

TRANSPORTATION SYSTEM SURTAX INTERLOCAL AGREEMENT

This Transportation System Surtax Interlocal Agreement (the "Agreement") is entered into by and between Broward County, a political subdivision of the State of Florida (the "County"), the municipalities that formally approve this Agreement and execute and return to the County a signature page bearing the above legend, each of which is a municipal corporation within Broward County existing under the laws of the State of Florida (collectively, the "Municipalities"), and the Broward County Metropolitan Planning Organization, duly organized and existing under Section 339.175, Florida Statutes (the "MPO").

Recitals

A. Because of the urgent need for transportation system improvements, the County Commission voted on June 5, 2018, to place on the November 6, 2018, ballot, for consideration by the countywide electorate, a proposed transportation surtax levy of one percent (1%) (the "Ballot Proposal"). On June 5, 2018, the County Commission also enacted Ordinance No. 2018-29, the Broward County Transportation Surtax Ordinance, which is codified in Section 31½-71, et seq., Broward County Code of Ordinances, and which, among other things:

1. Levied the surtax subject to subsequent voter approval;
2. Established a transportation surtax trust fund into which all surtax proceeds will be deposited;
3. Established an independent oversight board (the "Oversight Board") to ensure transparency and objectivity in the review of applications for funding from surtax proceeds;
4. Established a seven (7) member entity (the "Appointing Authority") to appoint the members of the Oversight Board. One of the members is a designee of the Broward League of Cities; and
5. Provided a process by which any municipality within Broward County may apply for project funding from surtax proceeds, which process includes a request that the MPO review and rank all municipal projects based on each project's ability to alleviate traffic congestion and enhance connectivity.

B. The County and the Municipalities enter into this Agreement to demonstrate their commitment to work together to protect the health, safety, and welfare of their mutual residents and visitors, including by educating the electorate, consistent with state law requirements, on the critical importance of the Ballot Proposal.

C. The County Commission, the governing body of each of the Municipalities, and the MPO enter into this Agreement on behalf of their respective entities after having made the following findings:

1. Without a dedication of substantial new revenues, the existing transit system within Broward County will not be sustainable, alternative modes of transportation will not be realized, and traffic congestion will continue to worsen;
2. The ten-year Transportation Development Plan approved by the County Commission on January 9, 2018, identifies that the County's transit system will be substantially underfunded by 2025, despite the current dedication of substantial *ad valorem* tax revenues to subsidize transit operations;
3. The proposed transportation surtax would enable the advancement of transportation and premium transit projects presently identified in the MPO's Commitment 2045 Metropolitan Transportation Plan and the current five-year Transportation Improvement Program, and would provide funding for roadway capital investment projects that would improve safety, reduce congestion, and advance multimodal mobility options for residents and visitors, which projects are currently infeasible for reasons including a lack of dedicated revenue for operations and maintenance; and
4. Critically, the proposed transportation surtax would provide a dedicated funding source that would enable the County to leverage revenues contributed by residents and visitors to obtain federal transportation grants available only to grant applicants that can demonstrate the financial resources to build, operate, and maintain, through their useful lives, major transportation projects, thereby bringing back to Broward County more of the tax dollars paid by local residents and businesses that would otherwise be allocated to other counties and states. The proposed surtax would enable the County to compete directly for, and work collaboratively with other governmental and private partners to acquire, certain discretionary state and federal funding to advance the mobility goals of the region.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Agreement

I. Recitals. The above-stated Recitals are true and correct and are incorporated herein by this reference.

II. Applications for Funding. All municipal projects included within the Regional Mobility & Transportation Enhancements Surtax Initiative, which will be considered by the County Commission on September 13, 2018 (the "Current Municipal Projects"), shall be deemed to have been properly submitted by the Municipalities to the County consistent

with Section 31½-75(h), Broward County Code of Ordinances, and are not required to be resubmitted. There are seven hundred nine (709) Current Municipal Projects, with an estimated total cost of \$2.8 billion. All of these projects have been submitted to the MPO for review, ranking, and prioritization, consistent with Section IV below.

III. Eligibility. While the Transportation Surtax Ordinance prioritizes funding for municipal projects that will relieve traffic congestion and increase connectivity, the following municipal projects may be considered for funding:

A. Street lighting - Improvements to lighting systems along a public road that illuminate the right-of-way for vehicles, pedestrians, and bicyclists. A lighting justification report consistent with Broward County and FDOT policies is required for these improvements to be considered;

B. Drainage - Improvements to a public road storm water system that address drainage deficiencies, provided the drainage improvements only address storm water runoff from a public roadway. Improvements to address runoff from private roads and developments are not eligible;

C. Buffer/Sound Walls - Improvements that are consistent with the Florida Department of Transportation's noise decibel level criteria;

D. Fiber-optic - Improvements supporting only communications for the public transportation system, provided that the proposed improvements have received approval from the maintaining and operating agency(ies). Shared conduit may not be considered for surtax funding;

E. Landscaping - Only improvements within the public road right-of-way that meet the applicable design criteria may be considered for funding;

F. Parking - Improvements used for park-and-ride or other transit-oriented development parking that serves the public. Garages directly related to a transportation project that serves the public will be considered, provided the parking fees do not exceed costs associated with securing, operating, and maintaining the facility; and

G. Road Improvements - Resurfacing and road repairs, pavement markings, signage, guardrails, ADA accommodations, and traffic calming projects are eligible. High-end decorative lighting, decorative road signage, brick pavers, and similar items are not eligible.

IV. MPO Review and Ranking. For all Current Municipal Projects and all future municipal projects submitted to the MPO (collectively, "Submitted Municipal Projects"), the MPO agrees to review, rank, and prioritize the projects based upon each project's ability to alleviate traffic congestion and enhance connectivity. The parties hereto acknowledge that the MPO might lack adequate resources to review, rank, and prioritize

the Submitted Municipal Projects prior to calendar year 2020. The impact of this is addressed in Section V below.

V. Surtax Proceeds for Submitted Municipal Projects.

A. If the proposed surtax levy is approved by the voters in the November 6, 2018, election, the net amount of transportation surtax proceeds the County receives from the Florida Department of Revenue ("FDOR") shall be defined as the "Transportation Surtax Proceeds." The amount of Transportation Surtax Proceeds currently estimated to be received during the thirty-year levy is approximately \$15.6 billion.

B. Section 212.055, Florida Statutes, which authorizes the levy of the proposed surtax, was recently amended to require, prior to the conducting of the referendum, completion of an independent "performance audit of the program associated with the surtax adoption proposed by the county." In connection with that audit, the County submitted to the state's Office of Program Policy Analysis and Government Accountability the table attached hereto as Exhibit A (the "Table"). The Table shows the amount of Transportation Surtax Proceeds currently projected to be received by the County and the current intended use of such proceeds.

C. The row of the Table titled "City Projects" represents the County's current estimate of the amount of money available and intended in good faith to be utilized each year during the thirty-year tax levy to fund (i) Submitted Municipal Projects approved by the Oversight Board and (ii) Community Bus Service expenditures (as specified below).

D. Consistent with Section 212.055(1)(d), Florida Statutes, the County Commission hereby determines it appropriate and the County hereby commits that, for each applicable year during which Transportation Surtax Proceeds are received by the County, a minimum of ten percent (10%) of the Transportation Surtax Proceeds received by the County, less the amount directly paid from Transportation Surtax Proceeds for Community Bus Service as outlined below, shall be used to fund one or more Submitted Municipal Projects ranked highest by the MPO. No Transportation Surtax Proceeds may be used to fund any Submitted Municipal Project: (i) submitted by a municipality that is not a party to this Agreement; (ii) that has not been approved by the Oversight Board; or (iii) to the extent utilization of Transportation Surtax Proceeds on such project would be impermissible under applicable law. Additionally, this ten percent (10%) commitment shall be reduced in any year to the extent requested expenditures for Submitted Municipal Projects prioritized by the MPO are below ten percent (10%) of Transportation Surtax Proceeds received during such year less Community Bus Service expenditures for such year. Funding of a Submitted Municipal Project shall be accomplished through an interlocal agreement between the County and the applicable Municipality. The unincorporated area of the County shall be considered a municipality eligible to receive funding committed under this section, and projects proposed on behalf of the unincorporated area of the County shall constitute Submitted Municipal Projects. Each Municipality agrees to keep any and all Transportation Surtax Proceeds it receives in a

segregated financial account, and agrees not to comingle such proceeds with any other funds.

E. Community Bus Service. Transportation Surtax Proceeds will directly fund existing Community Bus Service as outlined below, subject to the below-stated conditions and such expenditures being approved by the Oversight Board. Funding of such service is not subject to any review or ranking by the MPO. The Community Bus Service funded pursuant to this paragraph must be new service that supplements existing service. To receive surtax funding, the new service must meet or exceed the standard of 7.1 passengers per revenue service hour per route (the County has the discretion to increase this standard based on future population and ridership growth). Reasonable and necessary operating, maintenance, and capital expenses incurred in providing such Community Bus Service are eligible for surtax funding.

F. Potential Limitation for Calendar Year 2019. Notwithstanding anything in this Agreement to the contrary, if the MPO is unable to review, rank, and prioritize Submitted Municipal Projects prior to calendar year 2020, the ten percent (10%) commitment stated in paragraph D above shall be inapplicable for calendar year 2019, but the County shall fund during calendar year 2019 the Community Bus Service described in paragraph E above.

VI. Condition Precedent to Effectiveness of this Agreement; Joining After the Agreement Becomes Effective. This Agreement shall become effective only if, on or before September 30, 2018, the MPO and municipalities representing a majority of the population of Broward County formally approve, execute, and return the executed Agreement to the County, with a contemporaneous copy e-mailed to the County Administrator and County Attorney at the e-mail addresses provided below. Any municipality may join the Agreement after it becomes effective. No municipality is eligible to receive any Transportation Surtax Proceeds prior to that municipality becoming a party to this Agreement. Additionally, if a municipality has not joined the Agreement on or before September 30, 2018, that municipality shall not be eligible to receive any Transportation Surtax Proceeds received by the County in 2019.

VII. Reporting, Audit, and Related Requirements. The County and each Municipality receiving funding pursuant to this Agreement agree to fully comply with the Reporting Requirements specified on Exhibit B, agree to fully comply and otherwise fully cooperate with the auditing, project review, and oversight requirements stated in Section 31½-75, Broward County Code of Ordinances, as same may be amended by the County (provided that such amendment(s) apply equally to the County), and agree that all of their respective expenditures of Transportation Surtax Proceeds will be consistent with the conditions, if any, of the approval received by the Oversight Board. The obligations stated in this paragraph shall survive expiration or earlier termination of this Agreement.

VIII. Term of Agreement. This Agreement shall remain in full force and effect until all Transportation Surtax Proceeds received by any party pursuant hereto have been expended and thereafter until ninety (90) days after the Oversight Board has completed

its review of each applicable party's final audit. If the Ballot Measure is not approved by majority vote in connection with the November 6, 2018, election, this Agreement shall be null and void *ab initio*.

IX. No Impact on Future Levies. Nothing in this Agreement shall impact in any way, whatsoever, any future ballot question (whether placed on a ballot in 2019 or any time thereafter) seeking to impose, extend, or increase any levy of any surtax, or impact in any way any distribution from any such new, extended, or increased levy.

X. Pledge of Support. To the full extent permissible under applicable law, all parties pledge to support the approval of the Ballot Measure and agree to work cooperatively to enhance the regional transportation system. Nothing stated in this section shall be interpreted to impede the free speech rights of any individual.

XI. Amendment. This Agreement may be amended by a written document formally approved by the County and by such Municipalities that both (i) constitute a majority of the Municipalities that are a party to the Agreement, and (ii) cumulatively represent more than fifty percent (50%) of the County's total population. The MPO's written approval of any amendment shall only be required if the amendment purports to modify any express obligation of the MPO hereunder. Any properly approved amendment shall be binding on all parties hereto.

XII. Governing Law, Venue, and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. **BY ENTERING INTO THIS AGREEMENT, EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS THAT PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT.**

XIII. Counterparts. This Agreement may be executed in counterparts, and such counterparts together shall constitute one and the same instrument.

XIV. Further Actions. If an audit conducted in connection herewith or in connection with Chapter 31½, Broward County Code of Ordinances, documents any misspent funds or other violation of this Agreement, the party in violation shall promptly take all reasonable and required actions to correct the violation. This provision shall survive the expiration or earlier termination of this Agreement.

XV. Notices. Any notice under this Agreement shall be provided by email to the following recipients:

As to the County: Broward County Administrator
Current e-mail: bhenry@broward.org

With a copy to: Broward County Attorney
Current e-mail: ameyers@broward.org

As to Municipality: Manager/Administrator
Name and current e-mail provided on signature page

With a copy to: Municipal Attorney
Name and current e-mail provided on signature page

MPO: MPO Executive Director
Current e-mail: stuartg@browardmpo.org

With a copy to: MPO General Counsel
Current e-mail: agabriel@wsh-law.com

A party's notice address may be changed at any time by that party, provided that party provides notice of such change consistent with the requirements of this section.

XVI. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any other agreement, representation, or communication, whether oral or written, between the parties relating to the subject matter of this Agreement.

XVII. Headings. The section and subsection headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

XVIII. Joint Preparation. The preparation of this Agreement has been a joint effort of the parties hereto, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against any party.

XIX. Severability. In the event any portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective and the parties agree to negotiate in good faith to modify the invalidated portion of the Agreement in a manner designed to effectuate the original intent of the parties.

XX. Advice of Counsel. Each party acknowledges and agrees that it has had the opportunity to consult with and be represented by counsel of its choice in connection with the negotiation and drafting of this Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY, by its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, duly authorized to execute same by Board action on the 21st day of August, 2018; each Municipality signing by and through its authorized officer or official, duly authorized to execute same by official action taken on the date identified on its signature page; and the MPO signing by and through its authorized officer or official, duly authorized to execute same by official action taken on the date identified on its signature page.

BROWARD 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 _____, 2018

Approved as to form by:

Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: _____
Andrew J. Meyers
Broward County Attorney
____ day of _____, 2018

Signature Page for Municipality

TRANSPORTATION SYSTEM SURTAX INTERLOCAL AGREEMENT

Each Municipality to supply its own valid signature page (to be valid, the signature page must include notice information and date of formal action approving the Agreement)

MPO Signature Page

TRANSPORTATION SYSTEM SURTAX INTERLOCAL AGREEMENT

MPO to provide its own valid signature page (to be valid, the signature page must include notice information and date of formal action approving the Agreement)

Exhibit A - From OPPAGA Submittal

Exhibit B - Reporting Requirements

The County and each Municipality shall submit to the Oversight Board an annual detailed report of the progress made in carrying out their respective projects funded through the surtax. The report shall be audited by an independent CPA, with an opinion as to whether the financial information is presented in accordance with Generally Accepted Accounting Principles and whether the projects are in accordance with the ILA. The audit shall contain sufficient information for the Oversight Board to determine if the project expenditures conform to this Agreement and applicable law. In this regard, the report must include cumulative financial information for each individual project undertaken pursuant to this Agreement.

The annual report must conform to the report format presented below and must include the following three sections:

Section One presents expenditures for the current year and the cumulative expenditures for each project as follows:

- 1) A description of the project;
- 2) The projected costs of the project as originally approved by the Oversight Board;
- 3) The cumulative expenditures for the project up to the beginning of the year being reported;
- 4) The expenditures for the project for the current report year; and
- 5) The total cumulative expenditures for the project as of the end of the current year being reported.

Section Two presents the Statement of Revenue, Expenditures, and Changes in Fund Balance for the separate account/fund established for any and all Surtax funds received pursuant to this Agreement, and includes:

- 1) Revenue received by source;
- 2) The project expenditures;
- 3) Administrative costs including, as applicable, salaries, contractual services, and capital outlay;
- 4) Debt service, including principal and interest;
- 5) Other expenditures; and
- 6) The beginning and ending fund balances.

Section Three presents the Balance Sheet for the Surtax fund.

The annual report should include appropriate footnote disclosures in support of the items presented in sections one to three and include disclosure of any issue of noncompliance with this Agreement or applicable law. The following is a sample format of the required report.

**Sample Format for Financial Information for the Annual Report
XYZ Municipality/County Receiving Surtax Funding for Fiscal Year Ended September 30, 201x**

Section I: Project Expenditures (to include detail on Project components of each approved project)

Description Project	Project Budget	Expenditures through Prior FY	Current Expenditures	Cumulative Expenditures
Project 1 (Show detail of expenditures by budget line item)	##	##	##	##
Project 2 (Show detail of expenditures by budget line item)	##	##	##	##
Total	##	##	##	##

Section II: Statement of Revenue, Expenditures & Changes in Fund Balance

Revenues:	
Surtax Receipts	\$ #,###,###
Other	#,###,###
Interest	#,###
Total Revenues	\$ #,###,###
Project/Activity Expenditures (total from Section I, Current Expenditures)	\$ #,###,###
Administrative Costs:	
Salaries	###,###
Contractual Services	###,###
Capital Outlay	###,###
Total Administrative Costs	###,###
Debt Service:	
Principal	###,###
Interest	###,###
Total Debt Service	###,###
Other Expenditures	###,###
Total Expenditures	###,###
Excess of Revenues Over Expenditures	###,###
Fund Balance October 1	###,###
Fund Balance September 30	###,###

Section III: Balance Sheet

Assets (in detail)	\$ ##,###,###
Liabilities and Fund Balances (in detail)	\$ ##,###,###