

Item # 39

ADDITIONAL MATERIAL
10:00 a.m. Regular Meeting
APRIL 26, 2016

SUBMITTED AT THE REQUEST OF

COMMISSIONER TIM RYAN

**TRANSPORTATION SYSTEM SURTAX INTERLOCAL AGREEMENT BETWEEN
BROWARD COUNTY**

and

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”), and _____, a municipal corporation (the “Municipality”).

Recitals

- A. Section 212.055(1), Florida Statutes, authorizes the County to levy a discretionary sales surtax of up to one percent (1%), subject to approval by a majority vote of the electorate of the County (the “Surtax”).
- B. The countywide electorate may be asked on November 8, 2016, whether to approve such levy (the “Ballot Measure”), with the revenues therefrom to be disbursed and expended in accordance with Section 212.055(1) and this Agreement.
- C. If a majority of the electorate approves the Ballot Measure, Section 212.055(1) further provides that the proceeds from the Surtax shall be “applied to as many or as few of the uses enumerated [within Section 212.055(1)] in whatever combination the county commission deems appropriate”.
- D. The County Commission, by approval of this Agreement, has deemed appropriate the use of the Surtax proceeds as provided in this Agreement.
- E. Section 212.055(1)(d)(4) authorizes the County to enter into interlocal agreements with municipalities to distribute proceeds of the Surtax to municipalities, which proceeds may be used (1) for the planning, development, construction, operation, and maintenance of roads and bridges in the county; (2) for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; (3) for the planning, development, construction, operation, and maintenance of on-demand transportation services; (4) for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and (5) as a pledge for new or refinanced bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges.
- F. The County desires to enter into interlocal agreements with the identical substantive terms with each municipality within the County (a “Transportation Surtax ILA”), with the further intent that these interlocal agreements will provide that, collectively, thirty percent (30%) of the proceeds of the Surtax shall be distributed to the municipalities, including the unincorporated area of Broward County, for expenditure consistent with the terms and conditions of Section 212.055(1)(d)(4) and this Agreement.

G. Municipality wishes to receive its *pro rata* share of the Surtax proceeds.

H. To provide for enhanced accountability, objectivity, and transparency in the distribution and expenditure of Surtax proceeds, the parties desire that a Transportation Surtax Oversight Board consisting of independent members be established to review proposed projects for consistency with Section 212.055(1) and this Agreement.

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

Agreement

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

II. Ballot Measure. The terms of this Agreement shall be interpreted and implemented in accordance with the Ballot Measure, which shall provide for the levy of the Surtax commencing at 12:01 a.m. on January 1, 2017; for the creation of a trust account administered by the County into which all Surtax proceeds shall be deposited pending disbursement and expenditure pursuant to the terms of this Agreement; and for the levy of the Surtax to end on December 31, 2046, at 11:59 p.m.

III. Surtax Proceeds.

A. The total Surtax proceeds remitted to the County by the Florida Department of Revenue (“FDOR”) as required by law (less any administrative or other costs lawfully deducted by FDOR) shall be defined as the “Gross Surtax Proceeds.”

B. The County may deduct up to one percent (1%) of the Gross Surtax Proceeds to pay for the actual administrative costs (direct costs of dedicated Transportation Surtax Oversight Board staff, direct expenses for consultant and other costs incurred by the Transportation Surtax Oversight Board, and only those indirect costs that would be recoverable in a federally-approved indirect cost plan) incurred by the County pursuant to this Agreement and the other Transportation Surtax ILAs. The Gross Surtax Proceeds minus such actual administrative costs (capped at 1%) shall be defined as the “Net Surtax Proceeds.”

C. Until disbursed consistent with the terms of this Agreement, the Net Surtax Proceeds shall be maintained by the County in a segregated “Net Surtax Proceeds Trust Account,” and shall not be comingled with any other funds (including other transit or transportation funds).

IV. Allocation of Net Surtax Proceeds.

A. Seventy percent (70%) of the Net Surtax Proceeds shall be allocated to and retained by the County in its subaccount within the Net Surtax Proceeds Trust Account, and

the remaining thirty percent (30%) shall be allocated to municipalities (the unincorporated area shall be considered a municipality).

- B. By April 30, July 31, October 31, and January 31 of each year during the term of this Agreement, the County shall allocate the Net Surtax Proceeds received by the County during the prior calendar quarter into subaccounts maintained by the County within the Net Surtax Proceeds Trust Account. These subaccounts shall be maintained, respectively, for the benefit of Municipality, for the benefit of each other municipality that has entered into a Transportation Surtax ILA, for the benefit of the County (as a regional government), and for the benefit of the unincorporated area of the County. The amount allocated into Municipality's subaccount shall be Municipality's *pro rata* share of the Net Surtax Proceeds, which share shall be equal to thirty percent (30%) of the Net Surtax Proceeds received by the County during the prior calendar quarter multiplied by Municipality's population, then divided by the total population of the County. Any interest earned on Net Surtax Proceeds shall belong to the governmental entity to which such proceeds are allocated, and may only be expended on projects approved pursuant to the terms of this Agreement.
- C. Challenge Grants.
1. In the event the municipal thirty percent (30%) share of Net Surtax Proceeds is not fully allocated because one or more municipalities have not entered into a Transportation Surtax ILA on or before June 30, 2016, the County shall place the unallocated proceeds into a Surtax Challenge Grant subaccount within the Net Surtax Proceeds Trust Account for distribution to municipalities as described in paragraph C (2) immediately below.
 2. Only municipalities that have entered into Transportation Surtax ILAs may apply for grant awards from the Surtax Challenge Grant subaccount. Challenge Grants shall be awarded from proceeds of this subaccount every five years or when \$5 million has accumulated within the subaccount, whichever is sooner. The Challenge Grant process will be overseen by the Broward Metropolitan Planning Organization, which shall develop an application process, award criteria, and other appropriate requirements. Challenge Grant awards may only be used for projects that meet the requirements of Section 212.055(1) (d) (4), Florida Statutes.
- D. Calculating and Adjusting Population. For purposes of this Agreement, the population of each municipality and the County shall be the population shown by the United States Census Bureau's decennial census applicable at the time of the allocation of Net Surtax Proceeds. However, whenever any new municipality is incorporated within Broward County, the parties agree that reasonable methods shall be utilized to establish new population figures for each municipality, the unincorporated area, and the whole County, which figures shall be effective for all allocations of Net Surtax Proceeds from the date that new municipality enters into

a Transportation Surtax ILA through the publication of the next United States Census Bureau decennial census.

V. Transportation Surtax Oversight Board.

A. Establishment. By February 1, 2017, the County shall establish the “Transportation Surtax Oversight Board” (the “Oversight Board”). The Oversight Board shall be comprised of the following nine (9) members: one (1) professional in each of the following fields: accounting, finance, land use, law, engineering or construction management, architecture, and environmental science; one retired elected official; and one retired city manager. None of the members shall, at any time during their term, be an elected official or have an employment or contractual relationship with, or be employed by any entity that has a contractual relationship with, the County or any municipality within the County. The following five (5) persons and entities (collectively, the “Appointing Authority”) shall, based on procedures established by majority vote, make nominations for members and shall, also by majority vote, appoint members on or before May 1, 2017:

1. The Secretary of the Florida Department of Transportation, District 4, or an employee of District 4 designated by the Secretary;
2. The designee of the Broward Workshop;
3. The designee of the Broward County Council of Chambers (of Commerce);
4. The Broward County Auditor, or the Auditor’s designee; and
5. The Director of the Florida Atlantic University Center for Environmental Studies, or such person’s designee.

B. Term of Members. Members shall serve four-year terms and may be reappointed for successive terms. Members may be removed for good cause determined by supermajority vote of the Appointing Authority, and may be removed by a majority vote of the Appointing Authority if the member no longer meets the qualifications for membership. Any member appointed to replace a member who has been removed or who resigns shall serve for the balance of the term of such member. The Appointing Authority shall meet as required to appoint or remove members.

C. Oversight Board Meetings. The Oversight Board shall meet quarterly. The members shall elect a chairperson to preside over meetings. The Oversight Board shall establish its own rules of procedure for conducting its meetings.

D. Staffing. The County shall provide sufficient staff to enable the Oversight Board to efficiently perform its functions, and shall retain such consultants as the Oversight Board determines necessary to perform its responsibilities under this Agreement.

VI. Approval of Projects. Projects that do not involve bond financing shall be funded through Surtax proceeds only if approved by the Oversight Board. Projects that involve bond

financing secured in whole or in part by Surtax proceeds shall be funded through Surtax proceeds only if the conditions stated in Section VI (B) are met.

- A. Projects that do not involve Bond Financing. All applications for projects funded by Surtax proceeds that do not involve bond financing shall be submitted to the Oversight Board, which shall determine:
1. Whether the project, as described in the project application, is permissible under Section 212.055(1)(d)(4), Florida Statutes; and
 2. Whether the applicant has submitted all required external audits pursuant to Section VIII (C) below and, if it has, whether such audits demonstrate that the applicant, at the time of application, is in compliance with the requirements of this Agreement.

If the Oversight Board determines that the project meets these two (2) requirements, the Oversight Board shall approve the project and shall send written notice of such approval to the applicant and to the County's Chief Financial Officer (the project shall be deemed approved upon receipt by the County's Chief Financial Officer of such written notice). The written notice of approval may contain recommendations made by the Oversight Board regarding best practices or other methods that may be employed to improve the project. If either of the two (2) stated requirements is not met, the Oversight Board shall reject the project and shall send written notice thereof to the applicant. Such notice shall specify the reasons why the project was rejected. Rejected projects may be modified by the applicant and resubmitted for subsequent consideration by the Oversight Board. The Oversight Board shall issue its written notice of project approval or rejection within one hundred twenty (120) days of its receipt of a completed project application.

- B. Projects that involve Bond Financing. A project that involves bond financing (including bond issuance, refinancing, or repayment) shall be deemed approved upon receipt by the Oversight Board, and prompt subsequent transmittal by the Oversight Board to the County's Chief Financial Officer, of:
1. A written opinion from qualified bond counsel retained by the project applicant stating that the proposed expenditure of Surtax proceeds complies with all applicable legal requirements, is not inconsistent with any existing bond covenants to which the applicant has obligated itself, and will not result in the applicant exceeding the debt limitation referenced in Section VI (D) below; and
 2. A certified copy of the applicant's governmental resolution or other formal action approving the project expenditure and any related bond issuance, refinancing, or repayment.
- C. Municipality and the County agree that permissible projects include, but are not limited to, the types of projects delineated on Exhibit 1. Additionally, except as

would otherwise be prohibited by applicable law or by the terms of any grant or other agreement, Municipality and the County agree that Surtax proceeds may be used to fund approved projects in whole or in part, including any approved project that has commenced prior to the initial levy of the Surtax, and may be used to fund joint projects between or among parties to Transportation Surtax ILAs.

- D. Debt Limitation. Neither Municipality nor the County shall issue any bonds or other debt to be repaid, in whole or in part, through Surtax proceeds that, on a cumulative basis, exceed fifty percent (50%) of the Surtax proceeds the issuer reasonably expects to receive (based on available data) during the applicable debt repayment year. The parties acknowledge that this limitation is prudent due to the potential for significant fluctuations in annual Surtax proceeds.
- E. The notice address for the County's Chief Financial Officer is: Broward County Chief Financial Officer, 115 South Andrews Avenue, Room 513, Fort Lauderdale, FL 33301.

VII. Funding of Approved Projects. The County may expend Surtax proceeds that have been allocated to the County to provide funding for a project at any time after the project is approved. Until expended, all Surtax proceeds allocated to the County shall be maintained by the County in its subaccount within the Net Surtax Proceeds Trust Account. With regard to funding of Municipality's approved projects, Surtax proceeds shall be disbursed to Municipality as follows:

- A. Approved Projects with a Lower Total Cost than the Amount of Allocated Proceeds in Municipality's Subaccount. Where the total cost of an approved project is less than the amount of available Surtax proceeds contained in Municipality's subaccount, the County shall disburse to Municipality, within thirty (30) days of notice of project approval, Surtax proceeds in the amount of the total cost of the project.
- B. Approved Projects with a Total Cost Exceeding the Amount of Allocated Proceeds in Municipality's Subaccount. Where the total cost of an approved project exceeds the amount of available Surtax proceeds contained in Municipality's subaccount, the County shall disburse to Municipality, within thirty (30) days of notice of project approval, all available Surtax proceeds in Municipality's subaccount. Thereafter, the County shall disburse to Municipality, on a quarterly basis, additional Surtax proceeds allocated into Municipality's subaccount in an amount equal to the lesser of (a) the total cost of the approved project minus prior Surtax proceeds disbursements for the project or (b) the amount available in Municipality's subaccount at the time of disbursement. Quarterly disbursements shall occur on the last day of the month that follows the month in which the Oversight Board holds its quarterly meeting.
- C. In the event Municipality has more than one approved project, funds shall be disbursed, as available, to projects in the order in which they obtained approval,

unless the County and Municipality agree otherwise in writing (the County shall not unreasonably withhold its agreement).

- D. Any interest earned on any disbursed Surtax proceeds may only be expended on approved projects.

VIII. Maintenance and Expenditure of Surtax Proceeds.

- A. No Surtax proceeds may be expended except to pay valid expenses of the approved project for which such proceeds were disbursed by the County. Prior to expenditure, Municipality agrees to maintain all Surtax proceeds disbursed by the County in segregated, project-specific fund accounts, with no such proceeds (or any interest earned thereon) being comingled with any other funds (including any other transit or transportation funds). Municipality shall create and maintain sufficient records, including invoices and evidence of payment, to permit the external auditor (referenced in paragraph (C) below) to efficiently identify and document, on a project-specific basis, all Surtax proceeds received by the Municipality for each approved project, the current balance of such proceeds in each project-specific segregated fund account maintained by Municipality (including interest earned thereon, if any), and each expenditure of such funds.
- B. Each party shall each be solely responsible for its own expenditures of Surtax proceeds, including with regard to any actual or alleged misuse or overspending of such proceeds, notwithstanding the issuance by the Oversight Board of any approval or written determination as referenced in Section VI (A) above.
- C. Each party shall retain a qualified external auditor to perform an annual audit of each of the party's approved projects and of all Surtax proceeds received, maintained, and expended by that party. Annual audits shall be performed for each fiscal year in which the party has applied for, received, expended, or retained any Surtax proceeds. A certified copy of the completed external audit shall be provided to the Oversight Board by the earlier of ninety (90) days after the end of the party's fiscal year or thirty (30) days after the completed audit is received by the party. If, based on its review of an audit, the Oversight Board determines that Surtax proceeds (or any interest earned thereon) have not been maintained or expended as required under this Agreement, and if such violation has not been resolved within ninety (90) days after the noncompliant party receives from the Oversight Board written notice of the violation, the Oversight Board may take either or both of the following actions:
 - 1. Order such party to return to the Net Surtax Proceeds Trust Account, within ten (10) days, all improperly maintained funds and the amount of all misspent funds. Improperly maintained funds shall be returned to such party within thirty (30) days after the Oversight Board notifies the County in writing that mechanisms have been established to ensure that those and all future funds will be properly maintained. The amount of misspent funds

returned to the Net Surtax Proceeds Trust Account shall be treated, for purposes of subsequent reallocation, as though they were new Gross Surtax Proceeds received from FDOR during the calendar quarter in which they are returned to such account; or

2. Refer the matter to the Broward Office of Inspector General (“OIG”) for investigation.

If the Oversight Board takes either or both of those actions, the noncompliant party shall not receive any further disbursement of Surtax proceeds until the Oversight Board or OIG, as applicable, notifies the County, in writing, that the matter has been fully resolved, after which the County, within thirty (30) days, shall provide to the formerly noncompliant party all disbursements that would otherwise have been received by that party during the period of non-disbursement.

IX. Opportunity to Execute ILA. Each municipality within Broward County shall have the opportunity, through June 30, 2016, to return to the County an approved, executed Transportation Surtax ILA. For any municipality that does not do so by June 30, 2016, but does so after that date (a “Later-Joining Municipality”), the Transportation Surtax ILA between that municipality and the County shall not be effective until the later of June 30, 2017, or the date upon which the Later-Joining Municipality enters into a Transportation Surtax ILA. Later-Joining Municipalities shall be entitled to an allocation only of those Surtax proceeds paid by FDOR after the effective date of the Later-Joining Municipality’s Transportation Surtax ILA.

X. Resolution of Disputes. If either party alleges a breach of this Agreement by the other party, or either party wishes to dispute a decision of the Oversight Board, the parties agree first to try in good faith to settle the dispute through negotiation, and if settlement is not achieved through negotiation, the parties agree to try in good faith to settle the dispute through mandatory mediation. If the dispute is not settled through negotiation or mandatory mediation:

1. Disputes alleging any breach of this Agreement by the County or Municipality (but not involving any decision of the Oversight Board) shall be resolved by filing an appropriate legal action in the 17th Judicial Circuit Court in and for Broward County, Florida; and
2. Disputes challenging any decision of the Oversight Board shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, or by any other arbitration entity to which the parties agree in writing, and judgment on the award rendered by the arbitrator may be entered by the 17th Judicial Circuit Court in and for Broward County, Florida.

Municipality acknowledges that all Net Surtax proceeds allocated under this Agreement are received by the County from FDOR, are held in trust by the County to ensure proper distribution and expenditure, and that the County has a public responsibility to ensure, and standing to enforce,

that all actions taken pursuant to this Agreement fully comply with this Agreement and the requirements of Section 212.055(1), Florida Statutes.

XI. Term of Agreement. This Agreement shall remain in full force and effect until all Surtax proceeds disbursed to either party have been expended and thereafter until ninety (90) days after each party has provided its final external audit to the Oversight Board. In the event the Ballot Measure is not approved by majority vote on November 8, 2016, this Agreement shall be null and void *ab initio*.

XII. Further Actions; Survival of Provision. If the final external audit submitted by a party to the Oversight Board 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 of the term of this Agreement.

XIII. Notices. Except as otherwise specified in this Agreement, any notices required under the terms and conditions of this Agreement shall be provided in writing and sent by U.S. Mail, certified, return receipt requested, or by email, as follows:

As to the County: County Administrator
Broward County
115 S. Andrews Avenue, Room 409
Fort Lauderdale, FL 33301
Email: bhenry@broward.org

With a copy to: County Attorney
Office of the County Attorney
115 S. Andrews Avenue, Room 423
Fort Lauderdale, FL 33301
Email: jacoffey@broward.org

As to Municipality: Manager/Administrator

Email: _____

With a copy to: Municipal Attorney

Email: _____

A party's notice address (including for the County's Chief Financial Officer) may be changed at any time by that party, provided that party provides notice of such change consistent with the requirements of this paragraph.

XIV. 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 transactions contemplated by or the subject matter of

this Agreement. This Agreement may not be amended, modified, or changed in any respect except by an agreement in writing signed by the parties to this Agreement.

XV. 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.

XVI. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.

XVII. 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 either party.

XVIII. 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.

XIX. 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.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY, signing by and through its Mayor or Vice-Mayor, duly authorized to execute same by Board action on the ___ day of _____, 2016, and the Municipality, signing by and through its _____, duly authorized to execute same by official action taken on the ___ day of _____, 2016.

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 _____, 2016

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: _____
Andrew J. Meyers
Chief Deputy County Attorney
____ day of May, 2016

Signature Page for Municipality

DRAFT

Exhibit 1

To be developed

DRAFT