 2.2 BROWARD and PALM BEACH shall jointly develop the competitive procurement solicitation document in the form of a Request for Proposals ("RFP") that will contain the necessary specifications and requirements to meet the needs of each Party to implement its own Transit Interoperability System.
- 2.3 BROWARD shall issue, following approval by the Board, the RFP and the Joint Procurement shall be conducted by BROWARD pursuant to its procurement policies as set forth in the Chapter 21 of the Broward County Administrative Code ("Procurement Code") and shall be subject to all applicable Broward County ordinances, rules, and regulations, including but, not limited to the Broward County Cone of Silence Ordinance and the Code of Ethics for Broward County elected officials and employees.
- 2.4 The Evaluation Committee shall be appointed pursuant to the provisions of the Procurement Code and shall contain five (5) voting members, two (2) of which shall be employees of PALM BEACH with Palm Beach County job classification codes comparable to the job classifications codes required by the Procurement Code for county employees.
- 2.5 Upon approval, by the Board, of the final ranking, the Broward County Purchasing Director, assisted by Broward County staff, and representatives from PALM BEACH, shall attempt to negotiate a contract with the first ranked/highest-

evaluated vendor ("Vendor") within a reasonable time period, or the time period established by the RFP or the Evaluation Committee.

- 2.6 The Parties shall negotiate a three party agreement with the Vendor ("Contract"). At a minimum, the Contract shall contain provisions to: (i) authorize BROWARD and PALM BEACH to independently utilize their own processes to purchase the Transit Interoperability System items necessary to meet their individual needs, (ii) require that the Vendor shall separately bill each Party directly for their individual purchases, (iii) require that each Party shall be solely responsible for payments on account of its purchases and in no event shall a Party be responsible for the purchases made by the other Party, (iv) require that each Party shall be separately responsible for the Vendor's compliance with the Contract terms and obligations, including but not limited to, all conditions of delivery and quality of the items purchased by the Party.

ARTICLE 3

TERM

- 3.1 The term of this Agreement shall begin on the date it is fully executed by the Parties and shall end on final acceptance of the project. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

ARTICLE 4

GOVERNMENTAL IMMUNITY

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. All Parties to this agreement are a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 5

INSURANCE

The Parties are entities subject to Section 768.28, Florida Statutes.

ARTICLE 6

TERMINATION

- 6.1 This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within thirty (30) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated for convenience by BROWARD or PALM BEACH prior to award of the Contract to the Vendor. Termination for convenience by either BROWARD or PALM BEACH shall be effective on the termination date stated in written notice provided by the Party exercising its right to terminate for convenience, which termination date shall be not less than thirty (30) days after the date of such written notice.
- 6.2 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

ARTICLE 7

RELATIONSHIPS OF THE PARTIES

Except as set forth herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be deemed to express an intention to make any Party a partner, agent, or local representative of any other Party or to create any type of fiduciary responsibility or relationship of any kind whatsoever between the Parties. The obligations created and imposed by this Agreement are not joint; rather, such obligations are separate and severable.

ARTICLE 8

MISCELLANEOUS

- 8.1 ASSIGNMENT. This Agreement, or any interest herein, may not be assigned, transferred or otherwise encumbered, under any circumstances by any party without the prior written consent of the other party to this Agreement.
- 8.2 STATE AND FEDERAL LAWS. The provisions of this Agreement shall comply with all applicable state and federal laws. This Agreement shall be construed in accordance with the laws of the state of Florida.
- 8.3 NOTICES. Whenever a Party desires to give notice to another Party or Parties, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, 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:

Director, Broward County Transit Division
1 North University Drive, Suite 3100A
Plantation, Florida 33324

FOR PALM BEACH:

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

With Copy to:
County Attorney
301 N. Olive Avenue
West Palm Beach, Florida 33401

- 8.4 PRIOR AGREEMENTS. This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written. This Agreement does not modify the terms of the Partnership Agreement between MIAMI-DADE and SFRTA and the Participation Agreement shall remain in full force and effect.

- 8.5 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 any Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within thirty (30) days of final court action, including all available appeals. The election to terminate shall be in writing and comply with the provisions of section 12.3 herein and shall be effective upon the termination date stated in the written notice, which termination date shall not be less than 365 days after the date of such written notice.
- 8.6 REPRESENTATIONS AND WARRANTIES. Each of the Parties hereby represents and warrants as to itself as follows:
- (a) It is duly organized and validly existing under the constitution and laws of the state of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder;
 - (b) This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.
- 8.7 JOINT PREPARATION. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
- 8.8 INTERPRETATION. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.
- 8.9 THIRD PARTY BENEFICIARIES. The Parties do not intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

- 8.10 AMENDMENTS. The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. 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 Parties or others delegated authority to or otherwise authorized to execute same on their behalf.
- 8.11 JURISDICTION, VENUE, WAIVER OF JURY TRIAL. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteen or Seventeenth Judicial Circuit in in the state of Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**
- 8.12 MULTIPLE ORIGINALS. Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.
- 8.13 FORCE MAJEURE. If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed.
- 8.14 NON DISCRIMINATION. No Party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression, or genetic information in the performance of this Agreement.

The Parties 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 and shall not otherwise unlawfully discriminate. The Parties shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services herein, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability),

and all applicable regulations, guidelines, and standards. In addition, the Parties shall take affirmative steps to prevent discrimination in employment against disabled persons.

[REMAINDER OF PAGE 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 _____, 20__, and MIAMI-DADE COUNTY, signing by and through its _____, duly authorized to execute same and PALM BEACH COUNTY, signing by and through its Mayor or Vice-Mayor, duly authorized by its Board of County Commissioners to execute same and SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, signing by and through its _____, duly authorized to execute same and.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
it's Board of County Commissioners

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

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Signature (Date)

By _____
Sharon V. Thorsen (Date)
Senior County Attorney

Print Name and Title above

Noel M. Pfeffer (Date)
Deputy County Attorney

SVT:dmv
5/15/14
4/21/14
03/05/14

jointpurchaseagreementtransit fare interoperability project
14-114.00

PALM BEACH COUNTY

ATTEST:

By: _____
County Clerk

By: _____
Mayor

_____ day of _____, 2014

Approved as to form
and legal sufficiency

County Attorney

Departmental Approval
By:
